# 1AC Filed Rates – Navy – Michigan PS

## 1AC – Plan

#### By expanding the scope of its core antitrust laws, the United States federal government should substantially increase prohibitions on nearly all anticompetitive business practices by the private sector that are currently exempted by the filed rate doctrine.

## 1AC – Energy

#### Advantage One is Energy:

#### The filed-rate doctrine is a ‘zombie energy law,’ shielding undead companies from liability for anticompetitive behavior.

Macey ’20 [Joshua; 2020; Law Professor at Cornell; Vanderbilt Law Review, “Zombie Energy Laws,” vol. 73, no. 4]

Today, these “zombie energy laws” entrench incumbent market power and prevent the deployment of renewables.15 The filed rate doctrine, for example, continues to shield energy companies from civil antitrust suits even though most energy companies no longer formally file rates with regulators.16 The requirement that regulators assess the financial viability of transmission projects before issuing a certificate of public convenience and necessity to site new transmission lines is a vestigial remnant of a rule that was once needed to prevent new entry into a utility’s exclusive service territory.17 In these ways, courts and regulators have clung to many of the rules that were created to protect customers in the public utility era but have since outlived their useful purpose.18

Footnote 16:

16. See Rossi, supra note 11, at 1646 (noting how courts have “allow[ed] the filed tariff doctrine to become an independent, firm-specific antitrust defense”). In twin cases decided in 1956, the Supreme Court instructed the Federal Power Commission (the regulatory predecessor to the Federal Energy Regulatory Commission (“FERC”)) to presume that any freely negotiated wholesale transaction was “just and reasonable” for purposes of the Federal Power Act and the Natural Gas Act. See Fed. Power Comm’n v. Sierra Pac. Power Co., 350 U.S. 348, 372 (1956) (holding that contract rates freely negotiated between sophisticated parties meet the just-andreasonable standard required by the Federal Power Act, even if they are unprofitable to the public utility); United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332, 344–45, 347 (1956) (same, but for the purposes of the Natural Gas Act). The presumption that freely negotiated energy contracts are “just and reasonable” applies even if FERC did not have an initial opportunity to review the contract. See NRG Power Mktg., LLC v. Me. Pub. Utils. Comm’n, 558 U.S. 165, 167 (2010) (“Under this Court’s Mobile–Sierra doctrine, FERC must presume that a rate set by ‘a freely negotiated wholesale-energy contract’ meets the statutory ‘just and reasonable’ requirement.”); Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1, 554 U.S. 527, 530 (2008) (“The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest.”).

Article continues:

These zombie energy laws are now seriously degrading energy markets. They allow incumbents to raise prices and, worse, prevent clean energy companies from competing with incumbent fossil fuel generators. For example, Arkansas regulators recently blocked a multibillion dollar transmission line that would have enabled more than $7 billion of investment in renewable energy facilities after finding that only incumbent utilities are eligible to receive a certificate of public convenience and necessity in the state of Arkansas.19 Although the project would have reduced electricity prices in the southeast and provided enough clean energy to power over a million homes a year, it has been repeatedly delayed in part because state energy regulators have determined that only incumbent utilities were legally authorized to construct new transmission lines.20 The certificate of public convenience and necessity was originally designed to ensure that rate regulated utilities were able to honor their service obligations. Today, the requirement that regulators assess market demand before granting a certificate of public convenience and necessity entrenches incumbent market power and impedes the development of renewable suppliers.

Numerous scholars and policymakers have questioned the usefulness of these doctrines.21 This Article’s contribution is therefore not to provide a novel critique of these zombie energy laws. It is instead to point out that many of the seemingly diffuse problems that pervade modern electric power markets can be attributed to the historical origins of electricity regulation. All of these laws emerged to mitigate market power abuses under a regulatory system that has largely been abandoned. Their continued application is now facilitating market power abuses and blocking the development of cleaner and cheaper energy sources.

#### The doctrine serves no purpose in energy markets. Studies suggest FERC regulation can’t fix the market without restructuring the exception.

Macey ’20 [Joshua; 2020; Law Professor at Cornell; Vanderbilt Law Review, “Zombie Energy Laws,” vol. 73, no. 4]

The filed rate doctrine might have been a sensible rule when generators were regulated as public utilities. It is difficult to imagine how a plaintiff could have brought an antitrust case in court when utilities had a legal right to a monopoly and when regulators determined what prices were reasonable. The problem with the filed rate doctrine today is that many generators no longer actually file rates with public service commissioners.173

Footnote 173:

173. See Fed. Energy Regulatory Comm’n v. Elec. Power Supply Ass’n, 136 S. Ct. 760, 768 (2016):

Decades ago, state or local utilities controlled their own power plants, transmission lines, and delivery systems, operating as vertically integrated monopolies in confined geographic areas. That is no longer so. Independent power plants now abound, and almost all electricity flows not through “the local power networks of the past,” but instead through an interconnected “grid” of near-nationwide scope.

(quoting New York v. Fed. Energy Regulatory Comm’n, 535 U.S. 1, 7 (2002)).

The article continues:

Energy markets look radically different than they did a century ago. Much of the country’s generation is now compensated through competitive procurements, and, as of 2018, thirty-six percent of all generation is produced by independent power producers that are unaffiliated with investor-owned utilities.174 In the mid-1950s, the Supreme Court announced that it would assume that rates that had been negotiated at arm’s length were just and reasonable.175 Thus, in most of the country, private ordering—not formal ratemaking proceedings—now determines the profits generators make when they sell electricity.176

There is therefore no need for regulators to worry that antitrust suits will prevent the public service commissions from realizing their mandate to prevent discriminatory rates, because regulators in these parts of the country no longer rely on ratemaking proceedings to ensure that rates are just and reasonable. In fact, FERC now presumes that freely negotiated contracts are just and reasonable.177 When FERC and state energy regulators presume, without reviewing contracts in a ratemaking proceeding, that all freely negotiated contracts are just and reasonable, they do not have an opportunity to assess whether a contract has anticompetitive effects.

Yet the application of the filed rate doctrine to competitive energy markets means that market participants are largely shielded from the laws that mitigate anticompetitive behavior in ordinary markets. In 1986, the Supreme Court affirmed the filed rated doctrine on stare decisis grounds, and it did so despite recognizing that the doctrine no longer served its original purpose.178 Without authority to enforce antitrust laws, consumers have to trust that regulators will prevent collusive behavior and monopolistic pricing.

And regulators have failed to prevent market power abuses in electricity markets. Consider the 2000–2001 California energy crisis. At the turn of the twenty-first century, large generators began to strategically refuse to sell electricity until prices rose to astronomical levels.179 Companies such as Enron would purposefully export electricity that was needed in the state to neighboring states such as Nevada in order to drive up California electricity prices.180 Pacific Gas and Electric (“PG&E”), one of the two California companies that purchased electricity from generators to sell to consumers, was forced into bankruptcy when it found itself unable to afford electricity it was required to supply to Californians.181 This type of behavior contributed to market inefficiencies worth an estimated $12 billion.182 Suppliers’ anticompetitive behavior was one of the reasons wholesale prices increased so dramatically and was thus one of the reasons California had to implement rolling blackouts.183

Other states have experienced similar abuses. Texas found itself in the same position in 2005, when market manipulation cost Texans more than $70 million.184 In the summer of 2006, New York market manipulation cost New Yorkers approximately $150 million.185 Studies of energy prices have demonstrated that market manipulation is an ongoing problem and that the tools FERC uses to deter manipulation are ill-equipped to prevent the types of abuses that pervade energy markets.186

It arguably made sense to funnel antitrust suits against regulated monopolies through the federal regulator charged with overseeing those monopolies. That is because judicial enforcement may undermine a market’s entire rate structure and lead to discriminatory rates. On top of that, a company that enjoys a legal right to a monopoly is by definition permitted to engage in some conduct that would otherwise constitute an antitrust violation. In such cases, it arguably made sense to have the regulator responsible for ensuring that a company charge just and reasonable rates also make sure that the company is complying with service obligations imposed by state tort, contract, and antitrust laws.

Yet courts continue to apply the filed rate doctrine in restructured energy markets. The U.S. Court of Appeals for the First Circuit, for example, has held that “utility filings with the regulatory agency prevail over . . . other claims seeking different rates or terms than those reflected in the filings with the agency.”187 According to the Ninth Circuit, the doctrine is “a form of deference and preemption, which precludes interference with the rate setting authority of an administrative agency, like FERC.”188

As explained in Section III.C, the filed rate doctrine was a judicially created doctrine intended to make sure that the judiciary did not undermine rates filed in cost-of-service ratemaking proceedings. Today, however, FERC has replaced monopoly cost-of-service ratemaking with a market-based approach to setting wholesale rates in most of the country. The Commission now seeks to ensure “just and reasonable” rates “by enhancing competition” among multiple wholesale providers of electricity.189 FERC has done so because it has concluded that competition is the most effective way “to bring more efficient, lower cost power to the Nation’s electricity consumers.”190 To achieve that purpose, FERC has endeavored “to break down regulatory and economic barriers that hinder a free market in wholesale electricity”191 and it has chosen to rely on market forces in competitive auctions to fulfill its statutory charge of ensuring “just and reasonable” wholesale rates.192 Courts thus seem to reflexively apply the filed rate doctrine in restructured markets without recognizing that the doctrine has become obsolete in markets where energy regulators do not review every energy contract before determining that the contract is just and reasonable.193

Restructured energy markets are intended to create the same incentives as ordinary markets. To that end, exempting energy companies from judicial enforcement of ordinary tort, contract, and antitrust claims gives energy companies an exceptional privilege. In the cases described in this Section, the filed rate doctrine prevented civil plaintiffs from enforcing antitrust laws.194 In this way, a doctrine that was originally meant to protect consumers by ensuring utilities treat all customers fairly has become a weapon that generators yield to exploit their market power.

#### Energy prices are rising.

Schnurman 12-30 [Mitchell; December 30; Business columnist; covers a wide range of topics; *The Dallas Morning News,* “Sticker Shock: Electricity Prices Jump 17% in Dallas-Fort Worth, With More Hikes Likely,” <https://www.dallasnews.com/business/energy/2021/12/16/sticker-shock-electricity-prices-jump-17-in-dallas-fort-worth-with-more-hikes-likely/>; KS]

Just about everyone seems worried about rising inflation, including the Federal Reserve, and prices in Dallas-Fort Worth have been climbing faster than most places.

One local item really stands out: Electricity in D-FW rose 17.3% in the 12 months ending in November. That was more than double the 6.5% increase for the U.S. city average, according to the U.S. Bureau of Labor Statistics.

D-FW’s price per kilowatt hour, estimated at 15.3 cents in October and November, was the highest monthly average here since the Great Recession 13 years ago. For much of the past two decades, electricity prices in D-FW were lower than the U.S. city average, but that changed in the fall.

“Prices are up and they’re likely to continue to stay up,” Tim Morstad, associate state director of AARP Texas, said during a virtual presentation on the Texas energy market Wednesday.

The cost of natural gas, which sets the price in Texas’ deregulated electricity market, has jumped sharply in the past year. That’s usually the biggest factor in higher rates passed on to consumers and businesses. But more price pressure is on the horizon, including recouping some of the costs from last winter’s big freeze and the expense of hardening the Texas grid.

There are also design changes in the works for the state’s electric market, primarily aimed at improving reliability and keeping the lights on during severe weather. Those reforms won’t come cheap, either.

One estimate projects that average residential bills in Texas could increase by 14.3% next year — apart from increases tied to natural gas, according to a filing this month with the Public Utility Commission.

“These possible bill increases could apply for many years into the future,” said the filing by the Texas Consumer Association and energy consultant Alison Silverstein.

Manufacturers already are dealing with higher costs for most of their inputs, including electricity, said Tony Bennett, CEO of the Texas Association of Manufacturers. He cited higher natural gas prices and higher hedging costs that reflect greater risks.

Some pricing premium for electricity stems from last winter’s storm, he said, but most of those expenses have not kicked in yet: “Higher electricity costs are certainly in our future,” Bennett wrote in an email.

Most Texans live in a deregulated electric market, and shoppers can usually get lower prices than the averages reported by government agencies. For example, the average one-year fixed-rate plan without fees available in the region was 12.4 cents a kWh on Dec. 1, according to the Association of Electric Companies of Texas.

That’s lower than the average D-FW rate reported by the Bureau of Labor Statistics, but it’s nearly 23% higher than the group’s same metric a year ago.

“There is a bottom to the consumers’ pocketbook,” Morstad said.

Most inflation increases in Dallas-Fort Worth over the past year were relatively similar to national trends. Housing costs rose 5.9% here compared with 4.8% for the U.S. average city, for example. But in several categories, D-FW stood apart.

The gap in electricity was notable both for the size of the increase and the fact that local average prices surpassed the national benchmark. That wasn’t the case with gasoline.

D-FW had a sharper rise in gasoline prices than the average city — up 70% in the past year compared with 58%. But the larger jump stems, in part, from gas prices starting at a lower point here.

Despite the larger year-over-year increase, the price of a gallon of unleaded regular gasoline in D-FW was almost 40 cents lower than in the average U.S. city, according to government figures.

Higher energy prices, including oil and natural gas, have been a big contributor to the sharpest rise in inflation in nearly 40 years.

The Federal Reserve, which earlier said that rising prices during the pandemic were transitory, took moves to tamp down inflation. On Wednesday, Fed officials said they would reduce bond purchases earlier than planned and indicated they would raise the federal funds rate up to three times next year.

#### Private utilities are creating artificial shortages – limits supply and raises prices.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Plaintiff-appellant accuses Eversource Energy and Avangrid (two vertically integrated utilities that distribute gas and electricity to end-use customers and own power generation assets) of misusing their market power at the natural gas resale level and engineering a chain of events that inflicted substantial harm on New England residents. The defendants-appellees abused their gas pipeline use rights to create an artificial shortage of resale gas, a key input for generating electricity in New England. By limiting the supply of gas in New England and raising the price of natural gas, the defendants-appellees increased the costs of generating electricity. And by raising the costs of generating electricity, they increased wholesale electricity prices and ultimately retail electricity costs for New Englanders by more than $3 billion.

#### Market power abuses drive up prices and grid vulnerabilities.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

B. The Unique Nature of the Electricity Market and the Greater Potential for Market Abuse

The electricity market is different from any other competitive market in a way that makes it hard to control. This makes the electricity industry particularly prone to market power abuse by individual utilities.45 The wholesale electricity market is currently under FERC's jurisdiction.46 That means that private utilities are required to file their tariffs with FERC for its review and approval.47 During the approval process, FERC reviews the market share of the utility in order to determine whether the utility possesses the market power necessary to manipulate the market.48 Market power means the power of a single firm to drive prices upwards without losing its consumers.49 In its extreme form, market power leads to monopoly.50 Monopolies hurt consumers because they produce too little and charge too much.51

Currently, FERC employs the Federal Guidelines developed by the DOJ and the FTC for nonelectricity markets as a benchmark for the critical market share under which the utility is incapable of exercising market power.52 This market set by DOJ and FTC stood at twenty percent.53 What FERC does not account for is that the unique characteristics of the electricity market "directly translate into enhanced market power for generators and traders holding much smaller market shares than 20%."54 The nature of the electricity market is such that when the right conditions are met, even a utility with as little as one percent of the market share can exercise significant market power by withholding capacity and driving the prices upwards.55

The electricity market is unique in several ways. First, the demand for electricity is highly inconsistent over time.56 Second, electricity cannot be stored.57 That means that "[e]ach unit consumed must be produced at exactly the nanosecond it is consumed."58 Thus, unless consumers are responsive in their demand for electricity, the only way to stabilize prices is to add more generators because the future capacity cannot balance out the present capacity.59 The demand for electricity is fairly inelastic due to the lack of price information among consumers.60 Price elasticity of demand describes "the extent to which quantity demanded decreases in response to an increase in the price of a good or service."61 Therefore, consumer demand does not act as a constraint upon market power because consumption will continue at the same rate regardless of the price charged.62 Further, the number of generating facilities is relatively fixed due to the substantial entry barriers for production of electricity.63

Thus, varying demand for electricity and the inability to store electricity may result in tremendous price volatility in the electricity market.64 Further, these characteristics open the door to potential market power abuse by making it possible for one firm to artificially inflate prices by withholding its electricity generation capacity or raising its prices with impunity.65 The fact that the exercise of market power in the electricity market does not demand collusion makes the electricity market particularly vulnerable to abuse.66 In case of collusion, however, the price of electricity can soar even higher.67

Third, electricity is transmitted through an integrated transmission grid which may include several regions in the United States and Canada.68 Consequently, individual states can impact the market significantly yet have very little power to control it.69 Further, because electricity cannot be stored, the only way to operate the grid without causing blackouts is to balance generation and demand carefully in order to avoid surplus in the wires.70

#### Rising prices guarantee demand outpaces supply – ensures grid failure.

Kocieniewski & Malik 11-5 [David and Naureen; November 5; Reporters at Bloomberg; *Bloomberg;* “The Power Grid Is Just Another Casino for Energy Traders,” <https://www.bloomberg.com/news/features/2021-11-05/why-is-my-electric-bill-so-high-energy-traders-bets-could-be-the-culprit>; KS]

Anyone who pays a utility bill in the U.S. is familiar with the symptoms of an aging power grid perpetually in need of upgrades. Less visible are the entities that bet on, and make multimillion-dollar profits from, the grid’s shortcomings. GreenHat’s story shows that not only do American power customers have to contend with high electric bills, rolling blackouts, and increasingly common outages—they’re also underwriting a trading system that allows speculators to pocket the winnings and sticks ratepayers with some of the biggest losses.

Andrew Kittell grew up in the shadow of Wall Street. His father, Donald Kittell, was an executive with Morgan Stanley Dean Witter and later served as the chief financial officer for Sifma, the Securities Industry and Financial Markets Association. Andrew liked excitement—he skied and surfed—but told friends he’d learned from summer jobs on Wall Street that he didn’t care for financial risk. At Columbia Business School, he wrote in-depth research on the odds of winning at a casino, reaching conclusions that soured him on gambling, close associates say.

Kittell was hired out of school by Bear Stearns, for a unit that aimed to wring profit from the investment bank’s portfolio of power plants. After Bear’s 2008 bankruptcy, he wound up in Houston at JPMorgan Ventures Energy Corp. (JPMVEC), where he worked alongside fellow trader John Bartholomew. Bartholomew had spent years as a power purchaser at a Southern California utility; he boasted on his résumé that the experience had taught him how to take advantage of flaws in the state’s payment formulas for power generators.

In the broadest terms, power traders try to anticipate when demand will rise and supply will falter. JPMVEC did all that—and also focused on finding rules it could exploit. One example: During times of heightened demand, California officials would pay plant owners hefty ramp-up fees to bring more generators online. So JPMVEC wouldn’t switch on the handful of plants under its control until it could charge as much as 83 times the normal price of power. The plants would run for a bit, then shut down to await the next demand peak. In all, the firm employed 12 different strategies that federal officials determined went beyond typical behavior and were designed to game the system.

According to internal emails, senior JPMorgan executives expected the power unit to reap hundreds of millions of dollars, but by 2013 regulators had intervened. JPMorgan agreed that year to the second-largest settlement in FERC’s history: It paid a $285 million fine for what the settlement called “manipulative bidding strategies” and returned $125 million more in “unjust profits.”

The next year, Kittell, Bartholomew, and a third JPMVEC alumnus, Kevin Ziegenhorn, formed GreenHat. Through their lawyers, Bartholomew and Ziegenhorn declined to comment for this story.

FERC is the main enforcement authority for U.S. electricity markets. The Securities and Exchange Commission has also led major investigations into energy trading firms, including Enron, whose market manipulation and accounting fraud led to bankruptcy in 2001 and landed top executives in prison. But consumers’ first line of defense consists of four regional transmission organizations, or RTOs, and three single-state independent system operators, or ISOs (New York, California, and Texas have their own grids). These private companies grapple with a system that is part Escher, part Rube Goldberg. Day to day, the essential task is balancing supply and demand—and the power flow has to be precise, at a frequency of 60 hertz, or the grid can become unstable. It’s a daunting task considering that the grid is a sprawling patchwork cobbled together from lines running along paths built a century ago and vulnerable to challenges as unpredictable as extreme weather, mechanical breakdowns, falling tree limbs, cyberattacks, and solar flares. The grid operators also run the markets for financial instruments based on the cost of those disruptions.

GreenHat traded in a market operated by the largest of the grid keepers, the RTO known as PJM Interconnection LLC. PJM (the name originally stood for Pennsylvania, New Jersey, and Maryland) directs power from 1,400 generators through 85,100 miles of high-voltage cables in 13 Eastern states and the District of Columbia. Its 65 million electricity consumers have been spared the widespread blackouts that have affected tens of millions of people in Texas and California lately, but they’ve paid for that stability.

PJM is supposed to balance the interests of power companies, consumers, and communities, but for years it’s allowed major suppliers such as Exelon, Duke Energy, and American Electric Power to bill ratepayers for high-priced upgrades to sections of the grid where they predominate, according to an assortment of studies. Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program, says PJM’s reliable checkoff on new projects allows suppliers to preserve their market dominance and freeze out competition. It’s effectively “a protection racket” for the biggest providers, Peskoe says.

PJM has also allowed power providers owned by Wall Street firms such as Blackstone Inc. and KKR & Co. to tap into the billions of dollars a year PJM pays for what’s called reserve generation—the maintenance of clunker plants that are used only in emergencies, typically a few days a year. That limited role has been a lifeline for aging plants like the 52-year-old Homer City Generating Station in western Pennsylvania, once owned by General Electric Co. It’s a coal-burning plant made all but obsolete by the shale gas boom in the surrounding area. PJM pays it to stay online to help meet peak demand. Federal regulators, academics, consumer advocates, and market participants all say PJM pays for far too much capacity. PJM disagrees.

GreenHat found a similarly accommodating environment in PJM’s market for congestion contracts. Grid operators dole out rights to the excess congestion revenue they collect to utilities and other power suppliers. At regular auctions, the recipients can resell such rights as futures contracts. Winning bidders, including speculators like GreenHat, acquire their positions on credit; no money changes hands until the contracts’ terms end. That can be years in the future.

Similar markets operate around the country, but GreenHat found PJM’s especially attractive. In comments to close associates, Kittell cited one particular aspect: PJM allowed traders to buy large numbers of congestion contracts while posting very little collateral. To secure the positions that ultimately lost $180 million, PJM required GreenHat to pledge less than $600,000, FERC records show.

PJM declined to comment on the GreenHat case, citing FERC’s ongoing investigation. In emailed statements, PJM has said that since GreenHat’s default it has implemented “a comprehensive overhaul of credit reform, mitigation policies and procedures” that include stricter collateral requirements and the appointment of a chief risk officer in 2019. The new policies give PJM officials “authority to limit, rescind or terminate participants.”

PJM has also closed another regulatory gap. When GreenHat set up shop, PJM had no screening process in place for new traders or trading firms. It does now. The applications of the GreenHat executives were approved without so much as a Google search.

Anyone who’s paid surge pricing for an Uber has a general idea of what creates congestion revenue: Prices and surcharges climb steeply whenever demand exceeds suppliers’ capacity. In the electricity market, there are additional wrinkles. Overloading a power line causes wires to retain heat and stretch, putting them at risk of failure, so grid operators like PJM have to balance the limited capacity of the lines against the ceaseless ebb and flow of demand. When needed, they bring on additional power providers, at higher prices. Say the price on a given day is $30 per megawatt-hour. When there’s a little pressure on supply, that might rise a few dollars. As the pressure increases it might double, then increase tenfold, then twentyfold. PJM finally caps prices at $1,000 per MWh—but in the most extreme conditions they could surge to $3,750. Next year those prices can rise to more than $12,000.

When prices jump, grid operators charge every ratepayer the new, higher price—even though the initial providers continue to receive the previous, lower price. Imagine you’re riding in an Uber economy car when demand leaps so high that the only option available for new riders is limousines. And then imagine that the price you have to pay automatically increases to the limousine rate—even though your driver will collect only the economy rate.

The money that grid operators collect from consumers but don’t pay to power providers is congestion revenue. During the first six months of this year, consumers in PJM’s service area kicked in $354 million in such revenue, a 97% increase from a year earlier.

#### Grid failure is existential.

Weiss and Weiss ’19 [Matthew and Martin; May 29; National Sales Director at United Medical Instruments, UMI and Research assistant at the American Jewish University; Neurosurgeon at UCLA-Olive View Medical Center; Energy, Sustainability, and Society, “An assessment of threats to the American power grid,” vol. 9]

Consequences of a sustained power outage

The EMP Commission states “Should significant parts of the electrical power infrastructure be lost for any substantial period of time, the Commission believes that the consequences are likely to be catastrophic, and many people will die for the lack of the basic elements necessary to sustain life in dense urban and suburban communities.” [67].

Space constraints preclude discussion on how the loss of the grid would render synthesis and distribution of oil and gas inoperative. Telecommunications would collapse, as would finance and banking. Virtually all technology, infrastructure, and services require electricity.

An EMP attack that collapses the electric power grid will collapse the water infrastructure—the delivery and purification of water and the removal and treatment of wastewater and sewage. Outbreaks that would result from the failure of these systems include cholera. It is problematic if fuel will be available to boil water. Lack of water will cause death in 3 to 4 days [68].

Food production would also collapse. Crops and livestock require water delivered by electronically powered pumps. Tractors, harvesters, and other farm equipment run on petroleum products supplied by an infrastructure (pumps, pipelines) that require electricity. The plants that make fertilizer, insecticides, and feed also require electricity. Gas pumps that fuel the trucks that distribute food require electricity. Food processing requires electricity.

In 1900, nearly 40% of the population lived on farms. That percentage is now less than 2% [69]. It is through technology that 2% of the population can feed the other 98% [68]. The acreage under cultivation today is only 6% more than in 1900, yet productivity has increased 50 fold [69].

As stated by Dr. Lowell L Wood in Congressional testimony:

“If we were no longer able to fuel our agricultural machine in the country, the food production of the country would simply stop, because we do not have the horses and mules that used to tow agricultural gear around in the 1880s and 1890s”. “So the situation would be exceedingly adverse if both electricity and the fuel that electricity moves around the country……… stayed away for a substantial period of time, we would miss the harvest, and we would starve the following winter” [70].

People can live for 1–2 months without food, but after 5 days, they have difficulty thinking and at 2 weeks they are incapacitated [68]. There is typically a 30-day perishable food supply at regional warehouses but most would be destroyed with the loss of refrigeration [69]. The EMP Commission has suggested food be stockpiled for a possible EMP event.

A prescription for failure

Even if all the recommendations of the Congressional EMP Commission were implemented, there is no guarantee that the grid will not sustain a prolonged collapse. There should therefore be contingency plans for such a failure.

There is also another consideration. The foundational pillars of prior American nuclear defense policy, in today’s climate, are of uncertain validity. Mutual assured destruction is the Maginot line of the 21st century. Nonproliferation will prove difficult to resurrect.

The consequences of a widespread nuclear attack have been positioned to the public as massive deaths from blast effects, and then further lingering deaths from the effects of radiation. We suspect there will be no electricity, and there will be no electricity for a very long time.

There should be an actionable plan in anticipation of a possible prolonged collapse of the grid—a retro-structure and a skill set to provide a framework for survival. Our sense is there is no plan.

#### The filed rate doctrine insulates price manipulation from private suits.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Legislative and regulatory action have transformed the governance of gas and electricity industries since the 1970s. For much of the twentieth century, comprehensive public utility regulation governed the production and sale of gas and electricity. Federal and state regulators treated both industries as generally monopolistic and subjected firms to price regulation. Under this cost-of-service regulation, federal and state regulators established rates that allowed sellers of gas and electricity to recover their costs and earn a reasonable rate of return on their capital investments. Over the past 40 years, Congress and the Federal Energy Regulatory Commission (FERC) have curtailed the public regulation of prices in natural gas and electricity and introduced market competition in both industries. These legislative and regulatory actions have replaced regulator-approved rates with market-based prices in one or more levels of the gas and electric supply chains. Richard J. Pierce, Jr., The Evolution of Natural Gas Regulatory Policy, 10 Nat. Res. & Env. 53 (1995); Paul L. Joskow, Restructuring, Competition and Regulatory Reform in the U.S. Electricity Sector, 11 J. Econ. Persps. 119 (1997).

Under a system of market-based pricing, full and robust antitrust enforcement is vital to protect the public from the collusive, exclusionary, and unfair practices of producers and traders of electricity and natural gas. See Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”). In this case, however, the Court expanded the filed rate doctrine, which was created to protect the integrity of regulatorapproved rates, to immunize Eversource Energy and Avangrid’s manipulation of market prices for electricity and gas from a private antitrust lawsuit. In broadening the filed rate doctrine to dismiss the plaintiff-appellant’s lawsuit, the district court granted a de facto license for sellers of gas and electricity to use their market power to transfer millions or even billions of dollars from the public into their own coffers.

Traditionally, the filed doctrine protected the integrity of rates that federal regulators had approved. Under the filed rate doctrine, the Supreme Court and this Court have declined to retrospectively alter rates that a regulator had approved in advance of taking effect. Square D Co. v. Niagara Tariff Bureau, Inc., 476 U.S. 409 (1986); Town of Norwood v. New England Power Co., 202 F.3d 408 (1st Cir. 2000). With market-based pricing, however, regulators do not require the prospective filing of rates and approve any rates in advance of their effectiveness.

The district court’s expansion of the filed rate doctrine to insulate marketbased prices from private antitrust lawsuits is both bad law and bad policy. First, the decision, in addressing the relationship between the Natural Gas and Federal Power Acts and the antitrust laws, repealed the Clayton Act’s private right of action. The Supreme Court has established a strong presumption against such implied repeals of federal statutes, including the antitrust laws. United States v. Borden Co., 308 U.S. 188 (1939). The Supreme Court has held that “[r]epeals of the antitrust laws by implication from a regulatory statute are strongly disfavored and have only been found in cases of plain repugnancy between the antitrust and regulatory provisions.” United States v. Philadelphia National Bank, 374 U.S. 321, 350–51 (1963). Second, the decision undermines effective antitrust enforcement and the public benefits of market-based pricing regimes. With market-based pricing in gas and electricity, private antitrust lawsuits complement federal regulatory oversight and public antitrust enforcement, provide essential deterrence against collusive, exclusionary, and other unfair practices, and compensate the victims of antitrust violations in gas and electricity markets.

DESIRABILITY OF PARTICIPATION

The district court’s opinion improperly expanded the scope of the filed rate doctrine. The district court disregarded both the strong presumption against implied repeals of the antitrust laws and the importance of antitrust enforcement for competitive market-based pricing in gas and electricity. Amicus curiae will explain the legal authorities and policy considerations that support denying filed rate protection to the market-based prices at issue in this case. Amicus curiae’s brief will not duplicate arguments made by the parties. It will instead provide the amicus curiae’s distinct perspectives on the issues facing the Court.

CONCLUSION

For these reasons, the motion for leave to file an amicus curiae brief in support of the plaintiff-appellant should be granted.

#### Private right of action is key – it’s empirically more effectively than the DOJ and FTC.

Vaheesan ’19 [Sandeep; October 25; Legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans; “MOTION OF OPEN MARKETS INSTITUTE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT,” <https://static1-squarespacecom.proxy.lib.umich.edu/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>; KS]

Although it did not even consider whether a clear repugnancy exists between the implicated statutes, the district court nonetheless repealed the Clayton Act’s private right of action. 15 U.S.C. § 15. The court ignored the strong presumption against implied repeals and improperly broadened the filed rate doctrine. In natural gas resale and wholesale electricity markets, market-determined pricing is the norm. See supra Part I. The plaintiff-appellant’s complaint “challenge[s] the background marketplace conditions” and not “the reasonableness of any rates expressly approved by FERC.” Oneok, 135 S. Ct. at 1602. See also Otter Tail, 410 U.S. at 374 (“When [commercial] relationships are governed in the first instance by business judgment and not regulatory coercion, courts must be hesitant to conclude that Congress intended to override the fundamental national policies embodied in the antitrust laws.”).

No “clear repugnancy” exists between the Clayton Act and the Federal Power and Natural Gas Acts. The plaintiff-appellant’s complaint does not ask or threaten to unsettle any prices individually filed with FERC before they took effect. In contrast to the individual rates that were prospectively filed in Town of Norwood and Square D, the defendants-appellees here did not file rates with FERC in advance of their effectiveness. Instead of charging regulator-approved or - validated rates, the defendants-appellees’ discretionary conduct4 helped set prices in the market. Indeed, as discussed infra in Part III.B, private antitrust enforcement and federal regulatory oversight complement each other in industries with marketbased prices – and together constrain the discretion of market actors and ensure that they cannot profit through collusive, exclusionary, and other unfair practices.

B. The Full Application of the Antitrust Laws Is Essential for Competitive Market-Based Prices

Since Congress and FERC have committed to market-based pricing in wellhead gas, resales of gas, and wholesale electricity, the full application of the antitrust laws is critical for ensuring the success of this legislative and regulatory market creation. Even as FERC maintains oversight of the electricity and natural gas markets, this regulatory supervision has important limitations and cannot be expected to root out all anticompetitive conduct. Antitrust enforcement complements FERC oversight and provides vital deterrence against anticompetitive practices in gas and electricity markets. Specifically, antitrust suits brought by injured consumers and businesses provide strong deterrence of anticompetitive conduct as well as compensation. In dismissing the plaintiffappellant’s suit, the district court severely weakened the effectiveness of the antitrust laws and empowered sellers of gas and electricity to profit through anticompetitive market conduct.

FERC oversight is not adequate to prevent anticompetitive conduct and ensure that markets in natural gas and electricity are free from collusive, exclusionary, and other unfair market conduct. Although FERC has an obligation to maintain “just and reasonable rates” under the Natural Gas and Federal Power Acts, 15 U.S.C. § 717c, it has only very limited tools to police specific anticompetitive conduct in the gas and electricity markets and to provide any remedy for anticompetitive market conduct it discovers after the fact.

Even assuming FERC acts against anticompetitive and other unfair conduct,5 its remedies provide inadequate deterrence and cannot be counted on to compensate injured parties. FERC can impose monetary penalties of up to a fixed maximum amount per day on parties over whom it has jurisdiction and who have violated FERC rules in gas or electricity markets. 15 U.S.C. 717t-1; 16 U.S.C. 825o-1(b). All such penalties, however, go to the United States Treasury, not to the injured customers, absent agreement by the defendant. FERC can also order disgorgement of ill-gotten profits as a result of market manipulation. Revised Policy Statement on Enforcement, 123 FERC ¶ 61,156 (2008). Both remedies are, at best, an imperfect approximation of market-wide injury to purchasers and, at worst, a small fraction of market harm and woefully inadequate to deter market misconduct. And they offer no guarantee of full compensation for injured parties.

Given FERC’s limited market oversight powers, antitrust enforcement plays an important role in gas and electricity markets. Antitrust lawsuits help identify and stop anticompetitive practices and ensure that market-based pricing serves the public. When sellers engage in collusion, exclusion and mergers, they can enhance and maintain their market power and profit at the expense of purchasers and rivals. See, e.g., Keyspan, 763 F.Supp. at 636 (describing alleged effects of anticompetitive swap agreement involving rival generators in New York City). As federal regulators have renounced or been deprived by Congress of direct pricesetting authorities, the full effectiveness of the antitrust laws is essential. Jim Rossi, Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era, 56 Vand. L. Rev. 1591, 1648 (2003). See also Alfred E. Kahn, Deregulatory Schizophrenia, 75 Calif. L. Rev. 1059, 1059 (1987) (“While prepared to defend enthusiastically the deregulations with which I have been involved, I feel equally strongly that they have greatly accentuated the importance of antitrust enforcement.”).

The filed rate doctrine’s limitation on private antitrust enforcement subverts the effectiveness of the antitrust laws. The ability of injured consumers and businesses to bring antitrust suits is a pillar of the American antitrust enforcement regime. Under the Clayton Act, “[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . ., and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.” 15 U.S.C. § 15. See, e.g., Blue Shield of Va. v. McCready, 457 U.S. 465, 472 (1982) (quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236 (1948)) (“Congress sought to create a private enforcement mechanism that would deter violators and deprive them of the fruits of their illegal actions, and would provide ample compensation to the victims of antitrust violations. . . . As we have recognized, ‘[t]he statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.’”).

Empirical research shows the public importance of “private attorneys general” and the value of having more enforcers on the beat against corporate collusion, consolidation, and monopolization. A study of 60 private antitrust lawsuits between 1990 and 2011 found that these actions generated more deterrence than the federal government’s entire criminal antitrust enforcement activity over the same period. Joshua P. Davis & Robert H. Lande, Defying Conventional Wisdom: The Case for Private Antitrust Enforcement, 48 Ga. L. Rev. 1, 26 (2013). And these lawsuits compensated injured parties, whereas public enforcement generally did not.

Under the district court’s neutering of private antitrust enforcement, market participants have expansive power to control markets through collusive and exclusionary conduct and extract billions in overcharges from the public. Their discretion and power are subject only to the limited oversight of FERC, supra, and resource-constrained public antitrust enforcement agencies. Kadhim Shubber, Staffing at Antitrust Regulator Declines under Donald Trump, Fin. Times, Feb. 7, 2019. Federal antitrust enforcers themselves have recognized the central role of suits brought by consumers and businesses injured by antitrust violations. See, e.g., Study of Monopoly Power: Hearing Before the H. Comm. on the Judiciary, 82 Cong. Rec. 15 (1951) (Statement of H. Graham Morison, Assistant Attorney General in charge of Antitrust Div., Dep't of Justice) (“[I]f you did away with the triple damages suit entirely and still wanted substantial enforcement in order to have economic freedom you would have to quadruple the size of the Antitrust Division.”).

The district court’s expansion of the filed rate doctrine establishes for gas and electricity a regime of “radical deregulation—markets absent common law and antitrust protections.” Rossi, supra, at 1596. By barring purchasers of power and potentially other market participants from bringing antitrust suits for damages, the court’s ruling blocks arguably the most effective antitrust enforcers—individuals and businesses—from vindicating their rights and protecting the public.

CONCLUSION

For the foregoing reasons, this Court should limit the filed rate doctrine to its scope as articulated by the Supreme Court in Square D and this Court in Town of Norwood. The district court improperly expanded the filed rate doctrine to cover market-based prices that are not filed with a federal regulator before they take effect. Accordingly, this Court should reverse the district court’s granting of the defendants-appellees’ motion to dismiss and remand the case for discovery.

#### The plan solves by ensuring arbitrarily approved rates are subject to antitrust.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

This Article argues that judicial review of private party antitrust claims, predicated upon market-based tariffs and filed with a regulatory agency, is not precluded by the filed rate doctrine. Th study is limited to the electricity market. In order to argue in favor of judicial reviewability of private conduct under antitrust law, this Article analogizes the filed rate doctrine with agency inaction in law, which is governed by the doctrine of nonreviewability. In Heckler v. Cheney, the United States Supreme Court gave policy reasons for its conclusion that agency inaction was unreviewable.1 I will apply the reasoning offered by the Court in Heckler to the specifics of a case study and conclude that agency market-based tariff-approval decisions should be reviewable. The case study is California's electricity crisis of 2000-2001. In particular, the examination will concentrate Federal Energy Regulatory Commission's (FERC) poor handling of the crisis, its aftermath, and the antitrust claims that followed.

The presumption of reviewability shifts the burden to show that its approval of a marked-based rate was not arbitrary. Courts should subject an agency's decision to the arbitrary and capricious standard of review. This standard would require agencies to give explanations and standards. If the agency fails to show that the decision was not arbitrary, courts should refuse to apply the filed rate doctrine and should subject the claim to the operation of antitrust laws. Courts should not, however, determine which tariff would best serve the interests of the properly functioning deregulated electricity markets. Such determinations are best left to the legislature or the agency because antitrust law and agency regulation are complementary to each other.

#### That shields against market abuse by promoting accountability and preventing arbitrariness.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

VI. Judicial Review and the Filed Rate Doctrine

There is little reason to continue to disallow judicial review of antitrust claims against utilities on account of the filed rate doctrine. As argued in the preceding section, such claims are likely to be found reviewable if subjected to the Heckler standard in lieu of FERC 's limited expertise with the competitive markets, and its subsequent lack of capacity to monitor and effectively deter market abuse by private utilities.237 Such claims should be subjected to the same principles courts utilize in reviewing claims arising from agency action under the arbitrary and capricious standard of review, namely, the requirement for explanation-giving and standard-setting.

Judicial scrutiny should be limited to the determination of whether the agency's decision was arbitrary, and if it was, courts should then subject the claim to antitrust laws. The determination as to whether rates approved by the agency were indeed sufficient for the proper functioning of a competitive market should be left to the legislature. The courts are poorly suited for the determination of proper rates prices.238

There are several other alternatives to judicial review of agency decision-making process for tariff approval, such as the expansion of the filed rate doctrine or judicial deference to the most politically accountable figure.239 However, judicial review seems to be the most workable solution in light of "the founding principles of the administrative state [which] are dedicated not only to promoting political accountability, but also to preventing administrative arbitrariness."240

The danger of arbitrariness undermines the legitimacy of an agency's decisions by generating "conclusions that do not follow logically from the evidence, rules that give no notice of their application, or distinctions that violate basic principles of equal treatment."241 Such arbitrary results are evident in the continuing application of the filed rate doctrine, which shields private utilities from antitrust claims and prevents remedy even when such rates were approved as a result of an inadequate agency review process and lack of agency expertise.242

Further, the filed rate doctrine, as it exists in its current form and application, poses a serious problem as an impediment to the effective operation of properly functioning deregulated electricity markets.243 The doctrine has to be either abolished or revised. The latter solution would result in keeping the doctrine while expanding an agency's enforcement authority. This solution is simply not workable, because expanding agency authority will not be an effective substitute for agency expertise and experience with competitive markets. Abolishing the doctrine entirely is a more viable answer to the problem at hand. Abolition, however, must be accompanied by judicial review of agency decision- making processes related to tariff approval.

Keeping the filed rate doctrine in its current state is an unwise policy decision. As elaborated earlier, the filed rate doctrine was developed by the courts as a rule of statutory construction out of "deference to a 'congressional scheme of uniform . . . regulation'" delegated to the agency.244 The construed congressional intent behind the filed rate doctrine was to protect consumers from price discrimination by public utilities.245 This intent, however, was later perverted when courts started employing the doctrine to shield regulated utilities from antitrust claims. The mere act of filing with an agency, such as FERC, effectively insulates the utility from antitrust claims, even when the agency's market- based rate-approval process is nothing more than rubber stamping the submitted rates.246 Thus, the doctrine opens the door to market power abuse which poses a serious danger to the proper functioning of deregulated electricity markets.

## 1AC – Economy

#### Advantage Two is the Economy:

#### Business confidence is low – numerous indicators.

Marcos 9-28 [Coral; September 28; Business Reporter; *New York Times*, “Stocks Tumble in Worst Day Since May, as Tech Shares Slide and Bond Yields Climb,” <https://www.nytimes.com/2021/09/28/business/stock-market-today.html>; KS]

The prospect of the Federal Reserve not reaching as deep into its bottomless pockets is starting to hit home for investors.

The S&P 500 tumbled 2 percent on Tuesday — the worst one-day slide for the benchmark U.S. index since May — as investors faced the expected wind-down of the enormous bond purchases the central bank has made since the start of the pandemic.

“The deep sell-off highlights the extent of the nerves in the markets surrounding the moves of the Fed,” said Fiona Cincotta, senior financial markets analyst at Forex.com.

The coming slowdown of bond purchases is a sign of the Fed’s confidence that the economy is recovering from the upheaval of the pandemic. But, Ms. Cincotta noted, other factors are still making Wall Street wary.

“There’s also a combination of rising energy prices, concerns that inflation could be more entrenched in these elevated levels and the fact that consumer confidence is slowing,” she said.

The tumble extended into the Asian trading day on Wednesday, though investors signaled that confidence might be returning.

Stocks in Japan were down more than 2.6 percent midday. But losses in other Asian markets, like Hong Kong and mainland China, were more moderate. Futures markets were signaling that Wall Street would open modestly higher.

The trigger for Tuesday’s tumble, which cut across sectors, was a rise in the yield on the benchmark 10-year Treasury note. With the Fed preparing to slow its purchases as soon as November, investors have been selling off bonds before demand ebbs. On Tuesday, that pushed the 10-year’s yield up to 1.54 percent, its highest level since June.

Even though the Fed has said it doesn’t plan to increase interest rates for months or years, government bond yields are the basis for borrowing costs across the economy. When bond prices fall, yields rise — a move that can hinder the stock market’s performance because it makes owning bonds more attractive and can discourage riskier investments.

Higher rates would make borrowing more expensive for smaller companies, and the jump in yields was a blow to shares of several high-flying stocks. Etsy, the online craft marketplace, dropped 6 percent, and Shopify fell more than 5 percent. Both companies have soared during the pandemic.

“With tech stocks, you’re betting for a company to have a breakthrough years from now,” said Beth Ann Bovino, the chief U.S. economist at S&P Global. “If interest rates go up today, that value that you receive years from now is discounted.”

The biggest technology stocks — particularly Amazon, Apple, Microsoft, Google and Facebook — have a vast pull on the broader market and helped drag down the S&P 500. Apple fell 2.4 percent and was the best performer of the tech giants. Amazon dropped 2.6 percent while Microsoft, Facebook and Google were down by more than 3.5 percent.

But the declines cut across many sectors. Energy stocks were the exception, rallying after oil prices climbed early in the day. Schlumberger, ConocoPhillips, Halliburton and Exxon Mobil were among the best-performing shares in the S&P 500, though some of their gains faded as oil futures turned lower in the afternoon.

The Delta variant of the virus remains a concern for investors, while persistent supply-chain bottlenecks have affected everything from auto production to school lunches. In Washington, lawmakers remain deeply divided over spending on infrastructure and expanding social programs.

And another pressing fight is brewing over raising the nation’s debt limit — a dispute that could trigger a government shutdown. Treasury Secretary Janet L. Yellen warned lawmakers on Tuesday of “catastrophic” consequences if Congress does not deal with the debt limit before Oct. 18.

The unease is apparent in stock performance the past four weeks. The S&P 500 is approaching a 4 percent drop for September, ending seven straight months of gains. The winning streak had lifted stocks more than 20 percent, as investors seemed to largely shrug off any bad news.

Bumpy moments have usually involved the Fed. Tuesday’s trading echoed the volatility of earlier this year, when a jump in rates roiled financial markets. That rise happened as traders worried that higher inflation might cause the Fed to increase rates sooner than officials had forecast.

“There’s no doubt that the equity market does not like higher rates — there’s just no debate about it,” Ralph Axel, director of U.S. Rates Strategy at Bank of America.

Lauren Goodwin, an economist at New York Life Investments, wrote in a note to clients that investors have begun seeking out safer investments while weighing concerns including the debt-ceiling fight and regulatory actions in China.

#### **Energy prices drive inflationary pressures.**

Eberhart 9-21 [Dan; September 21; CEO of Canary, LLC.; *Forbes,* “Rising Energy Poses Big Inflationary Threat To U.S. Economy,” <https://www.forbes.com/sites/daneberhart/2021/09/21/rising-energy-poses-big-inflationary-threat-to-us-economy/?sh=7ada2d4377b2>; KS]

Fears about inflation are rampant in Europe where natural gas and power shortages are colliding with the onset of winter to drive energy prices to record-breaking levels. Mix in the effects of supply chain bottlenecks caused by the global pandemic and you have a dangerous cocktail of rising prices and falling purchasing power of must-have energy products.

And while the situation in the United States is not as bad, consumers and investors can’t afford to be complacent. Wall Street traders are watching what’s happening in Europe and anticipating inflation will continue to rise on these shores, too.

Concerns about the most recent Consumer Price Index (CPI) report put the jitters in traders that knocked the wind out of the sails of the stocks market. The year-over-year CPI rose 5.3 percent over its level last August and the core CPI is up 4 percent over the same period. That’s a slight decrease from where they were in July, but it’s still double the 2 percent inflation rate targeted by the Federal Reserve.

U.S. consumer prices increased at their slowest pace in six months in August, however those figures ignore the volatile food and energy components of the market. Consumers don’t have the luxury of ignoring rising prices for energy commodities like crude oil, natural gas, gasoline, and diesel. The cost of energy impacts prices throughout the supply chain – from production to transportation – and those extra costs ultimately filter down to the consumer at the end of the line.

Benchmark Brent crude oil now trades above $75 a barrel, or more than 45 percent above where it started the year, and analysts warn that a tightening oil market could prompt further gains.

Average U.S. retail gasoline prices are some 50 percent higher than a year ago at $3.19 a gallon, and with crude feedstock costs rising and some refineries still constrained after Hurricane Ida, they could also move higher.

The situation is most alarming in natural gas, which many consumers rely on to power and heat their homes. At over $5 per million Btu, benchmark Henry Hub natural gas prices are more than twice as high as a year ago, at an annualized rate equal to a $109 billion increase to consumers. The Energy Information Administration (EIA) reports that working natural gas stocks are 17 percent lower than a year ago and 7 percent below the five-year average.

Gas shortages in Europe and Asia are drawing more U.S. gas abroad as exports of liquefied natural gas (LNG), exacerbating market tightness here despite America’s vast gas reserves. The EIA says that natural gas exports are up 41 percent from a year ago.

The consultancy S&P Global Platts calculates that Henry Hub prices would have to increase to $10 per million Btu to provide incentive to U.S. producers to fulfill domestic natural gas demand rather supply the export market. At those price levels, which the United States experienced in 2008, would cause demand destruction in the manufacturing sector. Many manufacturers that consume large quantities of natural gas can no longer compete in the market at those prices, which results in a loss of jobs.

Low gas inventories and rising prices are a concern because the United States should now be building stocks for the winter when the heating season creates peak demand. The market is now in what’s known as a “shoulder season” when demand is structurally lower because the market is in between robust summer cooling demand and peak winter heating demand.

Instead, American consumers could be facing an uncomfortable winter if natural gas prices spike at the same time as crude oil and refined products push higher while the economy continues to recover from the pandemic.

It’s a dangerous prospect, particularly for lower income families who are hurt most by rising energy prices. A 50-cent-a-gallon increase in retail gasoline prices may not dent the wallet of wealthier consumers, but it can be incredibly painful for those with lower or fixed incomes.

And there’s another side to inflation in energy that can squeeze consumers. Investors use commodity markets to hedge their inflation risk, meaning they buy oil and gas futures contracts to hedge against the risk of consumer prices rising across the board. This speculative buying can drive up the price of the underlying commodity for consumers.

The Biden administration is understandably worried about rising energy prices but its attempts to blame the oil and gas industry are off base and show a lack of understanding of energy markets.

#### Inflation raises costs and decreases discretionary spending.

Troise 10-28 [Damian; October 28; Journalist at Associated Press; *Associated Press,* “Energy Prices Lift Oil and Gas Stocks, Weigh on the Economy,” <https://apnews.com/article/business-economy-prices-a906dbc90bf85a3caa11882e1eb861ec>; KS]

Energy prices are soaring in 2021 and oil and gas stocks are the clear winners, but the losers might just turn out to be businesses and consumers.

The energy sector has far outpaced the broader market in 2021. The S&P 500’s energy stocks are up more than 50%, compared with a roughly 20% gain for the overall index. Devon Energy, Marathon Oil and Occidental Petroleum have all more than doubled in value this year.

While energy stocks are reaping the benefits from high demand and lagging supplies, other areas of the economy are having a tougher time coping.

Surging oil and gas prices are adding to broader inflation pressures that are squeezing businesses and driving up costs. A wide range of manufacturers are finding it more costly to ramp up operations as energy costs rise. Airlines are getting hurt by higher jet fuel costs as they try to rebuild profits. Consumers in the U.S. and around the world are facing a tighter squeeze on their wallets from rising energy costs.

Fertilizer maker CF Industries briefly halted operations at two facilities in the U.K. in September because of high natural gas prices. Delta Air Lines CEO Ed Bastian warned investors earlier in October that fuel prices will hurt its ability to remain profitable through the end of the year. It expects a “modest” loss in the fourth quarter.

Consumers are already paying more for goods as companies pass through higher fuel costs, raw materials costs and supply chain disruptions. More worrisome to some analysts is what happens if people have to cut back on spending in order to pay for higher gas and home heating costs. The economic recovery depends on continued consumer spending, but higher energy costs could mean less discretionary spending on services, travel and goods.

#### The economic effects ripple through every industry and sector.

Salzman 11-9 [Avi; November 9; Senior writer at Barron's, covering stocks, the economy, and the impact of new technology on financial markets; *Barron’s,* “High Energy Prices Are Rippling Through the Economy,” <https://www.barrons.com/articles/high-energy-prices-are-rippling-through-the-economy-51636477167>; KS]

The latest government inflation figures show that prices are rising fast, and much of the momentum is coming from energy. The trends are already hitting businesses in several industries and will continue rippling through the economy. Investors should keep an eye out for shrinking margins—and possibly pressure on valuation—in the months ahead.

On Tuesday, the Bureau of Labor Statistics released the monthly producer price index, which measures prices of goods and services as they make their way through the supply chain. The report showed that the PPI rose 0.6% in October on a month-over-month basis, and 8.6% on a year over year basis, in line with economists’ expectations.

The consumer price index, which measures prices at the retail level, is scheduled to be released on Wednesday. That report is likely to show that escalating energy prices are forcing consumers to pay up for heating oil, propane, gasoline, and other fuels.

“I think more pain is going to come to the consumer, certainly, for this winter,” said Marcus McGregor, an energy analyst at asset manager Conning. “I think if you look at the latest reports, costs for propane, natural gas and any sources that are leading into the consumer’s home—if we have a really cold winter—are expected to increase significantly this winter. So I see more pain before relief when it comes to the U.S. consumer.”

Businesses are already having to adjust. The PPI shows how the escalating energy costs are affecting corporations—and how they may end up flowing through to consumers in several industries. The price of goods that were at the final stage of production (as opposed to component parts) rose 1.2% in the month, with three quarters of that jump having to do with a rise in the price of energy, according to the report. In October, oil prices rose 13%. Natural gas prices were flat in October, after jumping 34% in September, the largest one-month gain in 12 years.

That has been a boon for energy companies, which have led the market higher this year after trailing for much of the previous decade. Exxon Mobil (ticker: XOM) stock has soared 58% this year, and BP (BP) is up 34%.

But escalating energy prices are a draw on several other industries. Consumer goods get more expensive because it costs more to truck them to warehouses and stores.

“Higher commodity and freight cost impacts combined were a 400 basis point hit to gross margins,” said Procter & Gamble (PG) CFO Andre Schulten on the company’s earnings call last month.

Airlines get pinched, too, because fuel can account for about one-fifth of their expenses. Delta Air Lines (DAL), for instance, said on its latest earnings call that high fuel prices “will pressure our ability to remain profitable in the December quarter.”

“At present time, we’re expecting a modest loss in the fourth quarter with crude prices driving that up nearly 60% year-to-date and more than 15% just over the last month,” said CEO Ed Bastian.

Companies that make or process fuels and chemicals often run on natural gas. Refinery operator Valero Energy (VLO) said that its refinery operating expenses rose 6% in the third quarter largely because of higher natural gas prices. And any other business—including office work—that uses substantial amounts of electricity can be hurt when energy prices rise. Natural gas now accounts for the largest share of U.S. electricity generation.

Industrial companies can be hit too, as their operating expenses rise. Processed fuels used in manufacturing—things like oils, greases, natural gas, and diesel—are on average 34% more expensive than they were a year ago, according to the PPI. That, along with supply-chain problems around the world, are causing some industrial companies to warn investors that their margins could be hurt.

German chemicals company BASF (BASFY) said that high natural gas prices cost it 600 million euros in the first nine months of the year, but that October prices increases would make its operations even more expensive.

“Throughout basically all value chains, our suppliers, our customers and we ourselves continue to be confronted with increasing raw material, energy and transportation costs, supply chain constraints and the related and largely unforeseeable issues with material availability,” said CEO Martin Brudermüller on the company’s latest earnings call.

It’s a global problem that won’t be going away soon, and one that consumers are starting to feel too.

#### **Slows the U.S. economic recovery and guarantees recession.**

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

The U.S. economy is facing a new threat: rising energy prices.

Crude oil has risen 64% this year to a seven-year high. Natural-gas prices have roughly doubled over the past six months to a seven-year high. Heating oil has risen 68% this year. Prices at the pump are up nearly a dollar over the past 12 months to a national average just over $3 a gallon. Coal prices are at records.

Higher energy prices could push up inflation in coming months, damp consumer spending on other products and services, and ultimately slow the U.S. recovery, economists say.

“For consumers it’s like a tax,” economist Kathy Bostjancic of Oxford Economics said of the price increase. While consumers will likely be squeezed, the energy-price rise “would have to be extreme and prolonged” to halt the economic recovery, she added. More likely, “we would just see growth decelerate more or a longer pause before growth resumes, and that we just get a bit stickier inflation in the meantime.”

Andreas Steno Larsen, an analyst at Helsinki-based Nordea Bank ABP, is more pessimistic. He said this year’s rise in energy prices has caused him to cut his estimate for U.S. growth next year to 1.5% from 3.5%. While he believes oil and gas prices will remain flat in coming months, he also sees a worst-case scenario in which they rise by another 40% some time next year, enough to push the U.S. and global economy into a brief recession in mid-2022.

The higher prices are being driven by rising demand and tight supplies. As the pandemic fades and consumers around the world step up spending, factories and service providers are ramping up production, which requires energy. Oil supplies are tight because oil-exporting countries have decided to increase production in measured steps instead of opening the taps more widely.

#### Economic decline causes interstate war.

Brands ’21 [Hal and Michael Beckley; September 24; Global Affairs Professor at Johns Hopkins University; Political Science Professor at Tufts University; Foreign Policy, “China Is a Declining Power—and That’s the Problem,” <https://foreignpolicy.com/2021/09/24/china-great-power-united-states/>]

Slowing growth makes it harder for leaders to keep the public happy. Economic underperformance weakens the country against its rivals. Fearing upheaval, leaders crack down on dissent. They maneuver desperately to keep geopolitical enemies at bay. Expansion seems like a solution—a way of grabbing economic resources and markets, making nationalism a crutch for a wounded regime, and beating back foreign threats.

Many countries have followed this path. When the United States’ long post-Civil War economic surge ended, Washington violently suppressed strikes and unrest at home, built a powerful blue-water Navy, and engaged in a fit of belligerence and imperial expansion during the 1890s. After a fast-rising imperial Russia fell into a deep slump at the turn of the 20th century, the tsarist government cracked down hard while also enlarging its military, seeking colonial gains in East Asia and sending around 170,000 soldiers to occupy Manchuria. These moves backfired spectacularly: They antagonized Japan, which beat Russia in the first great-power war of the 20th century.

A century later, Russia became aggressive under similar circumstances. Facing a severe, post-2008 economic slowdown, Russian President Vladimir Putin invaded two neighboring countries, sought to create a new Eurasian economic bloc, staked Moscow’s claim to a resource-rich Arctic, and steered Russia deeper into dictatorship. Even democratic France engaged in anxious aggrandizement after the end of its postwar economic expansion in the 1970s. It tried to rebuild its old sphere of influence in Africa, deploying 14,000 troops to its former colonies and undertaking a dozen military interventions over the next two decades.

#### Economic decline ensures leadership turnover.

Brückner ’19 [Markus and Hans Grüner; October 31; Economics PhD and Professor at Australian National University, External Consultant to IMF and World Bank; Economics PhD and Professor at the University of Mannheim, External Consultant to European Central Bank; Public Choice, “Economic growth and political extremism,” no. 185]

Abstract

We argue that the growth rate, but not the level of aggregate income, affects the support for extreme political parties. In our model, extreme parties offer short-run benefits to part of the population at the expense of a minority. Growth effects on the support for such parties arise when uncertainty exists over whether the same subset of individuals will receive the same benefits in the future. More people are willing to take political risks if economic growth is slow. Based on a panel of 16 European countries, our empirical analysis shows that slower growth rates are associated with a significant increase in right-wing extremism. We find no significant effect of economic growth on the support for extreme left-wing parties.

1 Introduction

Distributional consequences are associated with political extremism, both in the short run and in the long run. Extreme political parties often propose to redistribute resources away from specific subgroups of society, such as the rich, ethnic minorities, or citizens living in specific regions. This paper analyzes the impact of economic growth on the support for extreme political parties in western democracies. We argue that the growth rate, but not the level of aggregate income, affects the support for extremism.

In the first part of our paper, we discuss three alternative explanations for why an increase in the economic growth rate reduces the support for extreme political parties. Two well-known explanations are related to retrospective voting and behavioral effects, the latter meaning that voters may react more strongly to changes in than to levels of economic well-being. The third, novel explanation is that parties with extreme political platforms are perceived to create considerable uncertainty about the future distribution of income.

We develop a simple game-theoretic model that analyzes that uncertainty effect. In our model, extreme political parties offer short-run gains from redistribution to a group of individuals. However, the same individuals also face long-run losses owing to the higher income risk that is associated with an extreme regime.1 The model permits a comparative static analysis with respect to several key variables of interest. The growth rate is associated with larger future income risk. Such risk reduces the number of voters favoring extreme parties. The level of aggregate income has no effect on the support for extremism. Income inequality raises support for redistribution and affects the impact that a change in the growth rate has on the support for extremism.

An important feature of our model is that the effect of economic growth on the support for extremism depends on uncertainty of future income redistribution. If redistributive policies are perceived as predictable—in the sense that the same group will have income taken away from it in the future—then the political support for an extremist party is unaffected by growth.

In the empirical part of our paper, we estimate the relationship between economic growth and the support for extreme political parties using a panel dataset comprising 16 European countries. Our dependent variable is a survey-based measure, compiled by Euro-barometer, of respondents' support for extreme right-wing parties and extreme left-wing parties. We use that data, which spans more than three decades and contains entries on a semi-annual frequency, to estimate the effects of economic growth on the support for extremism. Our empirical analysis shows a significant negative effect of real per capita GDP growth on the support for extreme right-wing parties: controlling for country and time fixed effects, a one percentage point decline in real per capita GDP growth increases the vote share of extreme right-wing parties by up to one percentage point. We document that the negative effect of economic growth on the support for right-wing extremism is robust across estimation techniques and model specifications. We do not find a systematic effect of growth on the support for left-wing extremism.

A possible explanation for the differential effects between left-wing and right-wing extremism that relates closely to our theoretical model is that right-wing extremism might be associated with more uncertainty over what groups will be subject to income expropriation in the future. Left-wing extremism is associated with income redistribution, but little uncertainty exists over its target. Communist doctrine (see, for example, the Communist Manifesto by Marx and Engels 1848), envisions a classless society; i.e., a society wherein incomes are distributed equally. Over the past century, extreme left-wing parties have followed closely that doctrine by proposing to redistribute incomes from rich to poor; as opposition parties they have voted against laissez faire policies and, when in power, they have implemented programs that reduced the wealth and income prospects of the rich (see, e.g., Brown 2010).

Right-wing extremism, in contrast to left-wing extremism, does not advocate a classless society. Instead, it often is associated with discrimination against specific groups of society for racial, religios, political or other reasons.2 An extreme case of a murderous and discriminatory regime was the German fascist rule during the first half of the 20th century. One can see it as a direct consequence of the Nazi party's "Fuhrerprinzip"—"the principle of unconditional authority of the leader" (Bernholz 2017, p.9)—which created considerable uncertainty over who might be stigmatized, imprisoned or killed in the future.3 Indeed, from the Nazi period we know that various groups were stigmatized for different reasons4 and that stigmatization also was particularly erratic.5,6

The empirical analysis of our paper is related to Stevenson (2001), who examines the determinants of aggregate policy preferences in a panel of 14 European countries. One of Stevenson's main findings is that declines in economic growth cause policy preferences to shift to the right, while increases in economic growth cause policy preferences to shift to the left.7 Our paper differs from Stevenson in at least three important aspects. First, in contrast to Stevenson, we show that our empirical results are robust to controlling for country fixed effects, meaning that our results also hold at the within-country level, and not just in cross-section. Relatedly, Acemoglu et al. (2008, 2009) showed that the cross-country relation between income and democracy turns insignificant when country fixed effects are entered into the econometric model. Second, we provide evidence that our empirical findings reflect a causal effect of economic growth on political extremism. We show that our main findings are robust to estimating dynamic models that enable to test for Granger causality; and we also show that the main findings hold with an instrumental variables approach. Third, we distinguish in our empirical analysis between extreme right-wing and extreme left-wing parties. That distinction matters: a robust negative effect of economic growth is found on the support for extreme right-wing parties, whereas no systematic effect exists for the support of extreme left-wing parties. Our finding of a significant negative effect of economic growth on the support for right-wing extremism is in line with the finding of Bromhead et al. (2012), who show that the vote share of right-wing extremists during the Great Depression was significantly larger in those countries that experienced a more severe economic crisis. Using subnational data for 218 European regions during 1990-2016, Rao et al. (2018) find a significant negative effect of regional output on the vote share of extreme right-wing parties, but no signicant effect on extreme left-wing parties.

**Leadership turnover causes nuclear war.**

Bertoli ’18 [Andrew, Allan Dafoe, and Robert F. Trager; May 9; PhD and International Relations Professor at IE University, Spain; PhD and International Relations Professor at UCLA; Political Science Professor at UCLA; Journal of Conflict Resolution, “Is There a War Party? Party Change, the Left–Right Divide, and International Conflict,” vol. 63, no. 4]

Is the likelihood that a democracy will take military action against other countries largely influenced by which party controls the presidency? Many believe so (Palmer, London, and Regan 2004; Arena and Palmer 2009; Clare 2010). In modern American politics, one party is consistently identified as more hawkish than the other. Surveys have revealed that Republican voters consistently prefer more aggressive policies (Eundak 2006; Trager and Vavreck 2011; Gries 2014). Moreover, many believe that Al Gore, had he been elected, would not have invaded Iraq like President George W. Bush did (Jervis 2003; Lieberfeld 2005), and that the foreign policies of Hillary Clinton and Donald Trump would be similarly opposed (Paletta 2016).

Nevertheless, it is very difficult to determine whether the party in control of the presidency really has an important impact on foreign policy due to the selection of parties into particular domestic and international contexts. Put simply, which party controls the presidency is not random. For example, the victory of George W. Bush in 2004 can be attributed to a number of domestic and international factors at the time, including the American public's heightened concerns over national security following September 11. Similarly, Barack Obama's success in 2008 was influenced by problems at home and a decrease in public willingness to engage in military adventurism. Therefore, an observational analysis would likely be biased by such selection processes. Thus, even if countries behave differently when certain parties control the presidency, it would be very difficult to know if that difference is explained by the parties or by the environments into which the parties are selected.

In principle, we could overcome this problem by running an experiment in which we randomly assigned countries to be ruled by leaders from different parties. Such an ideal research design would avoid the confounding problem, making it possible to test whether countries tend to be more or less aggressive when certain parties control the presidency. Experiments are unmatched in their ability to identify causal effects, so this type of study could greatly improve our understanding of how electing candidates from different parties influences foreign policy.

We approximate this ideal experiment by using a regression discontinuity (RD) design. Specifically, we look at close presidential elections where a candidate from one party barely defeated a candidate from a different party. Such a design works if it is close to random which party won in these cases, a premise which is plausible given the inherent randomness in large national elections. Thus, we use close elections to get data that are similar to what would result from a real experiment. Such natural experimental designs are extremely rare in the study of war and thus warrant attention in the exceptional instances when they do occur.

We run two main analyses. First, we look at whether countries tend to be more (or less) aggressive when presidential candidates from right-wing parties barely defeat candidates from left-wing parties. This quasi-experimental comparison involves a small sample size (n = 29), but we still find noteworthy evidence that electing right-wing candidates increases the likelihood that countries will initiate high-level military disputes against other states. Second, to increase our statistical power, we examine cases where candidates from incumbent parties barely won or barely lost to candidates from challenger parties (n = 36). Specifically, we test whether countries experienced a larger change in their propensity to engage in military disputes when the candidate from the challenger party barely won. Thus, our key outcome of interest here is how much countries deviated from their prior levels of dispute involvement. We find statistically significant evidence that electing candidates from challenger parties causes countries to experience a larger change in their propensity to engage in military conflict with other states.

Upon further examination of the data, we find that the results from our second test are largely explained by a tendency for candidates from challenger parties to initiate military disputes in their first year in office. Thus, these findings support the theory that major leadership transitions tend to increase the chances of state aggression, either because new leaders lack the experience to manage international crises effectively or because they need to prove their resolve by acting tough.

This article makes several important contributions to the study of international relations. First, there is a long-standing debate in political science over whether leaders have an important independent impact on interstate conflict or whether their influence is largely constrained by strategic realities (Byman and Pollack 2001; Mearsheimer and Walt 2003; Jones and Olken 2009; Chiozza and Goemans 2011; Saunders 2011; Horowitz, Stam, and Ellis 2015; Croco 2015). This study provides quasi-experimental evidence that leaders do have a meaningful impact on foreign policy. Second, the results presented here suggest that domestic political ideology can spill over into the international realm. One of the main explanations for the democratic peace is that democracies act in accordance with their domestic norms when it comes to foreign policy (Morgan and Campbell 1991). The findings presented here support that hypothesis by showing that left-wing leaders do tend to behave more dovishly in international affairs. Third, these results suggest that we should be alert to the potential for interstate conflict when right-wing leaders are in office, as well as after elections where party control of the presidency changes hands.

This study is also notable because it is one of the first in the international relations literature to use a preanalysis plan. Prior to looking at any of the results, we pre-registered the main tests that we planned to conduct in this article. Our motivation here was to tie our hands, so that there could be no question of sifting through the data to find the statistical tests that produced the most interesting or significant results. The temptation for scholars to run many tests and then report the ones that are most "interesting" can lead to misleading findings. This danger has attracted a great deal of attention across scientific fields over the last decade, and it is seen by many as a major problem for quantitative research (Nosek et al. 2015). The purpose of preanalysis plans is to help ensure that research remains credible.

The article proceeds as follows. We first discuss the theoretical bases for the claim that party control of the presidency influences conflict decisions and review the existing empirical work on this subject. We then outline the research design in more detail. Next, we conduct design checks to verify that the research design is appropriate. We then present the results for party ideology. After that, we test whether party turnover leads to changes in the likelihood of state aggression. We then discuss the findings and conclude.

Leaders, Parties, and International Conflict

In recent years, much debate has arisen over whether leaders influence the chances of interstate conflict, and if so, how. A major question in this research program is whether leaders from certain parties are more likely to behave aggressively in foreign affairs or whether the ideology of the leader is largely unrelated to state behavior.

The theory that party control of the presidency influences the chances of interstate conflict can be derived from three premises. The first is that conservatives and liberals hold different views about the legitimacy or efficacy of military force. This assumption is backed by cross-national survey data showing that liberals tend to be more concerned with fairness, duties of care, and preventing harm, while conservatives tend to favor the preservation of social orders, the purity of sanctified objects, and loyalty to in-groups (Graham, Haidt, and Nosek 2009; Boer and Fischer 2013). Several studies have also found that these differences in moral foundations influence foreign policy attitudes (Schwartz 1992; Kertzer et al. 2014; Kertzer and Rathbun 2015). In particular, liberals are more "prosocial" and seek compromise internationally, in contrast to conservatives, who are more "proself” and therefore bargain more aggressively (Schwartz, Caprara, and Vecchione 2010).

The second assumption is that general differences in party attitudes appear at the elite level. There are two ways that these differences could affect the behavior of political elites. First, the political leaders could sincerely hold beliefs and preferences similar to those of their constituents, leading them to have different foreign policy strategies and goals. Alternatively, the leaders could have different beliefs and attitudes than their constituents, but nonetheless recognize that they must carry out their supporters' agenda if they hope to stay in office.

Although it is difficult to know the extent to which leaders true foreign policy preferences reflect those of their constituents, several observational studies show that changes in a leader's base correlate with changes in their approach to international affairs. First, Mattes, Leeds, and Carroll (2015) find that changes in the supporting coalitions of leaders predict foreign policy change, measured by the policy positions taken by nations in the United Nations General Assembly. Rathbun (2004) and Haas (2005) come to a similar conclusion looking at support for peace-enforcement missions, and Solingen (2009) finds that economic interests and the ideologies of partisan coalitions influence nuclear weapons policy. Therefore, even when a leader has different foreign policy beliefs and goals than the rest of the party, there may still be pressure to toe the party line.

The third assumption is that leaders from different parties can act on their divergent preferences. This means that international and domestic constraints on leaders cannot be so powerful that they largely limit leaders to a single course of action. For example, some realists argue that there is little room for leaders to have an independent impact on foreign policy because they all need to defend and advance the national interest (Mearsheimer 2001; Mearsheimer and Walt 2003). Regarding domestic constraints, Trager and Vavreck (2011) find that right-wing and left-wing leaders can have incentives to hide their "types." Liberal leaders may be forced to adopt more hawkish foreign policies because they fear that their moderation will sometimes be interpreted as weakness (Schultz 2005), whereas conservative leaders may have incentives to adopt more moderate policies because the public would likely judge them unduly aggressive if they acted hawkishly. Thus, leader preferences and political incentives could actually push in opposite directions.

Several previous studies have examined whether right-wing leaders tend to behave more aggressively in foreign policy than left-wing leaders. Using logistic regression on panel data covering eighteen parliamentary democracies from 1949 to 1992, Palmer, London and Regan (2004) find that right-wing governments are more likely to be involved in military disputes, while left-wing governments are more likely to see the disputes in which they are involved in escalate. Their explanation is that right-wing parties favor using force more often, so their leaders will engage in military conflict more often. However, when left-wing leaders engage in conflict, they will need to emerge victorious to justify their involvement, so they will be more likely to bargain tough and escalate if necessary. These researchers find that a shift from left to right government increases the chances of dispute initiation by about 50 percent and that left-wing governments are about twice as likely to escalate conditional on being in a dispute. Second, Arena and Palmer (2009) apply a probit model to panel data covering twenty stable democracies from 1960 to 1996 and find that right-wing governments are more likely to initiate disputes. Their theory is based on the finding that right-wing leaders are less likely to be removed from office for using force unwisely than left-wing leaders. This makes right-wing leaders more likely to start international conflicts in the hopes of increasing their domestic support. Third, Clare (2010) applies logistic regression to twenty parliamentary democracies from 1950 to 1998 and finds that parliamentary democracies are about twice as likely to initiate disputes when they are controlled by right-wing parties.

The central limitation of these studies is that their conclusions rest on the results of regression analysis on cross-national panel data. Such an approach is not guaranteed to eliminate bias from omitted variables. In fact, the results from this type of analysis can be badly biased, even when researchers control for a wide range of important covariates (Clarke 2005). In some cases, controlling for potential con-founders can even amplify bias (Pearl 2013). Thus, the results from these past studies should be interpreted as a tentative first cut at answering this question rather than the final word on the subject.

The design-based approach that we employ in this article gets around the omitted variable bias problem because the as-if random assignment of leaders to office should create balance across observable and unobservable pretreatment characteristics. In many other scientific fields, the results of conventional observational analyses have been overturned by design-based studies. For example, the validity of hormone replacement therapy and a variety of theories in development economics, psychology, and elsewhere have been overturned when experimental and quasi-experimental approaches were brought to bear (Women's Health Initiative 2002; Freedman 2009; Dunning 2012). Therefore, the tests that we present in this article provide an important step forward in our understanding of the empirical relationship between party control of the presidency and interstate conflict.

Before moving on to our research design, though, we should first lay out the hypotheses that we want to test. As we detail in our preanalysis plan, we started this project with the belief that leaders do matter and that electing leaders from different parties does affect the likelihood of state aggression. Given this prior, we formulated two main hypotheses. The first is the party ideology hypothesis, which predicts that electing leaders from right-wing parties will increase the likelihood of state aggression. The second hypothesis is highly general and speaks directly to the question of whether leaders matter in international relations. It posits that electing a leader from the incumbent party will lead to less change in international dispute behavior than electing a leader from a challenger party. We refer to this as the incumbent/challenger hypothesis.

Party Ideology Hypothesis: Electing presidential candidates from right-wing parties will make countries more aggressive than electing candidates from left-wing parties.

Incumbent/Challenger Hypothesis: Electing candidates from challenger parties will lead to a greater change in state aggression than electing candidates from incumbent parties (the absolute difference in aggression between presidential terms will be greater when there is party turnover).

One issue that is related to the incumbent/challenger hypothesis is that new leaders may be particularly likely to act aggressively early in their terms. There are several reasons why this might be the case. First, new leaders may lack the experience to manage international crises effectively, making it more likely that disagreements with other states will turn into military conflicts (Potter 2007). Second, new leaders may be more likely to want to show the international community that they are willing to use force abroad, which could strengthen their bargaining leverage in future international negotiations (Wolford 2007; Dafoe 2012). Third, new leaders may want to send a signal to their domestic audiences that they are tough when it comes to foreign affairs, which could increase their popularity at home. This idea that leaders are more likely to get involved in military disputes when they first arrive in office has received support from cross-national logistic regression analysis on panel data (Gelpi and Grieco 2001) and a mixed-methods analysis that looks at American presidents (Potter 2007).

While most of the existing theory and research on leadership transitions has focused on cases where new leaders come to office, a similar logic might be applied to party control of the presidency, particularly when it comes to the reputational mechanisms. New leaders who are from the same party as the old one should be able to associate themselves with the previous leader's reputation, giving them less of a need to signal their resolve. On the other hand, when leaders from challenger parties come to power, there should be less certainty that the new leader will have an approach to foreign policy that is similar to the old one's. In short, when party control of the presidency changes hands, it marks a more significant leadership transition (Mattes, Leeds, and Matsumura 2016). Thus, even if parties tend to behave pretty similarly across ideologies, we might still find that leaders from challenger parties might be much more aggressive early in their tenures.

Challenger Aggression Hypothesis: Electing candidates from challenger parties will lead to an increase in state aggression when the new leader takes office.

We did not preregister the challenger aggression hypothesis prior to looking at the results, but this was the only hypothesis we tested outside of those we preregis-tered. Thus, the findings do not reflect data mining. Nevertheless, some readers may wish to interpret the test of this particular hypothesis as exploratory.

Research Design

There are several different design-based approaches that could be used to investigate how leaders affect state behavior. One would be to look at all cases of leadership turnover and compare how countries behaved before and after the leadership change. This research design rests on the idea that countries are comparable before and after leadership transitions. This assumption may be plausible in some cases, but in others, it is clearly invalid. For example, the periods before and after normal electoral leader transitions are usually not comparable. Many countries elect the leader and members of the legislature at the same time, making it difficult to determine the effect of leadership change by itself. Similarly, looking at cases when leaders were forcibly removed from office also has its limitations, since leaders are usually removed at times of extreme political tension. Likewise, leadership changes that are caused by assassinations are not likely to provide valid comparisons. The new leader will probably have to deal with a more complicated political situation in the aftermath of the assassination, making the beginning of their term much different from the end of the previous leader's term.

Another potentially promising approach would be to focus on changes in leadership that resulted from the natural deaths of leaders. The timing of natural leader deaths should be fairly unrelated to the domestic and international environments. Moreover, the legislature will typically not change following the natural death of a leader, making it much easier to isolate the independent effect of leaders on foreign policy. However, the natural death approach is not well-suited for this particular study. The reason is that the new leader almost always comes from the same party as the old leader. Thus, this exogenous change in leadership does not provide much leverage in determining how party control of the presidency affects interstate conflict. This research design could be useful in looking at other types of variation in leaders, such as age, military experience, and occupational background. However, it is not a promising design for this study.

The approach that we take instead is to use an RD design. RD involves comparing units that barely surpassed and barely fell short of an important cut point that influenced treatment assignment. For example, if there was a test where everyone who scored a fifty or higher got a scholarship, researchers could assess the effects of getting the scholarship by comparing the students who scored fifty and fifty-one to the students who scored forty-eight and forty-nine. So long as there is no sorting at the cut point, as could happen if the graders had opportunity and motive to nudge some test takers above the cut point, it should be close to random which of these students won the scholarship, since they were all on the verge of getting it (Lee 2008).

Close elections provide an excellent opportunity to use RD analysis. Given the inherent randomness in the electoral process, whether candidates barely win or barely lose in close elections is plausibly as-if random (Eggers et al. 2015).1 Political scientists have used RD to study questions like how winning an election influences a party's likelihood of winning the next election (Lee 2008) and how winning an election affects a candidate's wealth later in life (Eggers and Hainmueller 2009). Scholars have also used RD to test how economic and political outcomes differ when Republican candidates for mayor barely defeat or barely lose to Democratic candidates (Pettersson-Lidbom 2008; Gerber and Hopkins 2011; Beland 2015; de Benedictis-Kessner and Warshaw 2016).

In this article, we look at close presidential elections. To our knowledge, this study is the first to apply RD specifically to presidential elections. For our analysis, we followed the procedures that were outlined in our preanalysis plan (which is available at the end of the Online Appendix). We will briefly summarize these procedures in the remainder of this section.

Our Statistical Approach

There are two general ways to analyze an RD. The first, known as the continuity approach, involves plotting two smoothing functions on either side of the cut point and estimating the difference at the cut point (Voeten 2014). This method should be used when the score, or "forcing variable," is continuous. The second method is the local-randomization approach, appropriate when the forcing variable is discrete (Lee and Card 2008; Cattaneo, Frandsen, and Titiunik 2015; Bertoli 2017). It involves drawing a window around the cut point and treating the units within that window like they were in a randomized experiment.

Since the forcing variable in this study is vote share in a presidential election, which is essentially continuous, we would normally use the continuity approach. However, we discovered in our preanalysis plan that the continuity approach had a type 1 error rate (false-positive rate) of 12 percent for this study, which we believe is due to our small sample size. Since the type 1 error rate should be 5 percent by design, we chose not to use this method, since it was overly likely to give us significant results. Instead, we used the local-randomization approach, which we found had a type 1 error rate of about 4 percent.

Defining Close Elections

We considered elections to be close if the top two candidates were within 2 percent of the cut point (48 percent to 52 percent range). Data on close races were available in the data set constructed by Bertoli, Dafoe, and Trager (2018). This data set includes every democratic election between 1815 and 2010, where democracies are defined as countries with Polity IV Institutionalized Democracy scores above five. The data set provides information on the top two candidates including their names, parties, and vote shares in the election. If there were more than two candidates running in an election, we focused only on the votes for the top two candidates, rescaling their vote shares accordingly. In cases where there were runoffs, we used their vote shares from the runoff rather than the initial election. We also excluded close elections in nondemocracies because we were concerned about fraud in these cases. Given the possibility of fraud, we did not feel confident in assuming that the outcomes of these elections were as-if random.

One complication that arose is that the United States elects presidents through the electoral college. This system makes it possible for candidates to lose the popular vote but still win the election if they defeat their rival in the electoral college. To deal with this issue, we counted the electoral college vote rather than the popular vote when looking at the United States. This decision is consistent with other similar studies (Bertoli, Dafoe, and Trager 2018). For every other country, we used the popular vote.

Measuring Party Ideology

To identify parties as left or right-wing, we evaluated the parties against each other according to their positions at the time of the election on social questions associated with liberalism and conservatism. Parties were judged further to the right when they expressed support for "traditional values," national, religious, racial, or ethnic in-groups, or the benefits of authority and traditional sources of authority such as a monarchy. Parties were judged further to the left when they expressed inclusive sentiments, a duty of care for vulnerable groups, and support for democratic principles. Secondarily, we evaluated parties as left or right on economic policy preferences. Advocacy for wealthier interests placed a candidate further to the right, and advocacy for the less well-off is associated with the left. These two social and economic dimensions are highly correlated, with the principal exceptions coming from communist and postcommunist countries. In these cases, the primary social dimension determined the left-right coding. When parties could not be easily classified as left or right according to these metrics, we excluded the election from the ideology test.

Main Analyses

We looked at two different types of close elections. The first were close elections between right-wing and left-wing parties, where it was essentially random whether the presidency was controlled by a leader with a right-wing or left-wing ideology. In total, we have twenty-nine close elections between right-wing and left-wing parties. The second set of close elections that we analyzed was narrow races between an incumbent and challenger party. In these cases, it was as-if random whether the country experienced party continuity or change in the executive branch. We have thirty-six of these close elections in our data set. For this group of cases, we were particularly interested in testing whether a change in party control of the presidency increased the likelihood of a change in state aggression.

Although our sample sizes are not large, the power tests that we ran at the beginning of this project indicated that we had a good chance of picking up a medium-sized or large effect. For the test of left- versus right-wing parties, we determined we would correctly detect (at a = .05) a medium-sized effect (0.5 standard deviation [SD]) 30 percent of the time, a large effect (0.8 SD) 54 percent of the time, and a very large effect (1.2 SD) 82 percent of the time. In the incumbency power analysis, we found that we would detect a medium-sized effect 55 percent of the time, a large effect 93 percent of the time, and a very large effect over 99 percent of the time. Also, if the effects were small or nonexistent, the power tests indicated that we would be able to establish confidence intervals that were precise enough to rule out very large (+1.2 SD) positive and negative effects.2

Moreover, although the results turn out to be significant at conventional levels, we encourage readers to avoid interpreting p values as either significant (p < .05) or not while reading this article and to bear the bias-variance trade-off in research design in mind. Almost all quantitative research in international relations lacks any claim to strong causal identification, being based on observational data and linear adjustment of largely ad hoc covariate sets. By contrast, the design presented here has a strong claim to causal identification and unbiasedness, providing a crucial complement to the vast majority of the literature which does not. Thus, since p values provide a continuous measure of how inconsistent the evidence is with the null hypothesis, a higher p value in an unbiased design may actually reflect more evidence against the null than a lower p value in a biased one. Small p values (e.g., p < .2), even if not significant at conventional standards, also provide important evidence in these contexts.

In addition to our two main tests, we examined whether candidates from challenger parties are more likely to initiate military disputes at the beginning of their terms than candidates from incumbent parties, which would be consistent with the theory that major leadership transitions make state aggression more likely. Our motivation for running this test came from reading Wolford (2007), Dafoe (2012), and Wu and Wolford (2016). These articles advance a compelling theory and intriguing empirical evidence that new leaders have reputational incentives to act tough when they first come to office. We find strong evidence consistent with this hypothesis.

Outcomes

We measured aggression using the number of militarized interstate disputes (MIDs) that a country initiates. These disputes are cases where countries explicitly threatened, displayed, or used force against other states (Ghosn, Palmer, and Bremer 2004). Specifically, we look at the number of these disputes that a state initiated starting from when the leader took office and ending at the date that the winner of the next election was scheduled to start. In cases where leaders were replaced part of the way through their term, we used the day that they left office instead. Since the length of time that candidates held office varied, we divided the total number of disputes by the duration of the time period. Thus, the unit of measurement is military disputes initiated per year in office.

We use slightly different versions of the outcome variables for our different tests. For the ideology test, we use military disputes initiated per year, as described in the previous paragraph. For the main incumbency test, we use the absolute change in military disputes initiated per year from the previous term. We use this variable because we are interested in evaluating whether there was a larger absolute change in military aggression when the challenger party barely won. Thus, the measure is:

Absolute change in military aggression =|MIDs/year during winner's term

—MIDs/year during previous term|

In other words, we are testing whether challenger parties gaining control of the presidency makes countries with high levels of prior aggression more likely to experience a decrease in dispute initiation and countries with low levels of prior aggression more likely to experience an increase in dispute initiation. We conduct a one-sided test for this analysis, since we expect that the absolute change will be larger for countries where the challenger party barely wins. Lastly, for the exploratory test about whether challenger candidates tend to be more aggressive when they first take office, we look at the number of disputes that each country initiated in the first year of the new presidential term.

Across these tests, our main outcomes are (1) military disputes initiated and (2) high-level military disputes initiated. High-level disputes are cases where countries used force against other states or entered into international wars.3 Following the preanalysis plan, we examine high-level disputes, which constitute actual uses of force, separately because the factors that drive posturing may be different from those that drive actual violence. As secondary outcomes, we look at (3) all disputes that countries engaged in and (4) all high-level disputes that countries engaged in. These cases include disputes that countries did not start but participated in nonetheless.

Estimation

We employ two estimation strategies. Our primary statistical analysis involves t tests. This is a simple approach, recommended for its parsimony and robustness, which is appropriate given the assumption that close elections were as-if random (Dunning 2012). As a secondary test, we plot the outcome as a function of the electoral result and estimate how the expected value of the outcome changes at the cut point using local linear regression, as is often done for RD designs. An advantage with using this approach is that it makes it possible to visualize how outcomes change at the cut point.

Design Checks

Our research design rests on one main assumption, necessary for internally valid estimates: the outcomes of the close elections considered in this study are as-if random. For example, the design would be invalid if any candidates could precisely manipulate their vote shares around the cut point, such as by counting the votes and adding just enough to win. This assumption should be valid for democracies provided that elections are fair (Eggers et al. 2015).

A second "representativeness" assumption facilitates generalizing from our results, and this is that the democracy years experiencing close elections are not dissimilar to democracy years in which elections are not close. If this assumption is reasonable, then we can generalize from our results to all democracy years. However, if the countries that had close elections are not representative of other democracies, then the causal estimates that we find may not reflect broader patterns in international relations.

We can test the as-if randomness assumption in two ways. First, we can check that the samples are balanced on important pretreatment characteristics. Figure 1 plots the balance using two-sided t tests. The graph on the left shows that countries where right-wing parties barely won were very similar to countries where left-wing parties barely won, and the graph on the right shows that countries where incumbent parties barely won were similar to countries where challenger parties barely won. In Figure 1, we look at twenty-four covariates, and not a single one is significantly imbalanced. Thus, the data are consistent with the assumption that who won these close elections was as-if random.

[[FIGURE ONE OMITTED]]

[[FIGURE TWO OMITTED]]

Second, we can test whether there is balance in the number of cases on either side of the cut point. Figure 2 shows how close right-wing and incumbent parties were to winning the presidency. For the twenty-nine close elections between right-wing and left-wing parties, there were sixteen cases where the right-wing party won and thirteen cases where the left-wing party won (p = .71). Similarly, for the thirty-six close elections between incumbent and challenger parties, there were seventeen cases where the incumbent party won and nineteen cases where the challenger party won (p = .87). Thus, there is no evidence of sorting in either sample.

[[FIGURE THREE OMITTED]]

We can also evaluate the external validity assumption by comparing the two samples to the broader population of all democracies since 1815. Figure 3 uses box-plots to compare our samples to the broader population with respect to covariates related to military power. The comparisons show that our samples are very similar to the broader population of democracies from 1815 to 2010. Thus, at least with respect to these covariates, there is little reason to believe that either of our samples consist of an idiosyncratic group of countries that would behave differently than most other democracies. Rather, the representativeness of our samples indicates that our results should be indicative of broader trends in international relations.

In sum, the outcomes of the close elections appear to be random, and the countries where the close elections happened are fairly representative of all other democracies. Therefore, the design appears to have worked very well. In the next two sections, we will look at how electing presidential candidates from different parties affects state aggression using this new empirical approach.

Results for Party Ideology

Our results indicate that right-wing parties tend to be more aggressive than left-wing parties. Table 1 shows the aggression levels of the countries that had close elections between right-wing and left-wing candidates. On average, the countries where right-wing parties barely won started .06 more disputes per year than countries where left-wing parties barely won. Similarly, they engaged in .10 more high-level disputes per year than countries where left-wing parties barely won. Given that the average duration of a presidential term for these countries is 4 years and 169 days, this adds up to .32 more disputes initiated and .43 more high-level disputes initiated over an average presidential term.

Figure 4 plots the estimates for the two main outcome variables along with the two other indicators of aggression. The confidence intervals are based on two-tailed t tests. They suggest that electing right-wing parties does increase state aggression, particularly when it comes to high-level disputes. Of course, all of these confidence intervals cover zero, so we cannot rule out zero effect with 95 percent confidence based on this analysis alone. The estimate most different from zero is of high-level disputes initiated (p = .25). For disputes initiated, the results appear to be more consistent with no effect (p = .64), as do the results for the supplemental tests of all disputes and all high-level disputes.

[[TABLE ONE OMITTED]]

[[FIGURE FOUR OMITTED]]

However, if we look at the specific disputes in more detail, the evidence that electing right-wing leaders increases state aggression grows stronger. While all the high-level disputes that the right-wing leaders engaged in involved unequivocal uses of force, the only high-level dispute that any of the left-wing leaders initiated is questionable and should probably be excluded. This dispute was between Costa Rica and Nicaragua in 1995, and it did not involve any military action by either country. Costa Rican police crossed the Nicaraguan border in pursuit of suspects and were arrested. Two days later, the Costa Rican police force retaliated by arresting two Nicaraguan police officers who had crossed the border "to get a drink of water." The two sides made a prisoner swap on the following day. If this case is dropped, then electing right-wing parties appears to lead countries to initiate . 12 more high-level disputes per year (p = .162).4

Moreover, the only reason that these results are not significant is because the United States (2001) is an outlier, which inflates the standard errors. We can address this issue by modifying the outcome to a simple indicator variable for whether countries initiated any high-level disputes (no = 0, yes = 1), which makes our test insensitive to outliers. The estimates then suggest that electing right-wing parties increases the chances that countries will initiate high-level military disputes by 25 percent (p = .041). Therefore, even though the initial tests were not statistically significant, they become more conclusive after we address some minor issues with the data.

Given the number of democracies in the world today, there may be enough close elections to get much more precise estimates a decade or two from now or maybe even after the next expansion of the MID data set. This design is definitely worth returning to in the near future. However, for the present, we will turn to a second test in the next section on more data that yields increased statistical power. This test provides further evidence that which party controls the presidency does affect the likelihood of state aggression.

Results for Incumbent versus Challenger Parties

The second test that we run compares cases where challenger parties barely defeated incumbent parties to cases where they barely lost to incumbent parties. In these cases, it was as-if random whether the incumbent or challenger party won. Thus, we can test how much military aggression changes when the party that controls the executive branch changes. The outcomes that we use for this test are the absolute changes in the military indicators between the term when the incumbent or challenger party barely won and the previous term. For this analysis, we use one-sided tests that assume that there will tend to be a larger change in military aggression when the challenger party barely wins.

Table 2 shows the absolute change in aggression levels for the countries that had close elections between candidates from incumbent and challenger parties. When the candidates from challenger parties barely won, the absolute change in disputes initiated per year was .031 greater than when candidates from incumbent parties barely won (p = .30; 26 percent increase from baseline). For high-level disputes, the difference is even more notable. The absolute change in high-level disputes initiated per year was .074 greater than when candidates from incumbent parties barely won (p = .046, 133 percent increase from baseline). The average length of the presidential terms for these data was 4.42 years, so this adds up to a difference of .33 high-level disputes initiated per presidential term. Figure 5 plots the confidence intervals for the aggression indicators.

This estimated effect is substantively large relative to other determinants of conflict that international relations scholars have analyzed. For example, past studies have found that revolutions increase the likelihood that countries will initiate military disputes by about 74 percent (Colgan 2010), arms transfers by about 60 percent (Krause 2004), and neutrality pacts with potential conflict joiners by about 57 percent (Leeds 2003). The effect of challenger parties winning appears to be in the ballpark of these estimates, although it is hard to nail down this effect very precisely because of the relatively small sample size.

Figure 6 illustrates the effect for high-level disputes across a greater range of margins of victory. As countries move from incumbent party victories (the points on the left) to challenger party victories (the points on the right), there is a large shift in the absolute change in high-level disputes initiated. Countries where the challenger party barely won experienced a much larger change than countries where the incumbent party barely won. Although this method of estimating the treatment effect was not the primary method that we discussed in our preanalysis plan, the results for this approach are fairly conclusive.

## 1AC – Federalism

Advantage Three is Federalism:

#### Circuit splits over the filed rate doctrine makes enforcement incoherent.

First ’12 [Harry and Christopher Sagers; November 28; Law Professor at NYU; Law Professor at Cleveland-Marshall; Brief of Antitrust and Economics Professors, “McCray v. Fidelity National Title Insurance Company,” http://sblog.s3.amazonaws.com/wp-content/uploads/2013/02/McCray-Final-File-Copy-as-Filed.pdf]

Some courts, though not all, have found that this complex of theoretical considerations has no relevance as soon as a state adopts the simple expedient of a rate-filing system, even if it is identical to the unreviewed, file-and-use system that Ticor found so lacking. They do this on their view that the filed rate doctrine should apply in such cases, and in their view the filed rate rule precludes private remedies even where the agency engages in no actual review of rates filed.3 Amici are eager to undo this extraordinary elevation of form over theoretical substance, and to bring consistency to all cases in which states attempt to limit federal antitrust.

Footnote 3.

3 Not all courts so hold, and the Circuits are accordingly split. Compare Brown v. Ticor Title Ins. Co., 982 F.2d 386, 394 (9th Cir. 1992) (rejecting filed rate protection for state-filed rates), with Wegoland Ltd. v. NYNEX Corp., 27 F.3d 17, 20 (2d Cir.1994) (finding filed-rate protection for state-filed rates), H.J. Inc. v. Nw. Bell Tel. Co., 954 F.2d 485, 494 (8th Cir.1992) (same), and Taffet v. S. Co., 967 F.2d 1483, 1494 (11th Cir. 1992) (same).

Footnote 3 ends.

To be clear, Amici stress as the justification for certiorari not the lack of “active supervision” in and of itself, but the expansion of the heavily disfavored filed rate doctrine to state-filed rates, an expansion that creates serious theoretical tension. If “a doctrine [so] indefensible . . . should be narrowly construed,” as one leading antitrust authority has said, HERBERT HOVENKAMP, FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE § 19.6 (4th ed. 2011) (emphasis added), then there can be no call for expanding it in this way, beyond any traditional basis in the intent of the federal Congress, and in a way so far at odds with this Court’s theory of antitrust federalism. Accordingly, while there may be support for the view that federally filed rates can enjoy filed rate protection without actual review, and while some such support was cited below,4 it is inapt to this case.

Amici will explain three related reasons that the theoretical conflict renders certiorari appropriate. First, only this Court is likely to restore consistency across factual contexts that some lower courts have taken to be distinct and unrelated. Failure to find that consistency causes there to be inexplicably and undesirably different antitrust treatment of state regulatory regimes that do not differ in any respect relevant to any value of federalism or federal antitrust. Second, this Court will consider another matter this Term raising importantly similar issues, Federal Trade Commission v. Phoebe Putney Health Sys., Inc., 663 F.3d 1369 (11th Cir.), cert. granted 2012 WL 985316 (2012) (No. 11-1160). Consideration of both matters would complement one another, as they raise the same fundamental concern: what precisely should be required of state governments before they excuse private persons from federal antitrust liability. And finally, confusion of this central theoretical point caused the court below explicitly to break with a decision of the Ninth Circuit on essentially identical facts, Brown v. Ticor Title Ins. Co., 982 F.2d 386 (9th Cir. 1992). Amici submit that Brown properly applied this Court’s larger framework for balancing state regulation and federal antitrust.

III. REASONS FOR GRANTING THE PETITION

This case is not, as the court below took it to be, about minor points of detail within the widely disparaged “filed rate” doctrine, commonly associated with Keogh v. Chicago & Nw. Ry. Co., 260 U.S. 156 (1922). It has little to do with the since-repealed federal statute at issue in that case, or with any similar federal statute, or with Justice Brandeis’s views of the largely defunct Progressive-era rate and-entry regulatory regimes of which those statutes were a part.

Instead, this case is about federalism. Specifically, it is about what should be required before a state government excuses private persons from the federal antitrust laws. The court below forgot that “a state”—unlike the federal Congress— “does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . .” Parker v. Brown, 317 U.S. 341, 351 (1943).

The opinion below crystallized the central problem in the following, nearly hidden observation: while not denying that some of this Court’s state action cases seem hard to square with its decision, the court simply found “no apparent requirement to reconcile the filed rate and state action doctrines . . . .” McCray v. Fidelity Nat’l Title Ins. Co., 682 F.3d 229, 238 n.6 (3d Cir. 2012). The court gave no explanation for that view, cited two circuit opinions for it that are logically irrelevant,5 and was evidently unaware of judicial6 and academic7 authority for the seemingly self-evident point that antitrust scope doctrines should be consistent with one another. In fact there is a need for theoretical consistency, and certiorari is made appropriate by the court’s failure to seek it.

A. Serious and Unexplained Theoretical Conflict in the Scope of Antitrust

The decision below, when taken together with this Court’s Ticor decision, gives rise to the following puzzle. If State X and State Y both had title insurance regimes like those at issue in Ticor, then title insurers in both states would be fully subject to government antitrust remedies. Ticor so held. But the effect of a ruling like that below is to bar private damages remedies. So if State X did not have a ratefiling requirement, then private plaintiffs could challenge price-fixing by State X title insurers, but a rate-filing requirement in State Y would bar private challenges there, even though in every other respect the regulatory regimes remained identical. Nothing seemed relevant to filed rate protection below except for the tariff filing itself. In its absence, the filed rate doctrine would not apply, and Ticor would preclude state action immunity, making private damages actions possible.

The same result would hold even if both states’ regulators had the same power to enforce the same reasonable rate and non-discrimination rules, and even if both states explicitly authorized price-fixing by statute. Filed rate protection would still be unavailable, and Ticor would still deny state action immunity from private remedies. And it would be so even though the State Y filing system were exactly like the one found inadequate in Ticor—a file-anduse system in which the regulator never actually uses its power of post-filing review. The Third Circuit would preclude the federal remedies of Clayton Act § 4 in State Y but not State X, even though the only difference between them is State Y’s requirement to file a piece of paper that no one ever looks at.

This result is at odds with seventy years of this Court’s elaborate balancing of state and federal interests in antitrust cases, a framework that began in Parker in 1943. Where the Court has permitted states to deviate from the federal competition mandate, it has been solely to respect their sovereign interests in regulating trade within their borders. The states have no such interest in cases in which they do not in fact regulate. Accordingly, antitrust is relaxed in light of state policy only where the state itself has actively used its regulatory power. Ticor, 504 U.S. at 639-40; Midcal, 445 U.S. at 105-06.

Ticor, this Court’s last statement on the issue, remains its fullest theoretical elaboration. As Ticor explained, on a thorough canvass of the Court’s prior decisions, the Court’s purpose has never been “to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices.” The Court asks only “whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, [and] not simply by agreement among private parties.” Ticor, 504 U.S. at 634-35; see also id. at 633 (“Immunity is conferred out of respect for ongoing regulation by the State, not out of respect for the economics of price restraint.”). And the Court judges the degree of the state’s “independent judgment and control” by measuring precisely the variable that the court below said was irrelevant: the Court requires evidence of “[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law . . . .” Ticor, 504 U.S. at 633. Critically, the Court added that:

state officials [must] have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy. Absent such a program of supervision, there is no realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.

504 U.S. at 634 (quoting Patrick v. Burget, 486 U.S. 94, 100-01 (1988)).

Therefore, the result in this case should not stand unless there is some difference between the filed rate doctrine, applied below, and the state action doctrine explained in Ticor, and the difference serves some relevant policy goal important enough to justify radically different exposure to liability in otherwise similar contexts. But the only difference in consequence between the two doctrines is that the state action immunity precludes all antitrust and the filed rate rule ordinarily precludes only some private remedies. No policy goal of either antitrust or federalism is served by precluding private federal remedies in only one of two markets identical except that one observes a pro forma state-law filing requirement.

First, the policy values on which Keogh and other filed rate cases are justified have no force where rates are filed with a state agency.8 The goal of preventing price discrimination among customers—the filed rate doctrine’s “paramount purpose,” Square D Co. v. Niagara Frontier Tariff Bur., 476 U.S. 409, 417 (1986) (quoting Keogh, 260 U.S. at 163)—has no relevance here. First of all, as petitioners observe, Delaware’s regulatory regime explicitly permits varying prices and contemplates that they may be set competitively. Compl. ¶ 34 (quoting Del. Code Ann., Tit. 18, § 2501). But even if Delaware did prohibit discrimination, a state non-discrimination rule should be no basis for disregard of federal antitrust laws. A mere state government desire to prevent price discrimination—which is an ordinary feature of many healthy, competitive markets— should receive no more federal deference than any other state intrusion into normal competition. It would be no different than when a state “simply authorizes price setting and enforces the prices established by private parties.” 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344-45 (1987) (quoting Midcal, 445 U.S. at 106). Especially where the state engages in no actual oversight of the rates set, it would do no more than “cast[ ] . . . a gauzy cloak of state involvement over what is essentially a price-fixing arrangement.” Id.

Likewise, mandating deference to regulatory authority, the other major policy goal commonly associated with filed rate protection, would make little sense here, for that is precisely the value precluded by Ticor. A state government cannot by mere fiat declare that antitrust does not apply. No policy goal of antitrust or federalism would make that more true simply because a state has adopted a pro forma rate-filing requirement.

Second, it is no reply that filed rate protection leaves open federal enforcement. Ticor stressed the danger, in terms of the lost values of healthy competition, were states allowed to displace antitrust by fiat. See 504 U.S. at 632 (“The preservation of the free market and of a system of free enterprise without price fixing or cartels is essential to economic freedom. . . . A national policy of such a pervasive and fundamental character is an essential part of the economic and legal system within which the separate States administer their own laws for the protection and advancement of their people.”). It follows that if private remedies are needed for the actual preservation of those values, then private remedies too cannot be dispensed with by state fiat.

#### Filed rate has become a judicial bypass for enforcement.

Rossi ’3 [Jim Rossi; 2003; Law Professor at Florida State University; Vanderbilt Law School, “Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era,” vol. 56]

B. Antitrust Defenses and Immunities

Modern antitrust defenses and immunities provide courts an opportunity to safeguard the public interest in deterrence - largely ignored by the filed tariff shield - in the context of federal antitrust litigation. To be sure, per se defenses provide an important set of protections against judicial overreaching on the basis of antitrust law into competitive markets. 236 However, allowing the filed tariff doctrine to become an independent, firm-specific antitrust defense - as courts have - is unnecessary and harmful, given other doctrines that protect agency discretion and state jurisdiction while also providing courts the flexibility to evaluate dual enforcement issues. Courts should independently assess whether tariffs qualify for immunity from antitrust enforcement, using traditional antitrust law doctrines, rather than using filed tariffs as a shorthand way of bypassing the antitrust laws. In contexts in which in the filed rate bar has been raised, antitrust defenses arise in two distinct scenarios: 1) horizontally, in instances where federal regulators, rather than federal courts, might assert jurisdiction over allegedly anticompetitive conduct; and 2) vertically, in instances where federal regulators approve one tariff and state regulators approve another tariff, and hence a jurisdictional conflict arises because the allegedly [\*1647] anticompetitive conduct is arguably within the realm of state regulators or falls into a jurisdictional gap. In both scenarios, antitrust law already provides ways to respect the agency regulatory process, making the filed tariff doctrine redundant.

1. Horizontal Jurisdictional Conflicts: Regulatory Compliance and Primary Jurisdiction

In the horizontal scenario, courts since Keogh have invoked the filed tariff shield to bar most antitrust claims, but do recognize certain exceptions. 237 Nearly twenty years ago, Judge Friendly called the doctrine into question in this context. 238 Although in Square D the Supreme Court refused Judge Friendly's invitation to overturn Keogh, Justice Stevens and a majority of the Court were notably sympathetic to his critique. 239 Given the more prevalent emergence of market norms, Judge Friendly's critiques resound even more clearly today. Although recent Ninth Circuit cases refuse to allow deregulation to threaten the application of the filed tariff doctrine, these cases are solidly preemption cases rather than cases applying the basic principles of Keogh. 240 Federal courts have yet to fully assess Keogh's fate against the backdrop of electric power and telecommunications deregulation.

Where federal regulators have approved all tariffs related to allegedly anticompetitive conduct, the continued rationale for allowing the filed rate doctrine to bar antitrust liability is questionable. The strongest rationale for invoking the filed rate doctrine in this context is out of respect for the expertise of agency regulators, reflected in the deference strand of the filed tariff doctrine. In Town of Norwood, the First Circuit characterized the legal foundations of the filed rate doctrine as "extremely creaky," 241 but when invoked as a bar to antitrust enforcement, the filed rate doctrine is also incoherent. To begin, as with state contract and tort law claims, if misconduct requires modification of tariff terms, regulators could easily accommodate this need in future rate cases. 242 But also, as the court [\*1648] itself noted in Norwood, in the context of the tariff approval action, FERC had waived requirements that filed rates or tariffs be accompanied and justified by cost-of-service data. 243 Such data would be necessary for the agency itself to evaluate the price squeeze claim.

Notwithstanding the fact that the agency lacked sufficient data to evaluate a claim of price squeeze, the court in Norwood concluded that "it is the filing of the tariffs, and not any affirmative approval or scrutiny by the agency, that triggers the filed rate doctrine." 244 This is dangerously broad language. By focusing on the filing of tariffs by regulated firms, the court privileges private behavior rather than the actual or anticipated actions by regulators that traditional deference concepts evaluate. It is difficult to reconcile invocation of the filed rate doctrine in the context of price squeeze claims - as the court struggled with in Norwood - with other antitrust claims, in which the filed rate doctrine has not been successfully invoked as a bar to litigation. For example, mergers and sales of assets by utilities have been subject to antitrust challenge even though the resulting rates were subject to federal regulation and the merger or sale had been approved by regulators. 245 Since Otter Tail, which allowed antitrust claims when an agency had some jurisdiction, the simple filing of tariffs has not precluded antitrust claims, even where regulators have partial jurisdiction over conduct. 246 In a deregulated market, courts have a particular responsibility to carefully assess tariffs in order to help ensure that anticompetitive and otherwise illegal private conduct does not "escape scrutiny" of applicable legal standards. 247 Otherwise, as Judge Boudin (who penned Town of Norwood) warned in an earlier-published article, through the repeated use of the filed tariff doctrine the "metaphor is likely to exhaust itself," 248 undermining the very competitive process it is designed to protect.

#### Causes jurisdiction hunting. State action immunity makes it coherent.

Rossi ’3 [Jim Rossi; 2003; Law Professor at Florida State University; Vanderbilt Law School, “Lowering the Filed Tariff Shield: Judicial Enforcement for a Deregulatory Era,” vol. 56]

2. Vertical Jurisdictional Conflicts: State Action Immunity

Modern antitrust jurisprudence also potentially extends the filed tariff doctrine's reach to a second context, vertical, in which both federal and state regulators have approved tariffs relating to allegedly anticompetitive conduct. In this context, it is conceivably the state-approved tariff that makes antitrust enforcement unnecessary. Some states do not explicitly endorse the filed tariff doctrine, as a matter of state law, 261 but, regardless of whether a state independently does so, state action immunity serves functions similar to those the filed tariff doctrine purports to serve, again making it unnecessary.

State action immunity is designed to accommodate the federal antitrust interest in promoting competition with state interests in regulation. When state regulation works to restrict competition, these two interests may collide. In Parker v. Brown, the United States Supreme Court addressed this conflict in reviewing the potential antitrust liability of state officials enforcing a program that fixed raisin prices and restricted competition between growers. 262 The Court held that the Sherman Act was not intended to restrain "state action," effectively creating absolute immunity for pure state actors, but the Court did not address the potential liability of private parties operating under the auspices of state law. 263

Later cases extended state action immunity to private parties whose allegedly anticompetitive acts were the product of, or approved by, state action. As the Supreme Court stated in California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., immunity for private actors exists only if the challenged restraint is taken pursuant to a ""clearly articulated and affirmatively expressed … state policy'" 264 and is subject to active state [\*1653] supervision. 265 The clear articulation requirement does not require a defendant to show that state law compelled the challenged actions, 266 but instead only that the state affirmatively contemplated the type of activity challenged. 267 Given this low threshold, the active supervision requirement does most, if not all, of the heavy lifting in determining whether state action immunity applies to private actors. 268 Courts have held that this requirement is not automatically met when the state "simply authorizes price setting and enforces the prices established by private parties" because such a broad authorization would merely "cast[] … a gauzy cloak of state involvement over what is essentially a price-fixing arrangement." 269

In the context of dual rate regulation schemes, state action immunity can have the same effect as the filed rate doctrine at the state level, while also providing courts flexibility to evaluate the deterrence implications of declining jurisdiction. In Town of Concord v. Boston Edison Co., then-Judge Breyer assessed a price squeeze claim brought under these circumstances. 270 FERC regulated Boston Edison's wholesale electric power rates, while its retail rates were regulated by state authorities. 271 Municipal utilities, such as the Town of Concord, challenged Boston Edison's wholesale prices as anticompetitive, on the grounds that the utility's wholesale price increases, approved by FERC, had not been matched by corresponding retail price increases at the state level. 272 The municipality claimed that the disparity between the two rates put the towns in a price squeeze, making retail customers more likely to purchase directly from Boston Edison and thus placing the municipal customer base at risk. 273 Properly declining to apply the filed rate shield - because this basis for refusing jurisdiction is particularly problematic in the context of price squeeze claims, where sometimes neither the federal [\*1654] nor state regulator has authority to rectify an antitrust violation 274 - Judge Breyer reasoned that Boston Edison enjoyed no express immunity from the application of the antitrust laws, but recognized that careful analysis of the price squeeze claim is necessary in the context of regulated industries. 275 Regulators continue to monitor the reasonableness of rates, as well as the relationship between utilities and their competitors. 276 In addition, Judge Breyer noted that regulation makes it less likely that a price squeeze would drive independent distributors from the marketplace, since the permission of regulators is required to take on new customers. 277 He further observed that supporting a price squeeze claim in such circumstances is at odds with the goals of price competition to the extent that it would encourage greater retail rates, and that there were potential institutional concerns with courts telling regulators what rate to apply under the circumstances. 278 Judge Breyer concluded that "a price squeeze in a fully regulated industry such as electricity will not normally constitute "exclusionary conduct' under [the] Sherman Act … ." 279

Judge Breyer's analysis addressed the price squeeze claim on its merits. This is understandable given that, in the context of this specific price squeeze claim, it was unclear whether the anticompetitive conduct was the wholesale rate, the retail rate, or both. 280 However, on similar facts - where the state regulates retail rates and the allegedly anticompetitive conduct is at the retail level [\*1655] only - state action immunity might allow a more complete analysis of the deterrence benefits of allowing an antitrust claim to go forward. 281 If a state actively supervises the regulation of retail rates, for example, this could implicate state action immunity in price squeeze and other antitrust claims. 282 Thus, if courts are satisfied with the monitoring provided by state regulators (including their ability to deter wrongdoing by regulated firms), there may be no need to address the merits of antitrust claims, creating the same effect as the filed tariff shield - even in instances where a state lacks its own state-law version of the doctrine.

Such an approach has significant advantages over the filed rate doctrine, as it focuses on the degree and effectiveness of overlapping state supervision, rather than on the simple act of filing or approving a tariff. Courts have yet to fully determine how state action immunity will apply in a full or partially deregulated environment. It is fair to predict, though, that as market norms emerge in formerly regulated industries, state action immunity will likely be available less often than was previously the case. 283 For example, in a recent case involving a utility's offer of a discounted rate to a customer that was conditioned on the customer's agreement to forego development of its own generation plant, a United States District Court agreed with the Department of Justice's Antitrust Division that such conduct was not protected from antitrust attack by state action immunity. 284 Although the New York state legislature had authorized reduced rates to "prevent loss of … customers," and the New York Public Service Commission had approved the reduced rate contract, the court held that the state legislature did not foresee or intend the anticompetitive [\*1656] features of this arrangement, particularly to the extent it resulted in the removal of a competitor. 285

None of these doctrines - robust federal preemption, primary jurisdiction, or state action immunity from antitrust enforcement - was available early in the twentieth century, when federal courts first developed the filed tariff doctrine to help protect customers against discrimination in rates. 286 The filed tariff doctrine was questionable even before these doctrines developed, but today it is even more unnecessary. Further, by encouraging perverse behavior by private actors that is largely beyond the reach of the judiciary - thus widening the jurisdictional gap in enforcement of market norms - the doctrine is harmful. Using the filed tariff doctrine as an independent legal reason to preempt state law claims, or refuse jurisdiction over antitrust and other federal claims, gives short shrift to the public interest in the context of dual regulatory enforcement. In a dual enforcement regime, the jurisdictional inquiry must focus on the relationship between the agency and the courts, or the agency and state law, rather than on the deceptively simple act of filing a tariff with a regulatory body. These alternative doctrines provide federal courts the flexibility necessary to do this. Similarly, in states that recognize the doctrine, an analysis of primary jurisdiction would suffice to protect agency discretion.

#### Chills telemedicine which would solve the aging crisis.

Sklar ’20 [Tara and Christopher Robertson; 2020; Health Law Professor at the University of Arizona; Law Professor at the University of Arizona; American Journal of Law and Medicine, “Telehealth for an Aging Population: How Can Law Influence Adoption Among Providers, Payors, and Patients?” vol. 47]

Notwithstanding these avenues of reform, many states continue to restrict healthcare providers from practicing telemedicine by requiring a full license in the state of service.102 These states often define “the practice of medicine broadly to include phone calls, e-mails, and on-line discussions, circumscribe[ing] the use of the new technology.”103 To the extent that these state licensing laws are designed to favor local providers, they may arguably be subject to challenge under the dormant commerce clause of the U.S. Constitution,104 or under federal antitrust laws.105 Regardless, Congress should consider affirmatively preempting them as hindrances to interstate commerce and federal spending, such as Medicare. Likewise, Congress preempted state doctrines around corporate practice of medicine, to the extent that they interfere with the work of Health Maintenance Organizations (“HMOs”).106

Similar to when and how a healthcare relationship should be established, states may claim that strict licensure laws improve standardization and quality of care,107 but if the benefit is slim, then it may not offset the chilling effect of the on cross-border practice, and hence, provider participation and patient access. In fact, state licensure laws do not vary substantially, and a more ambitious alignment seems to be a promising path forward.108

C. REIMBURSEMENT OF COSTS

\*322 In this section, we describe current approaches by insurers, including Medicare, Medicaid, and private carriers, to reimburse for telehealth services. We discuss related state laws, and suggest how to optimize reimbursement for greater telehealth adoption.

On the private payor front, 40 states and the District of Columbia have laws governing reimbursement for telehealth.109 These laws either require coverage parity, which ensures that a service is reimbursed if provided through telehealth, or payment parity, which ensures that reimbursement is at the same rate as when care is delivered in-person.110 If the policy goal is to increase use of telehealth, then payment parity can reassure doctors that telehealth will not undercut their revenues. However, payment parity laws can defeat the policy advantage of telehealth to reduce costs.111

Because the majority of states have private-payer reimbursement laws of some sort, the current practice is to amend a law to expand its applicability to additional specialties.Minnesota, for example, did this when it expanded its private-payer law to cover dental coverage, while Utah's expansion singles out telepsychiatry services,112 and Washington allows telemedicine to be offered from “any location determined by the individual receiving the service.”113 It is important to question whether these private-payer laws are necessary to expand reimbursement efforts given increasing market demand. A Milbank report documented interviews in six states that did not have parity in payment laws, yet found that almost all private health insurers covered telehealth services and paid the same rate as in-person services.114

The aforementioned expansion of MA plans to cover telehealth could be an excellent natural experiment to compare before and after 2020. The clear implementation date could determine whether and how much reimbursement changes are improving overall utilization, access to care, better health outcomes, and lower costs when compared to the traditional Medicare population, in essence the control group. Comparisons between states may also be striking as most MA enrollees, forty percent, reside in six states (Florida, Hawaii, Minnesota, Oregon, Pennsylvania, and Wisconsin) and Puerto Rico, and, by contrast, rural states have lower rates of MA enrollees.115

MA's expansion into the telehealth may create additional market pressure for private insurers (who often also administer MA plans) to voluntarily reimburse for telehealth services. Traditional Medicare may follow the pathway that MA is starting with a bipartisan bill that was reintroduced on October 30, 2019 entitled Creating Opportunities Now for Necessary and Effective Care Technologies “CONNECT” for Health Act, which is currently pending in the Senate Finance Committee.116 This bill would reduce geographic and site-specific requirements for traditional Medicare so \*323 that these beneficiaries would also receive telehealth delivered care directly in their homes.117 This pending legislation could make an enormous impact on telehealth utilization nationwide where the pool of patients would surge to nearly 60 million people.

The MA move may also influence Medicaid, especially as the largest payor for long-term care in America. There are over six million older adults on Medicaid who have both Medicare and Medicaid coverage (aka “dual-eligibility”), and this is largely attributable to them going through their savings paying for some form of long-term care.118 In an effort to extend personal finances, a phenomenon of “aging in place” is gaining primacy as the preferred long-term care model, rather than a nursing home or institutional setting.119

Telehealth coverage and reimbursement in state Medicaid programs vary considerably. Almost all states (49) and the District of Columbia have some coverage for telehealth, and nearly all reimburse for live video telehealth.120 Some state Medicaid programs impose restrictions such as limits on the sort of facilities where telehealth care can be received, by what type of healthcare provider, and geographic restrictions.121 As of 2016, eight state Medicaid programs reimbursed for telehealth under their home health services, but this number more than doubled to 19 states by 2019.122 Patients are eligible for these Medicaid services if they have two or more chronic conditions, one chronic condition and are at risk for a second, or have one serious and persistent mental health condition.123 Given the prevalence for chronic conditions and mental health among older adults, as previously discussed, many will be able to meet the eligibility requirement.124

States are removing some of these restrictions, for instance, the majority of state Medicaid programs no longer have rural requirements that must be met for telehealth reimbursement.125 Additionally, a number of states are demonstrating innovative efforts with funding support from the federal government, namely through grants and waivers for home health programs.126 With the consent of the U.S. Department of Health and Human Services, Alabama, Iowa, Maine, New York, Ohio, and West Virginia have all used state plan amendments that include telehealth coverage in their home health proposals.127 Similarly, Kansas, Pennsylvania, and South Carolina have used waivers to cover remote patient monitoring for long-term care services.128

Across all these domains of insurance, the quick expansion of telehealth coverage may be worrisome if it forces patients who would otherwise prefer an in-person visit to only have access to care via telehealth. One option to help curtail this \*324 issue is for insurance regulators to require that insurers maintain an in-person option for members. Nonetheless, such insurance mandates may wreak inefficiency, if they do not reflect consumer preferences.

CONCLUSION

Telehealth is increasingly important to the future practice of medicine, but poses a unique set of challenges for state lawmakers as they attempt to navigate interstate practice. Additionally, state and federal lawmakers are being confronted with how to provide high-quality, affordable care for an aging population that will live for an average of two decades with multiple chronic conditions.129

It is clear that law plays a substantial role in how quickly telehealth operators can achieve the scale necessary to provide care for an older population in their homes. Fortunately, state licensure laws are actively reducing some of the administrative burdens that had limited cross-border practice with support for an interstate compact.130 But much more can be done on this front; the fragmentation of state-based licensure likely does not promote quality or efficiency compared to a unified or seamless system. Furthermore, the CMS rule to allow MA plans to reimburse for care received in the home is an essential move for telehealth to suddenly reach a much broader and older population where utilization has been disproportionately low compared to other age groups.131 This federal-private insurer effort combined with the work already underway via state Medicaid programs should continue nationwide growth for telehealth adoption.

An area that continues to remain variable across states is the establishment of a healthcare relationship. The position of the AMA and the states that follow it reflect a presumption that in-person interactions should remain the baseline for healthcare standards. Also discussed, to require an in-person visit for patients who cannot leave their homes without substantial difficulty, and for conditions where the standard of care would not require a physical exam, seems unnecessarily onerous and costly for all parties. A more flexible, forward-looking approach would be for lawmakers to allow alternatives or exceptions that recognize telehealth's unique capabilities and the patients that would most benefit from this form of care.

#### The aging crisis causes extinction.

Vladev ’20 [Ivaylo and Rositsa Vladeva; July 1; Konstantin Preslavsky University of Shumen, Faculty of Natural Sciences; Sciendo, “The Demographic Problem – One of the Main Problems of Contemporary,” vol. 7, no. 2]

The aim of the present study is to analyze the essential features of the global problems of the contemporary stage in the development of human society and to highlight the place of the demographic problem as an objective factor for the existence of modern civilization.

To realize the goal it clarifies the criteria for determining a problem as a global one and makes classification of the global problems from a geographic point of view. It identifies the causes for the demographic problem, analyses and specifies its different dimensions at the global, regional and national levels.

Materials and Methods

In order to study the processes of globalization and the specific features of the demographic problem, comparative analysis, content analysis and quantitative methods are applied. In order to clarify the criteria for determining a given problem as a global one, methods of systematization and classification from a geographic point of view are applied.

Results and Discussion

One of the essential characteristics of the modern development of the society is its globalization. It is known as international integration on a large scale in all areas of economics, culture and society. The processes of globalization should be explored in the context of the relationship of the planetary problems with some aspects of economic and social life on a global, regional and national level [2].

Globalization is a complex process that provokes many controversies, but also determines the overarching changes in our times. According to U. Bek, „globalization is certainly the most commonly used - the wrongly used - and the most rarely defined, probably the most vague, the most fuzzy and the most politically influential word in the last but also in the coming years“ [1, p. 42]. Most researchers regard globalization as an inevitable process of forming common principles of current civilization development and common criteria for the qualitative assessment of the development.

We can therefore accept globalization as a complex integrative process, characterized by the following main features:

- universality - a tendency towards integration of all economic, social, political, cultural, environmental and demographic processes in their entirety and interdependence;

- democracy - engaging and actively participating in the process of globalization of all social strata;

- spontaneity - absence of an external source as a special moderator;

- chaoticity - inconsistency of the ongoing integration processes and presence of random fluctuations.

Globalization is a phenomenon, but it is not an ideal process as well as its results and it affects differently individuals, social communities, countries, regions, and the planet as a whole. It has its positive and negative consequences, encompassing socio-economic, demographic, natural-geographic processes, transforming human relationships into a state of globality.

Globality as a problem is also associated with the global problems of civilization. During its development the human society frequently encounters complex problems originating from its local nature and cover significant parts of the globe. According to P. Lakov, „the global problems are provoked by the chronological unity and the rapid rate of destruction of the balance between nature and society and should therefore be considered as an undivided system of dynamically changing interdependent phenomena in the space“ [3, p. 24].

The global problems of the contemporary stage of the development of the world civilization are already fully manifested in the second half of the 20th century, but from the end of the 1990s to the present day as a result of the introduction of the new information and communication technologies and the enhanced processes of economic and political integration a kind of „globalization boom“is observed. Therefore, the studying of the global problems is necessary to take into account both the general patterns and trends in the development of the world economy, as well as the action of the social factors of development, including the rapid growth of the population of the planet, the strengthening of interaction and interdependence between states.

According to their origin, the global problems are the result of the processes of globalization that are taking place in today's world and play the role of drivers for the development of the world system. Because they arise from the functioning of the global systems and their interaction, they can not be considered in isolation, but their unity and interrelation must be taken into account.

The global problems are wide ranging and continually create hazards for the existence and development of human society. The world of the 21st century inherited from the 20th century poverty, economic problems, resource shortages, mass diseases and nationalism and religious fanaticism, dozens of „hot spots“ and international terrorism. The old dangers in the form of weapons of mass destruction are complemented by new ones.

Though diverse in nature, the global problems have a common specificity that separates them from the other processes and phenomena in world development and they are distinguished by certain features:

- they endanger the future of all human civilization;

- they are an objective factor for the world development;

- targeted and coordinated actions of much of humanity are needed to overcome them;

- failure to resolve them can lead to serious and irreversible consequences for the whole of humanity. Some authors believe that the global problems are the result of the following inconsistencies:

- between the unlimited production factors entering the system „technically“ and the limited reproduction capabilities of the system of nature;

- between the „industrial“ system widely used in the technics and the other „small craft“ and „,partly craft“ system under the name „human“;

- between the unique products of the „classical culture“ and the unrestricted circulation of „mass culture“ products;

- between the global balances according to which the stability of processes in nature and society depends on the degree of their balance [4, p. 280-281].

The territorial character of the global problems could be pointed out as their specific feature. Geographically they cover the whole of the world, but at the same time they are manifested at the regional level as well, with local indications in different countries. This proves the relationship between the categories: „common“(global) – „special“(regional) – „individual“(local).

In order not to identify the public, regional and local problems with global ones, it is necessary to specify criteria that can define a given problem as a global one (Figure 1).

[FIGURE 1 OMITTED]

It should be noted that these criteria together can only establish the global nature of a given problem, because each of them can not be a decisive factor. At the same time, we must emphasize the high dynamism of every global problem caused by the combination of many different factors and their state in specific historical conditions and geographic regions.

There is a wide variety of views regarding the classification of global problems: depending on their severity, the time of their emergence, their nature, the actual real dependencies between them, the sequence of decision-making to overcome them, etc. Their grouping according to certain attributes helps to identify the existing links, to specify the priorities, to determine the degree of exacerbation of objectively existing global problems and to rank the sequence of the actions for their solution.

In order to realize the purpose of the study and to clarify the essence of the global problems, an attempt was made to create a geographical classification. Without claiming to be exhaustive, we formulate fourteen global problems on the basis of their relevance, severity and importance. They are grouped into three large groups depending on the spheres in which they appear and prove the trinity of nature – man – society. Accordingly, the groups are geodemographic, population-related; natural-geographic, arising from the components of the natural environment and socio-economic, related to the economy, the social sphere, the culture, the social development (Figure 2).

Based on the classification, the following conclusions can be made:

- Global problems increase their number and sphere of manifestation;

- The greatest number of global problems (1/2 of all classified) occurs in the contact areas of interaction;

- Regardless of the conditional and relative nature of the proposed classification, the occurrence of the global problems is in close interdependence and interrelation;

- Most of the global problems has a complex nature because they occur under the influence of two (3, 4, 6, 8) or three main groups (2, 5, 7);

- Due to their complex nature the global problems require a system of comprehensive measures to resolve them.

From these examples it can be summarized that the assignment of one or another problem to a given group is conditional and depends on the criteria of partitioning, the degree of relevance of the individual problems and the regional view of the authors on them. Therefore, the proposed classification should be seen not as a definitive solution to the issue but as a possible way of reconstructing the complex system, helping to better understand the essence of the interrelations between the global problems.

[FIGURE 2 OMITTED]

1. Demographic

2. Food-related

3. Healthcare problems

4. Educational problems

5. Preservation of world peace

6. Problems of international security

7. Ecological

8. Depletion of natural resources

9. Global warming

10. Water-related

11. Global catastrophes and natural disasters

12. Socio-economic conflict between poor and rich countries

13. Social inequality

14. Spiritual and moral crisis of humanity

Every global problem should be seen from three main points: what is the present situation, where, how and why the situation has become dangerous and how we can try to change it for the better by applying different strategies. The choice and the decision depend to a great extent on the social-ethical and moralhumanistic norms created in society, which is also the goal of its development [5, p. 12].

It is known that the problem is a scientific or public issue that has to be investigated and solved. It is caused by a certain inconsistency in the course of a natural, social or demographic process, the carrying out of some human activity and the lack of the expected result.

The demographic problem is a leading among the global problems of our time, because its emergence and solving influence the solution of food problems, the environmental problem, the preservation of the world peace, the problems of the international security, the health care and the education.

Demographic problems arise in the reproduction of the population and the level of compliance of resources for the development of humanity and of individual peoples and societies. The main criterion for assessing the course of demographic processes is the ability to carry out normal and appropriate reproduction of the population according to the conditions and resources. Demographic development is not limited only to the process of increasing the number of inhabitants of the planet, but also includes the problems of increasing population in relation to the natural resource potential of the territory, the condition and quality of the environment, hindering the food supply of the population, urbanization, inter-ethnic relations, refugees, lack of employment. All this proves that the interrelations between demography, economy and politics are complex and multilayered.

Therefore, the demographic problem is the mismatch between the level of socio-economic development, the resource availability for the economy, food and commodity production and population growth. Generally speaking, the demographic problem is that the population is rapidly growing due to the high fertility rate and life expectancy, the shortage of natural resources and production capacities for food and consumer goods.

Today, the effects of relative and absolute population growth become so topical that they are becoming a global problem. The dynamics of population growth in the world, presented in Table 1, is very distinctive.

The point of 1 billion is exceeded at the beginning of the 19 century. While the first doubling after 1810 required 110 years, the second one was in 40 years (1920 – 1960), the third one in 14 years (1960 – 1974) and the last one in 12 years (1999 – 2011). For the last 18 years, the population has increased by more than 1.5 billion and 94.5% of the growth is in the developing countries and only 5.5% of the developed ones. At the end of 2017, the world population reached 7.5 billion.

[TABLE 1 OMITTED]

The rate of population growth is the rate at which demographic indicators change. The highest rates of population growth in the world occurred in the 1970s and 1980s – about 2% average annual growths. Then they began to decline and in the first decades of the 21st century they were set at 1.2%. It is expected that in the middle of the 21st century they will increase again to 2.8%.

According to estimates of UN experts, the world population by 2025 will reach 8.2 billion, by 2040 – 9.2 billion, by 2050 – 9.7 billion and by 2055 – almost 10 billion. Population growth, according to the expected trends for this period, will be formed by developing countries in a ratio of 97: 3.

Much or little is the present world population of 7.5 billion people? The world population itself, however significant, can not be considered as large or little, isolated from the natural and human resources and the established political and socio-economic conditions.

Scientists maintain two different opinions and carry on intensive discussions. Some of them believe that the Earth is still far from absolute overpopulation and unlikely to reach it. Another part of them believe that the Earth is already overpopulated. Reason for this opinion is the misery, malnutrition and hunger, avalanche escalation of environmental problems in overpopulated areas.

Very often, population growth is seen as one of the factors not only hindering the fulfilment of life needs, but also threatening the viability of human civilization. Together with the increased consumption of natural resources, technical and energy equipment, the amount of waste resulting from human life and production activity is constantly increasing. Moreover, the socio-demographic situation in developed and developing countries is diametrically opposed, denoted by the term „demographic division of the world“.

In different countries and regions, the demographic problem has different dimensions. In developed countries, the demographic problem is mainly reflected in the aging of the population and the reduction of human resources for the economic development of the countries. In developing countries, the demographic problem is reflected in a predominant increase of the population to the basic necessities of life and the occurrence of significant difficulties in feeding the population, its health care and the development of education. The extent and the nature of the demographic problem in individual countries depend to a large extent on their socio-economic development and the stage of the demographic transition they are on. At a regional and national level, demographic problems, depending on the type of reproduction of the population, have different dimensions – demographic explosion, demographic stagnation and demographic crisis. Human development across individual regions and countries is assessed through the two problems – a demographic explosion and a demographic crisis.

The rapid increase in population in the world, in a particular geographic region or in a particular country is defined as a demographic explosion. It is characterized by a high birth rate, a sharp drop in mortality, and especially child mortality and increased life expectancy. This is an unfavourable demographic situation because it reduces the opportunities for most people to feed, the opportunities for health care, education, jobs, etc.

The accelerated growth of the world population is now predominantly determined by the developing countries. Due to the high relative share of the population at sub-working age (1/4 of the population up to 16 years old) these countries will preserve the high growth rate of their population. Demographic explosion has a restraining effect on the country and region's development prospects. It is characteristic for the most countries in Africa, some countries in Asia and Latin America. At present the epicentre of the demographic explosion is in Africa.

High birth rate is the main prerequisite for triggering the demographic explosion. It, under the conditions of decreasing mortality, ensures the large population growth. The most significant birth rates occur in the continent of Africa and mostly in the West, Central, East and partially in South Africa.

In 2017, 43 African countries had birth rates above 30‰. The highest figures are in Niger (50‰), Chad (48‰), Angola (46‰), Democratic Republic of Congo (46‰), Central African Republic (45‰), Mozambique (45‰), Mali (44‰), Somalia (44‰), Burkina Faso (44‰), Burundi (43‰), Zambia (43‰) and others. The countries in Asia are with high birth rates too. 5 of them have a birth rate above 30‰: the Democratic Republic of Timor – Leste (36‰), Afghanistan (34‰), Yemen (33‰), Tajikistan (33‰), Iraq (31‰); and in 34 of them the birth rate is between 20 and 30‰. Haiti, Bolivia, Guyana and Guatemala in Latin America have a birth rate of between 25 and 30‰.

The decreasing overall mortality is the second most important prerequisite for the demographic explosion. It is mainly due to the development of healthcare and medicine and to the raising living standards of the population. Under this influence is the mortality rate in most European countries, East Asia, North America, the Gulf region (Oman, UAE, Qatar, Bahrain, Kuwait, Saudi Arabia). Decreasing mortality rate in these countries leads to an increased average life expectancy and aging of the population. The lower mortality rate in a number of countries is due to the age structure of the population with a strong predominance of younger generations (25-30% of the population up to 16 years old) and is denoted by the term „demographic spring“. This applies to most African countries.

The mortality rate is in close relation with the average life expectancy. The latter grows almost continuously. This is due to the increased living standards, the way of life and the improvement of health care.

According to UN data in 2017, the expected average life expectancy in the world is 69 years, for men 67 years and for women 71 years [6]. The highest average life expectancy is in the developed countries: Monaco (89.4 years), Japan (85.5 years), Singapore (85.5 years), Iceland (83.1 years), Israel (82.7), Switzerland (82.7), Malta (82.7 years), the Republic of Korea (82.5 years), the Australian Union (82.4 years), Italy (82.4 years), Luxembourg (82.4 years) and others.

Geographical regions with the highest average life expectancy are Western Europe and North America. For men, life expectancy is the highest in Monaco (85.5 years), Singapore (82.8 years), Japan (82.2 years) and Iceland (80.9 years). Women have the highest life expectancy in Monaco (93.4 years), Japan (89 years), Singapore (88.3 years) and Republic of Korea (85.8 years). The lowest life expectancy is in the poor African and Asian developing countries, such as Mozambique (54.1 years), the Central African Republic (53.3 years), Somalia (53.2 years), Zambia (53 years), Lesotho (53 years) and Afghanistan (52.1 years). Decreasing child mortality in developing countries and the high birth rates have an impact on the population growth and hence on the demographic explosion. At the end of the 20th century, child mortality in the world was about 54‰ and in 2017 it declined to 32.9‰. Thus, while in 2000 the continent with the highest child mortality rate in the world, Africa, it ranged from 87‰ (West Africa) to 140‰ (Central and Eastern Africa), in 2017 there was no African country with child mortality over 100‰.

Today, it varies in a wide range from 20 to 93‰ and decreases as a result of measures to combat diseases, hunger and malnutrition and to improve healthcare. Over the last decades, the child mortality rates in Arab countries rapidly decrease, especially in the Persian Gulf region (below 8‰), where it has reached the level of the most developed countries.

Analyzing the demographic situation in the world in the context of the demographic explosion, we should note that the larger population has a stronger impact on the environment and increases the „demographic burden“ on the territory.

It is simultaneously influenced by several factors: the absolute population growth, the extent of consumption (lifestyle, income, and infrastructure development), the social inequality of the population, and the level of technology used. The development of the modern economy requires the use of an increasing amount of natural resources. The acuteness of the problem is related not only to the depletion of the limited resources, but also with the nature of their impact on the environment during use. The increase of the population in the world and its migration intensify this impact by preventing the stabilization of the unemployment problem; make it difficult to solve the problems of education, healthcare and social welfare. Consequently, any socio-economic problem includes a demographic problem as well.

Decreasing the population in a particular geographic region or country forms the situation of a demographic crisis. It is due to low birth rates, average mortality rates, aging of the population, negative or zero natural growth and shortage of labour resources.

As a global problem it is still considered the demographic explosion, not paying due attention to the upcoming demographic problems as depopulation, narrowed reproduction of the population and its aging, which will cause irreversible negative social and economical problems and demographic crises, especially among the small nations.

The aging of the population forms an unfavourable demographic situation, consisting in increasing the number and relative share of people in over-working age, reducing the number of people in sub-working age and limiting the labour resources. It is especially distinctive for most countries in Europe, Japan and others.

The aging of the population is characterized by the average age of the population (a characteristic of the age structure of the population, which is calculated as a weighted average value of the population in all age groups). It reveals the level reached in the process of population aging in the world and countries.

In 2017, the average age of the population in the world is 30.6 years. It ranges from a low age of 15.5 to 16 years in the African countries of Niger, Mali, Chad, Uganda and Angola up to 43 years or more in some European countries and Japan. The countries with high living standards and high life expectancy have the highest average age like Monaco (53.8 years), Japan (47.7 years), Germany (47.4 years) and Italy (45.8 years). The high average age is a feature of countries with a very high level of emigration of young people, such as Slovenia (44.2 years), Lithuania (44), Latvia (43.9 years), Croatia (43.3 years), Bulgaria (43 years), Estonia (43 years) and others [6].

Thus, the relative share of the population in over-working age in 2025 in these countries will account for over 1/4 of the total population, which will cause significant losses for health care and social security. At the same time, the birth rate in most economically developed countries can no longer provide for simple reproduction of the population. This process is called „demographic winter“.

The phenomenon of the demographic crisis is primarily centred on the countries of Eastern Europe and is not yet typical for the developed countries. It becomes topical to the researchers of the population from the mid-1990s when the most unfavourable parameters of the demographic situation are reached – very low birth rates, high total mortality and high mortality in the individual age groups, old age structure, emigration, high unemployment, etc. About 80% of the natural population growth of the EU member states since 1994 is due to emigrants. According to demographic projections, almost all countries in Europe are expected to be covered by a demographic crisis in 2025.

The demographic crisis has its strongest manifestations in countries like Bulgaria, Latvia, Lithuania, Estonia, Hungary, Romania, Croatia and others. It is due to the negative natural growth and mass emigration of young population to Western Europe and North America. The term „demographic crisis“ can be interpreted as a profound violation of reproduction of the population. In 2017, Lithuania (14.8‰), Bulgaria (14.5‰) and Latvia (14.5‰) are at the top of the world's highest mortality rates, followed by Ukraine (14.3‰), Serbia (13.6‰), Belarus (13.2‰) and others. The lowest birth rates are in Japan (7.5‰), Puerto Rico (8‰), Portugal (8.2‰), Greece (8.3‰), Bulgaria (8.5‰) 5‰), Germany (8.6‰).

Since the beginning of the 21st century, the continent of Europe has a negative natural growth, with the highest negative figures being in Bulgaria (-6‰), Lithuania (-5‰), Latvia (-4.9‰), Serbia (-4, 7‰), Ukraine (-4.2‰), Hungary (-3.9‰), Croatia (-3.6‰). Thus, due to the low birth rates and high mortality, there is a disruption of the normal reproduction of human generations. The demographic crisis naturally reduces the population of a given country or region to a different extent, with a severe disruption of the basic demographic structures.

The demographic crisis is characterized by the fact that the real growth (the total value of the natural and mechanical growth) of the population in these countries is negative and forms a reduction of the population. In 2017, the reduction of the population is most pronounced in Lithuania (-11.1‰), Latvia (- 11‰), Moldova (-10.8‰), Bulgaria (-6.3‰), Estonia (-6‰), Croatia (-5.3‰), Serbia (-4.7‰), Ukraine (- 4.2‰), Romania (-3.5‰), Montenegro (-3.4‰), Hungary (-2.6‰), Belarus (-2.5‰) and others. The reduction of the population in each of these countries is not only related to higher mortality rates and lower birth rates but also to the significant emigration rates. The demographic crisis exists in Puerto Rico (-16‰) and Lebanon (-11.3‰) and the European countries Germany, Poland, Italy, Portugal, Greece are entering the crisis as well as Japan in Asia.

Many countries in the world are characterized by demographic stagnation. Its typical feature is maintaining the constant population. The actual growth is zero or around zero. This demographic situation is formed at and is characteristic for countries on different stages of demographic transition and different levels of socio-economic development. This group includes mainly developed countries with almost zero natural growth and a positive mechanical population growth, such as Austria, the Czech Republic, Slovakia, Slovenia, Finland, Spain and others.

The indicated negative trends in population development cover all developed and highly developed countries. The consequences for the society and the demographic systems in the developed countries are similar, but they vary in intensity over time. As the demographic crisis in these countries is largely blunted by immigration and increasing the average life expectancy.

Conclusions

Based on the report we can formulate the following results:

- The processes in the globalizing world are generating the global problems of today. They act as driving forces in the development of the world system.

- On the basis of their relevance and significance, in order to prove the trinity of nature – man – society, fourteen global problems are formulated in three large groups, depending on the spheres in which they manifest.

- Problems related to the dynamics of the human population affect the whole world and in some parts of the planet there is overpopulation, which can lead to depletion of natural resources as well as poverty and malnutrition.

- Global efforts to resolve the global demographic problem are contrary to the interest of countries that have unfavourable demographics including Bulgaria.

- There are countries with decreasing birth rates and increasing life expectancy everywhere in the world. The aging population leads to higher healthcare and pensions costs, and the number of workers and tax payers is steadily decreasing. As a result, these countries are at risk to become „demographic bombs“ which means a crisis due to too few people working.

- The demographic picture of the world is highly contrasting and moves between the two extremes - a demographic explosion and a demographic crisis. The factors that determine it affect the socio-economic development, income distribution, employment, unemployment, social security, health care, education, housing and the sources of water, food, energy, raw materials as well as environmental conditions and climate change.

- Stabilizing the population of our planet and resolving the demographic problem in the future is not an end in itself but a means of improving the lives of the present and future generations.

#### Sweeping antitrust now – the regulatory apparatus is packed, it reaches all sectors, AND will intensify.

Economist ‘1-15 [The Economist; forthcoming January 15; British news organization; Economist, “The growing demand for more vigorous antitrust action,” <https://www.economist.com/special-report/2022/01/10/the-growing-demand-for-more-vigorous-antitrust-action>]

Such actions mark a departure from the antitrust philosophy that has dominated regulatory thinking and judicial decisions in the past half-century. Associated with Robert Bork, an American judge from the late 1970s, it held that consumer welfare and the protection of competition, rather than of particular competitors, should be the only goals of antitrust law. Business practices were deemed fine so long as they did not result in harm to consumers from excessive prices. Most mergers were either competitively neutral or enhanced efficiency, even if they led to oligopoly; only those creating a dominant firm or monopoly were likely to be bad for consumers.

Bork’s work was itself a reaction to an earlier approach linked to Louis Brandeis, a former us Supreme Court justice. Brandeis believed that size was nefarious in itself. Curbing market power was a tool to fight other ills, such as mistreatment of workers, the stiffing of suppliers or even threats to democracy. This may have led to some perverse outcomes. In one notorious example in 1966, the Supreme Court blocked a merger between two grocers in Los Angeles with a combined market share of 8%.

Chinese trustbusters are now the most enthusiastic in disavowing the price-centricity of Bork’s “consumer-welfare standard”. But it has fallen out of favour everywhere, gradually in Europe and now, tentatively, in America. One reason is a global trend towards greater corporate concentration, from medicines to manufacturing. According to The Economist’s calculations, two-thirds of 900-odd sectors covered by America’s economic census became more concentrated between 1997 and 2012. In half of these concentration has edged up further in the subsequent five years. In the two decades to 2017 the weighted average market share of the top four firms in each industry increased from 26% to 32%. The four biggest British firms accounted for a larger share of revenue in 2018 than a decade earlier in 58% of 600-odd subsectors. Concentration in the EU has been going in the same direction, albeit more slowly.

Another good reason to bin Bork was technological change. The world’s biggest tech giants charge consumers either nothing (Alphabet, Google’s parent company, and Meta, formerly Facebook) or as little as possible (Amazon). Critics say this does not stop them abusing their dominance. Amazon is attacked for its treatment of workers, suppliers and third-party sellers. Google and Apple are accused of monopolistic practices against developers in their app stores. Facebook is taken to task for “killer acquisitions” aimed at neutralising innovative challengers such as Instagram and WhatsApp. (All four companies deny all these claims.)

Choice and quality

“We need to push for a broader notion of consumer harm,” declares Margrethe Vestager, the EU’s competition commissioner. It is no excuse that “the econometrics of price may be more straightforward than the econometrics of quality and choice”, she adds. Britain’s Competition and Markets Authority (CMA) has made similar noises. Like China’s samr, it is staffing up fast, going from around 650 officials to 850 in the past five years, catching up with Ms Vestager’s directorate-general.

Antitrust voices in America go further, arguing that the consumer-welfare standard was never as scientific as its advocates claimed and that Brandeis’s vision deserves a second look. Mr Biden has installed “neo-Brandeisians” in senior trustbusting roles. Lina Khan, a 32-year-old academic, chairs the Federal Trade Commission (FTC). Jonathan Kanter, a long-time Google-basher, heads the Department of Justice (DOJ)’s antitrust division. Tim Wu, a law professor whose books include “The Curse of Bigness”, is the White House adviser on technology and competition. “The speed of the takeover by the neo-Brandeisians of the regulatory apparatus has been extraordinary,” says one big asset manager.

This new competition doctrine remains a work in progress. But its contours are becoming sharper. It expands the goals of antitrust policy in two main areas: merger control and business-model regulation. For most mergers and acquisitions (m&a), regulators used to restrict scrutiny to a small number of “horizontal” deals between firms active in the same market that, if combined, could reduce competition and allow incumbents to raise prices. Today all these tenets are going out of the window.

Trustbusters now investigate “vertical” integrations between companies with separate lines of business, as well as horizontal ones with combined revenues that would not historically have warranted attention. A new procedure allows EU regulators to ask national authorities to submit deals that are potential killer acquisitions, particularly in the digital, pharma and biotech industries. They have used this to investigate Meta’s $1bn acquisition of Kustomer, an American business-software firm with low European sales, and the purchase by Illumina, a gene-sequencing giant, of Grail, a developer of diagnostic tests that does no business in the eu. Germany’s competition authority has been pushing cases like Illumina “to test its jurisdiction”, says an EU official. Britain’s cma has demanded that Meta undo its recent takeover of Giphy, a database of animated gif files.

In America the FTC and DOJ are making merger guidelines more stringent. M&A lawyers say the agencies are asking more questions, including about the impact of deals on the labour market. They already look beyond direct pecuniary harm to consumers. The FTC is backing a suit that seeks to break up Meta into Facebook, Instagram and WhatsApp, even though earlier regulators waved these takeovers through. Justifying its challenge to a merger between Simon & Schuster and Penguin Random House, the DOJ said it would give the new entity “outsized influence over who and what is published, and how much authors are paid for their work”. Ms Khan is expected to oppose Amazon’s $8.5bn purchase of mgm Studios, arguing that it would further strengthen the e-empire’s online hegemony. The fact that the entertainment market is fragmented and Amazon lets Prime-subscription customers binge-watch its videos for a fixed fee is, on this expansive view of antitrust, beside the point.

The second avenue of antitrust expansion—dictating what dominant businesses can and can’t do—is more inchoate than tougher merger control. But it could prove more consequential. Especially for America’s trillion-dollar tech giants it would be the first serious constraints on their activities since the internet made them the world’s most valuable companies.

Some edicts come from regulatory agencies. White House staff look on antitrust as a “Swiss-army knife”: a tool to fix lots of different problems, including such ills as inflation. It is early in Mr Biden’s term and they are still revving up, says one lobbyist. But “once they start going, they will be pretty muscular.” Last July Mr Biden issued an executive order, written by Mr Wu, instructing more than a dozen agencies vigorously to curb anticompetitive behaviour across the economy. It encourages agencies to create rules from weeding out “unfair methods of competition on internet marketplaces” to requiring railway owners “to provide rights of way to passenger rail”. In a memo outlining her priorities, Ms Khan declared that she would look into whether private-equity firms contribute to extractive business models in which companies raise prices or muscle out rivals.

The 107-year-old FTC Act grants Ms Khan wide latitude, so long as her rules are designed to forestall “conduct that is unfair or deceptive”. Congress may grant her even more power. Several proposals would outlaw practices deemed anticompetitive. One would treat Amazon’s marketplace or Google’s search engine as essential to commerce, rather like a dominant railway operator, prohibiting them from favouring their own products over others. Another would force Apple and Google to open up their app stores to alternative in-app payment methods and search results. A third would shift the burden of proof from regulators to dominant companies, which would need to show that any merger or acquisition does not hurt competition, rather than the other way around. All three have Democratic and Republican co-sponsors.

#### 2022 will bring down Big Tech.

Swartz ’22 [Jon; January 1; reporter, citing Bhaskar Chakravorti, dean of global business at the Fletcher School at Tufts University; MarketWatch, “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>]

This could finally change in 2022 as it did in the late 1990s, when some tech companies struck a cautious stance during the Justice Department’s investigation of Microsoft for monopolistic practices, Syed said.

“The difference is that we’re talking about interconnected companies that own an industry versus just one company [with Microsoft],” she said. “And there is bipartisan support, which makes it easier politically.”

With more than a dozen pieces of anti-tech legislation, a plethora of lawsuits and regulatory fines escalating in the U.S. and abroad, as well as the Biden administration rounding out Big Tech’s nightmare team of government agency heads, 2022 is shaping up as a seminal year for tech regulation after decades of inaction.

In rapid succession this year, Biden named and nominated an antitrust team of Tim Wu (to the newly created position of head of competition policy at the National Economic Council), Lina Khan (chair of the Federal Trade Commission) and Jonathan Kanter (head of the antitrust division of the Justice Department). Each is a heralded anti-monopolist advocate who has written extensively on the topic or represented companies making antitrust claims against Big Tech.

The trio have been referred to as members of a “New Brandeis movement,” named after Supreme Court Justice Louis Brandeis, whose decisions limited the power of big business in the early 20th century. With the New Brandeis trifecta in place, and Congress evaluating more than dozen possible anti-tech bills, next year is “shaping up to be the year of Tech Takedown,” Bhaskar Chakravorti, dean of global business at the Fletcher School at Tufts University, told MarketWatch.

More troubling for tech CEOs, he said, are the “many tiny actions at the FTC, Justice Department and Congress that will continue to keep feeding the news cycles with a steady stream of actions” that add up to a “a year of thousands of tiny tech papercuts.”

Big Tech’s treacherous path to antitrust enforcement has three potentially damaging roads: federal agencies challenging acquisitions and mergers; legislation tailored to stimulate competition and curtail the influence of tech’s dominant platforms; and federal and state lawsuits.

#### Scrutiny now.

National Law Review 12-16 [December 16, 2021; *National Law Review,* “Antitrust Scrutiny Heating Up in Oil and Gas Industries,” <https://www.natlawreview.com/article/antitrust-scrutiny-heating-oil-and-gas-industries>; KS]

President Biden recently wrote a letter to FTC Chair Lina Khan urging the Commission to immediately investigate potential anticompetitive behavior in the oil and gas sector. The President noted that gas prices have been rising, while the costs faced by oil and gas companies themselves have decreased. Concerned that the two largest oil and gas companies in the country are set to double their net income over 2019 while the gap between the price of unfinished gasoline and the price at the pump is increasing, he called on the FTC to “bring all of the Commission’s tools to bear if you uncover any wrongdoing.”

Steps Already Taken

The Biden administration has made a previous attempt to direct the FTC’s focus towards the oil and gas industries. At President Biden’s behest, the Director of the National Economic Council, Brian Deese, wrote to Chair Khan on August 11, citing “divergences between oil prices and the cost of gasoline at the pump” and urging the FTC to investigate. Chair Khan responded with a letter of her own, outlining a three point plan to address the administration’s concerns about the cost of gas. First, the FTC would identify additional legal theories to challenge fuel station mergers that involve dominant players in the market acquiring family-run businesses. Second, the FTC “would tak[e] steps to deter unlawful mergers in the oil and gas industry.” The Chair specifically referred to the imposition of prior approval requirements to deter illegal mergers in sectors including retail gas markets. Third, Chair Khan indicated that she would direct staff to investigate abuses in the franchise market, noting that the sale of gasoline at high prices may benefit chains at the expense of franchisee store operations.

President Biden expressed in his November 17th letter that he appreciated the plans to “strengthen oversight of mergers in the oil and gas sector” but that further inquiry is required.

# 2AC

### Grid – 2AC

### Econ – 2AC

#### Energy prices are driving inflation and rising interest rates.

Dobbs ’12-10 [Kevin; 2021; reporter, citing Morgan Stanley analyst Lisa Shalett; Natural Gas Intelligence, “Oil, Natural Gas Prices Drive Sustained Surge in Inflation,” https://www.naturalgasintel.com/oil-natural-gas-prices-drive-sustained-surge-in-inflation/]

Lofty oil and natural gas prices played outsized roles in fueling spikes in inflation this year. November proved no exception, with price increases reaching a pace last recorded nearly four decades ago.

The U.S. Bureau of Labor Statistics (BLS) said Friday the consumer price index surged 6.8% in November from the same month a year earlier, marking the fastest rate since 1982 and the sixth consecutive month of inflation above 5%.

November energy prices soared 33% from a year earlier — far more than any other category tracked by the BLS — and jumped 3.5% from October. The cost of gasoline at the pump was up more than 58% over the past 12 months, according to the federal report.

Energy commodities – chiefly oil and gas – climbed 5.9% month/month in November and 57.5% year/year.

The core price index, which excludes energy and food because of elevated volatility inherent in both categories, rose 4.9% in November from a year earlier. That marked an increase from October’s 4.6% jump and the fastest pace since 1991.

Many analysts expect inflation to persist. “The economic and market environment in 2022 will be decidedly reflationary, with higher economic growth and higher inflation, and eventually higher real interest rates,” said Morgan Stanley analyst Lisa Shalett.

#### 1 – High energy prices aggravate inflation.

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

However, higher energy prices could aggravate inflation and prompt the Federal Reserve to withdraw its easy monetary policy sooner, damping economic growth.

JPMorgan Chase economists believe higher oil prices could push up the annual inflation rate by 0.4 percentage point in coming months.

In August, consumer prices rose 4.3% from a year earlier, according to the Commerce Department’s price index for personal-consumption expenditures, the Fed’s preferred inflation gauge. The Fed targets annual inflation of 2%. Oxford Economics projects that energy prices will help push up the annual inflation rate to 5.1% by year-end.

“It’s going to elevate inflation expectations somewhat,” said analyst Bart Melek of TD Securities. “It might change our perception of what we think the Federal Reserve does.”

In the early and mid-2010s, high oil and gas prices were generally a boon for the U.S. economy, encouraging oil and gas producers to tap ample shale deposits, driving up demand for steel, equipment, construction workers, truck drivers and other workers.

That might not happen this time, Mr. Book said. The pandemic caused global demand for energy to collapse and while demand has recovered, energy companies are still cautious about drilling because of uncertainty about global demand and investor pressure to keep profit margins high, in part by limiting supply, he said.

#### 3 – High energy prices guarantee interest rate hikes – causes corporate crunch.

Joffe ’12-20 [Marc; 2021; Finance MBA at NYU, Former Senior Director for Moody's Analytics; the Hill, “For the Fed, taming inflation has risks,” https://thehill.com/opinion/finance/586517-for-the-fed-taming-inflation-has-risks]

But the biggest fiscal risk may stem from corporate lending. Rather than issue fixed-rate bonds, many highly leveraged companies rely on the syndicated bank loan market where most borrowing takes place on a floating rate basis. According to research from Fitch Ratings, $1.6 trillion of syndicated loans are currently outstanding with almost all borrowers carrying either speculative grade credit ratings or the lowest investment grade rating (Baa3 on Moody’s scale or BBB- from S&P, Fitch and other agencies).

Syndicated loans are distributed across multiple banks with about half of the volume packaged into Collateralized Loan Obligations (CLOs). Although analogous to the subprime Residential Mortgage-Backed Securities (RMBS) that triggered the Great Recession, CLOs have generally performed well over their 30-year history.

The loans packaged into subprime RMBS and CLO deals have high default risk, but corporate borrowers have generally proven more reliable than homebuyers with low credit scores. That may change when the Fed starts raising interest rates, especially if the hikes are precipitous.

A wave of leveraged loan defaults could harm both CLO investors and banks — to the extent that they continue to hold syndicated loans on their books. Because CLOs are well diversified, it is unlikely that defaults will impact investors in the senior AAA/Aaa rated tranches.

But if a lot of leveraged corporate borrowers are forced into bankruptcy by higher interest costs, we could see waves of layoffs. Suppliers to failing companies may also face late and/or partial payments, spreading the pain around the economy.

In this way, a sharp increase in interest rates could significantly slow economic growth or even trigger a recession.

#### Precede recessions.

Mitchell 10-10 [Josh; October 10; Covers the U.S. economy from the Journal's Washington, D.C. bureau. He previously covered transportation policy and the bailouts of General Motors and Chrysler. Prior to the Journal, he worked as a reporter for the Baltimore Sun and the Palm Beach Post; *Wall Street Journal,* “Soaring Energy Prices Raise Concerns About U.S. Inflation, Economy,” <https://www.wsj.com/articles/soaring-energy-prices-raise-concerns-about-u-s-inflation-economy-11633870800>; KS]

Energy prices are volatile even in normal times, and particularly unpredictable now because of the cloudy economic outlook and how governments and investors will respond to the shortage of supplies. Investors are pressing companies to maintain high prices and profit margins by resisting drastically expanding production.

Energy represents a sizable chunk of consumer budgets. In August, about 7% of consumer spending went toward energy, according to the Labor Department. Historically, high energy prices have often preceded recessions. Consumers can’t easily cut consumption on short notice, as they can with discretionary purchases, so higher prices act as a tax, draining the money they have available to spend on other goods and services.

Growth slowed sharply this summer as rising Covid-19 infections due to the Delta variant prompted a new round of business restrictions and consumer caution. The Federal Reserve Bank of Atlanta estimates that growth slowed from 6.7%, annualized, in the second quarter to 1.3% in the third.

### T-Expand Scope---2AC

#### 2. Function---allowing more private claims expands antitrust laws’ coverage.

Popofsky ‘8 [Mark; 2008; Adjunct Professor of Law at Georgetown University, J.D. from Harvard University; Competition Law and Policy, “Extraterritoriality in U.S. Jurisprudence,” Ch. 97]

3.3. What is the Sherman Act’s scope in private litigation?

The FTAIA has also spawned a significant and, despite the Supreme Court’s foray into the matter, unresolved dispute over whether certain claims brought by private parties are excluded from the Sherman Act’s coverage.

FTAIA subsection 2 and the Empagran case. The FTAIA requires not only that an effect on U.S. commerce must be “direct, substantial, and reasonably foreseeable” but also that “such effect gives rise to a claim” under the Sherman Act.124 It is this second requirement that, potentially, makes the Sherman Act’s applicability turn on the relationship between in-U.S. effects and the injury suffered by the party seeking to enforce the Sherman Act. If “such effect gives rise to a claim” means the claim of the particular plaintiff before the court (the narrow reading), then the plaintiff must demonstrate some nexus between its injury and the domestic effects. By contrast, if “such effect gives rise to a claim” simply means that the effects that justify the Sherman Act’s assertion must be anticompetitive (a term that otherwise nowhere appears in the FTAIA), then ordinary antitrust standing principles, and not the FTAIA, govern whether a particular plaintiff can assert a claim (the broad reading).

#### Private suits expand federal antitrust law.

Mobley ’10 [Samantha; 2010; Contributing editor, publishing for Getting the Deal Through in association with a slew of other writers; Global Competition Review, “Private Antitrust Litigation,” p. 147]

2 Are private antitrust actions mandated by statute? If not, on what basis are they possible?

Sections 4 and 16 of the Clayton Act enable private parties to bring claims under the federal antitrust laws (15 USC, sections 15(a), 26). Private plaintiffs can also pursue relief, as appropriate, under various state antitrust laws.

#### ‘Nontraditional’ exemptions and immunities are topical under their interpretation.

Kruse et al. 19, Layne E. Kruse, Co-Chair; Melissa H. Maxman, Co-Chair; Vittorio Cottafavi, Vice Chair; Stephen M. Medlock, Vice Chair; David Shaw, Vice Chair; Travis Wheeler, Vice Chair; Lisa Peterson, Young Lawyer Representative; all on the Exemptions and Immunities Committee of the ABA Antitrust Section, “Long Range Plan, 2018-19,” American Bar Association, 3/18/19, https://www.americanbar.org/content/dam/aba/administrative/antitrust\_law/lrps/2019/exemptions-immunities.pdf

The Committee’s current charter accurately characterizes its purview—that is, addressing the scope of the antitrust laws. That scope, of course, is defined primarily in terms of exemptions and immunities (both statutory and non-statutory). The Committee, however, has dealt with other doctrines, such as preemption and primary jurisdiction. These areas may not necessarily be viewed as traditional exemptions or immunities, but they nonetheless directly affect the application and extent of the antitrust laws. In addition, the Committee expends significant efforts to address international issues, including statutory exclusions from the U.S. antitrust laws, including the FTAIA; the related doctrines of act of state, sovereign immunity, and foreign sovereign compulsion; and industry-specific exemptions and exclusions from non-U.S. antitrust laws, including blocking exemptions.

The ‘scope of antitrust law’ is limited by statutory text. Either we meet, or no one does: any aff could modify statutory text.

Sagers ’15 [Christopher L; 2015; the James A. Thomas Distinguished Professor of Law and Faculty Director of the Cleveland-Marshall Solo Practice Incubator; Handbook on the Scope of Antitrust, “Introduction,” Ch. 1]

The scope of federal antitrust law is governed by three separate authorities: (1) the U.S. Constitution, (2) the language of the antitrust statutes themselves, and (3) the language of other federal statutes and regulations.

#### Counterinterpretation:

#### ‘Expanding the scope of its antitrust laws’ means modifying whether the law applies to activities.

Carpenter ’3 [David W. Carpenter and Richard D. Klingler; July 23; Partner at Sidley Austin Brown LLP, Law Clerk to Supreme Court Justice William Brennan; Partner at Sidley Austin Brown LLP, Law Clerk to Supreme Court Justice Sandra Day O'Connor, Rhodes Scholar; Westlaw, “Brief of AT&T Corp., Cavalier Telephone, and Competitive Telecommunications Association as Amici Curiae in Support of Respondent” in Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, p. 22-23]

First, the language and history of the savings clause foreclose these claims. Even if consideration of the duties imposed by the 1996 Act would expand the “standards” and “scope of the antitrust laws” (DOJ Br. 11, 24) - which it \*23 would not - the savings clause does not say that the Act is to have no effect on the scope of antitrust laws. Rather, it says that “nothing in this Act … shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.” 47 U.S.C. § 152 note. As the legislative history makes explicit, this clause is designed to prevent claims that antitrust law is inapplicable to conduct regulated by the 1996 Act,16 and Congress adopted this clause because it understood - based on the experience of introducing competition into long distance and equipment markets - that antitrust enforcement is an essential supplement to efforts to open telecommunications markets to competition through access regulations.

#### ‘Scope’ refers to activity at the present time, not the abstract potential application of law.

Clement ’16 [Frank; March 3; Judge on the Tennessee Court of Appeals; Court of Appeals of Tennessee at Nashville, “Hamer v. Southeast Res. Group, Inc,” Lexis 176]

When interpreting a contract, ordinary words typically have their ordinary meanings unless there is evidence [\*13] that the parties intended for the words to have a special meaning. Madson v. Madson, 636 So. 2d 759, 761 (Fla. Dist. Ct. App. 1994). The ordinary meaning of a word is often described as its meaning in the dictionary. See Siegle v. Progressive Consumers Ins. Co., 788 So. 2d 355, 360 (Fla. Dist. Ct. App. 2001); Beans v. Chohonis, 740 So. 2d 65, 67 (Fla. Dist. Ct. App. 1999). The ordinary meaning of a word or phrase is also described as "a natural meaning or the meaning most commonly understood when considered in relation to the subject matter and circumstances." See J.N. Laliotis Eng'g Constr. v. Mastor, 558 So. 2d 67, 68 (Fla. Dist. Ct. App. 1990) (quoting Granados Quinones v. Swiss Bank Corp., 509 So. 2d 273, 275 (Fla. 1987)).

If parties wish to depart from the ordinary meaning of common words and assign uncommon meanings to them, they must do so explicitly. See Madson, 636 So. 2d at 761. "One who would ascribe an exotic meaning to a term in a contract which otherwise has perfectly ordinary connotations must take pains to define the term either expressly or by express reference." E. Ins. Co. v. Austin, 396 So. 2d 823, 825 (Fla. Dist. Ct. App. 1981); see Russ v. State, 832 So. 2d 901, 907 (Fla. Dist. Ct. App. 2002) ("[W]here a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense." (alteration in original)); Koplowitz v. Imperial Towers Condo., Inc., 478 So. 2d 504, 505 (Fla. Dist. Ct. App. 1985) ("Whether they appear in a statute or in a declaration of condominium, words of common usage should be construed in their plain and ordinary sense.").

Here, this dispute exists because the parties' agreement does not define "scope" or "scope and purpose." Furthermore, the agreement does not identify the point in time when the "scope" of [\*14] Action's business is to be determined. Southeast contends that "scope and purpose" is ambiguous because it is susceptible to multiple reasonable interpretations. According to Southeast, "scope and purpose" means "at a minimum any business opportunity to be marketed to credit union members, including the telemedicine opportunity." However, the entirety of the parties' agreement and the "inconvenience, hardship, or absurdity" that would result from Southeast's proposed interpretation demonstrate that the agreement is not ambiguous and that the parties intended for the words "scope and purpose" to have their ordinary meanings. See Branscombe, 76 So. 3d at 948.

"Scope" and "purpose" are commonly-used words with commonly-understood meanings. Therefore, if the parties intended to ascribe an uncommon meaning to "scope" or "scope and purpose," they should have explicitly defined those terms. See E. Ins. Co., 396 So. 2d at 825. Instead of explicitly stating that these words have an uncommon definition, the agreement provides that its terms, covenants, and provisions "shall be construed simply and according to [their] fair meaning[s] . . . ." Consequently, the failure to specify a unique meaning for "scope and purpose" and the inclusion of the above-quoted section [\*15] indicate that the parties intended for these words to have their ordinary meanings. See id.; see also Russ, 832 So. 2d at 907; Koplowitz, 478 So. 2d at 505.

Under Southeast's interpretation, Plaintiff agreed to disclose and make available every business opportunity "to be marketed to credit union members." Such a broad definition appears to encompass every product or service imaginable, whether they have anything to do with Action or not. Under this interpretation, Plaintiff would be required to disclose an opportunity to sell cars to credit union members even though Action's business is not related to cars at all. The inconvenience, hardship, or absurdity that would result are weighty evidence that the parties did not intend for "scope and purpose" to have this meaning, especially when interpreting the agreement based on the ordinary meaning of "scope" avoids these difficulties. See Branscombe, 76 So. 3d at 948 HN9 ("The inconvenience, hardship, or absurdity of one interpretation of a contract or its contradiction of the general purpose is weighty evidence that such meaning was not intended when the language is open to an interpretation which is neither absurd nor frivolous and is in agreement with the general purpose of the parties.").

HN10 The ordinary meaning of words is found in the dictionary and is the most commonly understood meaning in relation to the subject matter of the parties' agreement. See Siegle, 788 So.2d at 360; Beans, 740 So. 2d at 67; J.N. Laliotis, 558 So. 2d at 68. According to one dictionary, "scope" means "1. The range of one's perceptions, thoughts, or actions. 2. Breath or opportunity to function. 3. The area covered by a given activity or subject." The American Heritage College Dictionary 1222 (3d ed. 1997). The operating agreement is concerned with the relationship of Action's members to each other and to Action, and the subject matter of section 6.6 is the duty to make certain business opportunities available to Action in order to avoid competition between Action and its members. [\*18] Based on the dictionary and the subject matter of the parties' agreement, "scope" most naturally refers to the range or breadth of the business that Action is engaged in at the relevant time.

Southeast contends this interpretation renders "purpose" redundant because "by definition, scope would always be within the purpose." We respectfully disagree. Contrary to Southeast's contentions, "scope" and "purpose" refer to different concepts. "Purpose" is aspirational and refers to what Action is capable of doing in the future (i.e. all lawful business for limited liability companies). In contrast, "scope" refers to what Action actually is doing or has done at the relevant point in time. Thus, an opportunity might be within Action's scope but not its purpose if, for example, Action had been organized for a limited purpose (e.g. to acquire real estate in Florida) but was in fact also engaged in the business of selling disposable mobile phones to college students. In this example, a business opportunity to sell mobile phones to college students would be within Action's scope but not its purpose.

Therefore, under the ordinary meaning of "scope," a member is required to disclose a business opportunity [\*19] if that opportunity (1) is within Action's aspirational goal — its purpose; and (2) is within the area that Action's business has or is actually covering at the relevant point in time. As a result, interpreting "scope" according to its ordinary meaning does not render any part of the agreement redundant.

Having concluded that "scope" refers to the breadth of the business Action is or has engaged in, we must turn our attention to determining when Action's "scope" should be assessed. The agreement does not specify whether Action's scope is to be determined as of the date of the agreement, the date of the discovery of an opportunity, or some other date. After reviewing the agreement, we conclude that the parties intended for Action's scope to be determined at the time when a member seeks to pursue the business opportunity in question.

#### Increasing exposure to liability ‘expands the scope.’

Pak et al. ’21 [Chul, Ken Edelson, John Ceccio, and Christina Clemens; 2021; Partner, associates, and law clerks at Wilson Sonsini Goodrich & Rosati; Private Competition Enforcement, “United States,” Ch. 20]

XIII Arbitration

Federal policy favours arbitration, and federal antitrust claims arising out of both international and domestic transactions generally may be arbitrated.159 Arbitration clauses are construed broadly,160 and courts refuse to recognise attempts by parties to limit the statutory remedies and procedures available to arbitrators, invalidating, for example, portions of arbitration agreements where the parties attempted to waive rights to treble damages or class or consolidated actions.161 Courts may not decline to enforce arbitration agreements that delegate to an arbitrator the question of whether a dispute should be arbitrated.162 In the context of class actions, however, the defendant’s arbitration rights may be deemed waived if it seeks to compel arbitration only after the class is certified and extensive discovery has occurred.163 Arbitration provisions may not be enforceable by franchisors against employees when the franchisor is not explicitly a signatory to the agreement.164 In addition, arbitrators may not impose class arbitration on parties unless it is contractually permissible.165 The Supreme Court has held that express arbitration clauses trump class-action rights, even in antitrust cases.166

XIV Indemnification and Contribution

i Joint and several liability

Under the doctrine of joint and several liability, each guilty defendant is liable for all the damages caused by the conduct of the entire conspiracy, not just those attributable to its own conduct.167 Antitrust co-conspirators can be held jointly and severally liable for damage predicated on sales by members of the conspiracy and damage caused by entities outside the conspiracy caused by the conspiracy.

ii No right to contribution

An antitrust defendant may not seek contribution from other participants in the anticompetitive scheme.168 Combined with joint and several liability for antitrust damages among defendants, the absence of the right to seek contribution from others has important practical consequences for defendants in their settlement strategies.

iii Indemnification

Most courts prohibit a defendant from seeking indemnification from other participants of an anticompetitive conspiracy, treating contribution and indemnification analogously.169 However, indemnification may be available to ‘an innocent actor whose liability stems from some legal relationship with the truly culpable party’.170

XV Enforcement of Monetary Judgements Against Foreign Companies

Monetary judgments issued by US courts generally become enforceable promptly after entry, and taking an appeal from the judgment does not ordinarily stay enforcement.171 To stay enforcement pending appeal, the losing defendant (or ‘judgment debtor’) must ordinarily post a bond for the full amount of the monetary judgments.172 Enforcement of monetary judgments in US federal courts is governed by FRCP 69.173

The principal device contemplated by that rule is the ‘writ of execution’ (i.e., an order authorising US marshals to seize and sell property of the judgment debtor within the territory of the district court).174 The holder of a monetary judgment (or ‘judgment creditor’) may register the judgment in other district courts, in which case the judgment is treated as though it had been issued from the court in which it has been registered.175 Rule 69 authorises proceedings in aid of enforcement, including post-judgment discovery as to the judgment debtor’s assets.176 The US Supreme Court recently held that such discovery may extend to assets held abroad because the judgment creditor may be able to secure execution in the countries where the assets are held.177

US courts generally do not have authority to execute against assets outside the United States.178 However, the enforcement law of the state of New York authorises orders requiring any judgment debtor or third party over which it has personal jurisdiction to bring money or personal property belonging to the judgment debtor into the state for execution.179 The constitutionality of this approach remains an open question.180

XVI Future Developments and Outlook

Private antitrust litigation and government enforcement of antitrust law have remained active throughout 2020. Legislatures and antitrust authorities have focused on the application of competition policy to digital sectors, closely examining the conduct and business models of large online platforms and other digital businesses. Recent complaints filed by the DOJ, FTC and state attorneys general suggest that antitrust authorities are exploring relatively untested territory under US law, such as theories of self-preferencing as a monopolisation violation and requests to unwind long-consummated mergers as a remedy for alleged anticompetitive harm.181 Government victories in these enforcement actions could lead to follow-on private litigation and establish precedent for new varieties of antitrust claims against firms in the digital space.182 These platforms’ expansive user bases could also yield large consumer classes in private class-action suits.

In 2021, US courts, in conjunction with antitrust enforcers and Congress, will play a central role in steering antitrust law and policy developments that will impact future private antitrust litigation. With the Democratic Party now in control of Congress and the White House, the coming years are likely to see increased antitrust enforcement as well as legislative proposals to expand the scope of antitrust liability, with the potential to expose firms to a broader variety of suits from competitors, customers, users and government enforcers.183

#### “Prohibitions’ disallow specific actions.

Blackmun ’92 [Harry Andrew, Anthony McLeod Kennedy, and David H Souter; Justices on the Supreme Court of the United States; Lexis, “Cipollone v. Liggett Group,” 505 U.S. 504]

Although the plurality flatly states that the phrase “no requirement or prohibition” “sweeps broadly” and “easily encompass[es] obligations that take the form of common-law rules,” ante, at 2620, those words are in reality far from unambiguous and cannot be said clearly to evidence a congressional mandate to pre-empt state common-law damages actions. The dictionary definitions of these terms suggest, if \*536 anything, specific actions mandated or disallowed by a formal governing authority. See, e.g., Webster's Third New International Dictionary 1929 (1981) (defining “require” as “to ask for authoritatively or imperatively: claim by right and authority” and “to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation)”); Black's Law Dictionary 1212 (6th ed. 1990) (defining “prohibition” as an “[a]ct or law prohibiting something”; an “interdiction”).

### Adv CP

#### Competition key.

Wayne Winegarden 21, senior fellow in business and economics at the Pacific Research Institute and director of PRI's Center for Medical Economics and Innovation, 11/9/21, Expand competitive power markets, not regulations and subsidies, to address global climate change, https://www.utilitydive.com/news/expand-competitive-power-markets-not-regulations-and-subsidies-to-address/609523/

The twenty-sixth session of the Conference of the Parties (COP 26) to the UN Framework Convention on Climate Change in Glasgow is finally upon us. Yet, despite all the previous meetings and government pledges, global greenhouse gas emissions (GHGs) have not yet peaked.  
In fact, if current policies continue unabated, the expected GHG emissions will still be too high relative to the levels necessary to constrain global temperature increases to two degrees Celsius or less above pre-industrial levels. Perhaps more revealing, even if all countries met their current pledges and targets, the expected emissions would still be too high to reach this target. As a result, there will undoubtedly be proclamations urging governments across the globe to do more at the conclusion of this year’s COP 26.  
As is often the case, "doing more" typically relies on greater government intervention into the marketplace such as burdensome cap and trade regulations, renewable use mandates, and subsidies for electric vehicles and other politically-favored technologies. Instead of government-driven mandates, a more fruitful approach would be empowering competitive electricity markets to usher in market sustainable low-emission technologies.  
Empowering wholesale and retail electricity competition will encourage the implementation of efficient low-emission technologies for the same reason markets provide consumers with more reliable and more affordable electricity services: free competition better aligns incentives.  
Take the experience of wholesale competition in the U.S.. Approximately 60% of the country is served by competitive wholesale electricity markets managed by a regional transmission organization (RTO) or independent system operator (ISO). In contrast to the monopoly markets, competitive wholesale markets empower independent power producers and suppliers to compete in the generation side of the business. Restructured electricity networks utilize market forces to facilitate which supplier will provide the generation services to meet customer demand.  
Competitive markets enable power generation providers to offer electricity across a broader region and to more customers, improving the incentives and ability to produce electricity more efficiently. The competitive model also improves the incentives to invest in productive generation assets by ensuring that utilities bear the consequences (both good and bad) from their investment decisions. Thanks to these positive incentives, customers benefit from better pricing and more efficient electricity services.  
What is true about pricing and reliability also holds for low-emission technologies. Competitive suppliers cannot ignore consumers' desires about low emissions technologies just as they cannot ignore their desires about cost and reliability. Therefore, electricity suppliers operating in competitive markets have an incentive to efficiently balance all these considerations. Those suppliers who can balance them better will gain customers, those who cannot, will lose customers. These positive incentives do not exist for utilities operating in monopoly markets. Instead of balancing the needs of customers, monopoly utilities serve the need of regulators, and consequently lack the same incentives to constantly strive to serve customers better.  
The evidence appears to be consistent with these incentives.

Experts agree on the power of competitive energy markets

Recognizing both the environmental and pricing benefits from competitive wholesale markets, nine former commissioners and chairs of the Federal Energy Regulatory Commission (FERC) argued in a [June 2021](https://www.rstreet.org/wp-content/uploads/2021/06/Former-FERC-Commissioners-Advocate-for-Expansion-of-Organized-Power-Markets-6-2-21-1.pdf) letter to Congress that RTOs and ISOs "provide compelling platforms for renewable energy development and are achieving considerable consumer benefit." According to these commissioners, "the approach FERC has championed for over two decades to ensure a well-functioning and dynamic grid is organized wholesale markets. There is no longer any doubt that these markets are reliable, resilient and highly attractive to innovative new technologies and clean energy resources."

Part of the reason competitive markets are "attractive to innovative new technologies" is due to the benefits enabled by greater economies of scale. As a 2020 study by the Nicholas Institute for Environmental Policy Solutions at Duke University concluded, "in terms of renewables development and integration, participation in RTOs and [Energy Imbalance Markets] offer advantages. Interconnection and the ability to connect far-flung but cheap renewables with customers through transmission is an advantage of RTOs. For example, RTO regions have seen more wind generation development compared to comparably wind-rich regions outside of RTOs. Markets with large geographic reach can improve the flexibility of the power system, which is important in the long run as more variable renewables come online."  
The positive incentives created by competitive wholesale markets are further enhanced when competition at the retail level is simultaneously empowered. When evaluating the impact of competition on the ability for commercial and industrial customers to increase their use of low-emission energy sources, the REBA Institute in collaboration with the Brattle Group, found that "allowing customers to choose their suppliers (such as in states with retail choice) has the highest technical potential for expanding access [to low-emission technologies] to the most C&I customers (potentially up to 100 percent) and lowering the cost of renewable energy procurement up to 11 percent" compared to customers who cannot choose their suppliers.  
Essentially, many customers prefer electricity that is generated from low emission sources if it is affordable and reliable. Competitive retail markets provide the means for customers to express these preferences and reward those generators who provide the preferred combination of these attributes.  
Data from the Energy Information Administration confirm that these incentives matter. The percentage change in carbon-dioxide emissions between 2008 and 2018 (the latest data available) in the retail competitive jurisdictions declined 12.1% on average compared to an average decline of 7.3% in the states that still rely on monopoly retail markets.  
The evidence is clear — competitive electricity markets can help the country achieve its clean energy goals in affordable and efficient ways. If the Biden Administration really wants to demonstrate America's leadership on climate change to skeptical leaders from around the world, then it should embrace competitive electricity markets as one of the keys to America's clean energy future.

### Waivers CP– 2AC

#### The CP text makes no sense, solves none of the aff, and in fact the CP makes it easier for companies to raise rates – Section 205(d) is the part of the Federal Power Act that requires the 30-day notice requirement unless there’s good cause to waive it – which means all the CP does is guarantee that FERC allow any company to retroactively file higher rates in all instances – Michigan reads #GoBlue

Kiplyn Farmer 88, American lawyer specializing in personal injury, criminal law, and worker compensation, “FERC Waiver of the Filed Rate Doctrine: Some Suggested Principles,” <https://www.eba-net.org/assets/1/6/31_9EnergyLJ497(1988).pdf>

On April 22, 1988 the D.C. Circuit, on rehearing, affirmed that the Federal Energy Regulatory Commission (FERC)1 is free to consider whether it has the authority to waive the "filed rate doctrine.' 2 This determination was the result of a suit brought by Columbia Gas Transmission Corporation (Columbia), a gas purchaser, after the FERC authorized five pipelines to collect a surcharge over and above the rates which were filed with the Commission at the time of sale.3 The FERC maintained that it has implied authority to waive the filed rate doctrine4 under the Natural Gas Act (NGA) and that its authority was upheld in City of Piqua v. FERC.6 Although the court overruled the Commission's decision in Columbia Gas7 because the affected parties were not on notice as to the increase in rates caused by the waiver,8 it opened the door to the possibility of allowing the FERC to establish guidelines regarding the circumstances in which it could waive the filed rate doctrine in the future.9 If the FERC is to retain authority to waive the doctrine when it determines that such a waiver is required in order to carry out its statutory mandate that rates and charges be just and reasonable,1 " it must establish criteria consistent with the principle that the FERC is prohibited from retroactive rate-making.'1 This article focuses on the issue of the FERC's authority to waive the filed rate doctrine by permitting rate changes to be made effective retroactively and recent judicial interpretations of the doctrine which the FERC will be required to consider in establishing its guidelines.

II. THE FILED RATE DOCTRINE

The "filed rate doctrine" requires that a regulated supplier not charge any rate other than that filed with the proper regulatory body. 2 No change in rates may take effect except upon thirty days' notice to the Commission and to the public.' 3 A change in rates may be accomplished by filing a revised schedule with the Commission."' For all sales or transportation of natural gas subject to Commission regulation, the pipeline is required to file with the Commission schedules of all rates and charges along with other applicable terms and conditions which relate to the filed rates.' 5 The Commission is required to use this data to determine if the rates are just and reasonable. Any rate or charge found not to meet this standard is unlawful.' 6 Where the Commission finds a rate to be improper the NGA empowers the Commission to determine a just and reasonable rate and, by its own order, fix that rate subject to the following conditions: the Commission may order a decrease in the rate if it finds the filed rate to be excessive but it may not order an increase in the rate unless the higher rate conforms with a new schedule to be filed by the regulated company. 7

Generally, pipelines are permitted to modify their rates only prospectively since the NGA requires all rates to be filed with the Commission at least thirty days before taking effect.!' However, the same paragraph of the NGA frees the Commission to allow changes to take effect without thirty days' notice if "good cause" is shown. 19 The circumstances in which the thirty days notice can be waived so as to permit changes in rates to take effect retroactively is the central issue of the litigation discussed in this note.2 " Specifically, in what circumstances can the FERC waive the notice requirement in the NGA so as to give rate changes retroactive application and thereby effectively waive the filed rate doctrine? The answer to this question is not completely answered by the language of the NGA2 and has now been remanded by the court to the FERC for further consideration.22

III. CITY OF PIQUA

The case often cited as precedent for allowing a rate to take effect prior to the date of filing with the Commission is City of Piqua v. FER C.23 On September 21, 1979 the D.C. Circuit held that the FERC was within its the statutory authority in allowing the enforcement of a new contract for electrical service between Dayton Power and Light (DP&L)24 and the City of Piqua, Ohio,25 despite the fact that it became effective prior to being filed with the Commission.26 The contract was an extension of an existing agreement intended by the parties to take effect upon the expiration of the old agreement on May 9, 1977.27 The term of the contract was from May 10, 1977 to March 10, 1978, however, DP&L could not file the contract until after the City Commission approved it on July 18, 1977.28 DP&L filed the new contract with the FERC on August 5, 1977 and requested that the thirty days' notice requirement under section 205(d) of the Federal Power Act (FPA) be waived so as to permit a retroactive effective date.2 9 The Commission found authority for waiving the notice provision under that portion of section 205(d) of the FPA, and section 35.11 of the Commission regulations, which allow such a waiver when good cause is shown for doing so.30

Following the Commission's issuance of the order waiving the notice period and authorizing the prior effective date, the City of Piqua filed a request for rehearing, which the Commission denied.3 " The City then sought to have the order reviewed by the court of appeals on the grounds that authorization of the prior effective date constituted retroactive rate-making which was unauthorized by statute, 2 prohibited by the policy against retroactive rate making,13 and not supported by substantial evidence.3 4 The court of appeals held that the 'rate change, based upon a privately negotiated and signed contract, was not retroactive because it was prospective from the date of execution of the contract.35 The court further held that a rate, which is otherwise just and reasonable,36 is not unlawful on the grounds of retroactivity so long as good cause can be shown for waiving the notice provision in the FPA.37 The court found that the intent of the Act's notice provision was not violated because the contract was freely negotiated and agreed upon, giving both sides actual notice of its contents. 38 The court also held that this resolution correctly upheld the validity of the parties' private contract.3 9 The court noted the fact that it was the petitioner's own approval process which prevented DP&L from timely filing the rate with the Commission' as evidence justifying the Commission's finding of good cause for the waiver. In so doing, the court strongly affirmed the Commission's broader statutory authority to waive the notice requirement in any case where good cause is shown.4

IV. ARKANSAS LOUISIANA

Subsequent to the decision in City of Piqua, the United States Supreme Court in Arkansas Louisana Gas Co. v. Hall, addressed the legal effect of the filed rate doctrine in the context of a claimant's request in state court for contract damiges that, if awarded, would have had substantially the same effect as a retroactive rate increase.42 The Arkansas Louisiana Gas Co. (Arkla) contracted to purchase natural gas from a field from which gas was sold under contracts with other parties. The producer, Hall, had negotiated a "favored nations clause" in the contract which provided that if Arkla purchased gas from the same field from any other producer at a higher rate than it was paying Hall, then Hall would be entitled to receive the same higher price for his gas sales to Arkla.43 The contract was filed by Arkla and approved by the FERC. Subsequently, Arkla entered into another contract with a producer of gas from the same field at a higher rate but did not inform Hall and did not take any action to increase the rate pursuant to the "favored nations clause." Upon learning of Arkla's other contract, Hall brought action in state courts in Louisiana to recover damages in the amount of the difference between what Arkla actually paid and what it would have paid under the clause had Arkla. notified Hall of the higher rate. The issues argued in A rkla were first, that an award of damages presumed that the higher rate would have been approved by the FERC had the rate been filed with the Commission; and second, that to award damages based upon Hall's contract right to increased rates would be a violation of the filed rate doctrine because the new rate would first have to be filed with the Commission before it could take effect and thus, if both arguments were valid, a rate change could not indirectly be awarded retroactively via the award of damages. The Louisiana Supreme Court disagreed 45 and awarded damages for the period in which Arkla was paying the higher rate to the other producers in the field without paying the same rate to Hall.46 Arkla appealed the decision to the United States Supreme Court, which reversed the Louisiana decision by holding that the damages sought by Hall would amount to a retroactive rate increase and would authorize a rate not previously filed and approved by the FERC, thus violating the filed rate doctrine.a7 The Court held that a regulated seller of gas may not impose a rate different than the one filed with the Commission under the NGA, and that the Commission and the courts are prohibited from retroactively imposing a higher rate for gas already sold whether in the form of damages for breach of contract or otherwise.4a

Two aspects of the Court's opinion in Arkla must be weighed in future decisions, given the absence of a clear judicial trend regarding the waiver issue: 49 (1) private contracts versus public policy,5 " and (2) the equities associated with waiving the filed rate doctrine.5 In addressing these issues, it could be inferred that the Court may have indirectly disagreed with the D.C. Circuit's broad holding in City of Piqua. On the subject of enforcing the intent of private contracts, the D.C. Circuit was inclined to apply the Act in a broad manner in order to honor the parties' intent and to apply equitable principles.52 But in Arkla, the Supreme Court made a stronger statement in support of strict interpretation of the Act, pointing out that when faced with a discrepancy between the contract and the filed rate, the Commission was obligated to enforce the filed rate.53 In response to Hall's appeal for equitable considerations, the Supreme Court could find no basis for applying equity in the absence of what it called "affirmative misconduct."54 This statement could be read to indicate an inclination by the Supreme Court to place a strict construction of the language of the NGA over the argument for an equitable result.

The Arkla decision also can be distinguished from other cases concerning the filed rate doctrine because it overturned the Louisiana Supreme Court decision to award damages on the basis of what that court assumed the Commission would decide, had the new rate been filed.55 In its decision, the U.S. Supreme Court held that the filed rate doctrine prohibited the award of damages based on rates other than those on file with the Commission during the time period in question.56 On the other hand, Arkla has been cited as a broader precedent for enforcing regulatory policy against retroactive ratemaking. For example, in Dorchester Gas Producing Co. v. FERC57 the Fifth Circuit cited Arkla in upholding a Commission decision not to apply a ratemaking decision retroactively. 58

V. COLUMBIA GAS TRANSMISSION CORP. 5 9

The Columbia Gas case affords the potential to clarify the issue of waiver of the filed rate doctrine in light of City of Piqua and Arkla. In 1978 Congress passed the Natural Gas Policy Act (NGPA)6 ° in which ceiling prices6 were established for various categories of gas sales62 by producers to purchasers, characterized in the NGPA as "first sales".63 Ceiling prices could only be exceeded' by adding certain of the seller's costs of processing and transporting65 the gas beyond the wellhead.66 Following the enactment of the NGPA, the Commission immediately began a rulemaking proceeding which culminated in the issuance of Interim Regulations Implementing the Natural Gas Policy Act of 1978.67 These regulations were amended in 1980 by the FERC Order No. 94,which clarified how a seller could recover certain costs in excess of the statutory ceiling.68 However, the Commission announced in its Order that it would not accept applications at that time for recovery of compression and gathering costs due to the complexity of that category of costs and the absence of an industry standard for determining those costs.69 First sellers were assured that, as soon as the Commission determined a reliable method for calculating the costs, it would provide a collection procedure for gas sold after the effective date of the initial rulemaking,7 ° provided such costs were contractually agreed upon.7'

Finally, in Order Nos. 94-A72 and 94-B73 the FERC issued regulations for recovery from first purchasers of the costs incurred by producers for delivery and compression of gas sold after July 25, 1980,14 or the date on which a recovery application was filed by the producer with the Commission, whichever was earlier; but, the regulation only covered gas delivered to the pipeline before March 7, 1983. Several first purchaser pipeline companies petitioned the Commission for approval to pass these costs on to their customers through a direct billing of the surcharge for the appropriate period. 7' The Commission issued approvals to five pipelines under this regulation.76 Columbia Gas, a customer of one of these pipelines,77 filed suit claiming that by making the orders applicable to gas sold prior to the effective date of the final orders, the FERC had authorized a retroactive rate increase." Columbia also claimed that the direct billing method, which the FERC approved for Transcontinental Gas Pipeline Corp. (Transco), was inconsistent with the FERC's policy of authorizing rate increases only through the procedures of a rate increase filing or the filing of a purchased gas adjustment (PGA) clause, both of which are prospective.79 Since the rates authorized by the Orders had not been filed with the Commission as of the effective date of the surcharge, the petitioners asserted that the FERC was prohibited from such retroactive rate-making by the NGA.80

The Court of Appeals ruled that the Commission's order allowing the charges to be passed along for gas already sold amounted to a retroactive rate increase, which was prohibited by the NGA.8 The court rejected the Commission's argument that Columbia was on notice of the surcharge as of the date the Commission issued the interim Order No. 94 in 1980, because that order concerned only first sales between producers and the purchasers, and did not put subsequent purchasers on notice that a passthrough was being permitted. 2 The Court suggested that the FERC's regulations provided the pipelines with a prospective means of recovering the costs at issue.83 The court held that the Commission was prohibited under the filed rate doctrine from allowing retroactive rate increases and consequently remanded the issue to the Commission for further proceedings consistent with the filed rate doctrine.8 4 Subsequently, the FERC and various intevenor pipelines85 petitioned the court for rehearing, which petitions were denied. 6 However, in issuing its decision the court confirmed that the "FERC is free to consider the waiver issue and determine whether, it may issue new orders on grounds consistent with the principles emunciated in our earlier opinions of this case."8 7 This statement returned the waiver issue to the FERC, allowing it the opportunity to create new guidelines in deciding the waiver issue in this and future cases.

VI. CONCLUSION

The Arkla and Columbia decisions uphold the sanctity of the filed rate doctrine. However, pipelines that desire to pass along unanticipated cost increases are not entirely without recourse. 8 Congress clearly provided the Commission with some latitude by authorizing the Commission to waive the thirty days' notice provision for good cause.89 The question which remains is "what are the circumstances in which the doctrine against retroactive rate changes can be waived?" A review of a number of cases which have considered this issue reveals six interrelated elements which have been used to decide whether the filed rate doctrine should be waived.

The first element is "good cause," which is the statutory standard in the NGA.90 In City of Piqua, the City's own procedures contributed to the delay in filing, which the court held to be substantial evidence of "good cause." 91 In Arkla the court noted that the Commission found that good cause did not exist for a waiver.92 This element was not discussed explicitly in the Columbia Gas decision although implicit in the decision was the inference that the FERC failed to establish that it had good cause to waive the thirty days' notice requirement. 93 In reviewing the Columbia Gas decision the FERC may address the good cause element in support of orders 94-A and 94-B.

The second element is "notice." In City of Piqua, the court found that notice was provided through the negotiation and execution of the renewal contract, in spite of the fact that the filed rate doctrine was technically violated because the contract was not filed with the Commission for several months thereafter. Most recently, the D.C. Circuit, in deciding Columbia Gas, held that notice was not given to the second purchaser and therefore no surcharge could be levied against the purchaser which predated the requisite filing under the NGA.94

The third element involves "the validity of private contracts." The D.C. Circuit in City of Pique weighed the private intent of the parties in their contract heavily in granting a retroactive waiver and cited the Supreme Court's decision in United v. Mobile, to the effect that the Federal Power Act was not intended to abrogate private contractual arrangements. On the other hand, in Arkla the Supreme Court stated "when there is a conflict between the filed rate and the contract rate, the filed rate controls."95 This statement by the Supreme Court must be reconciled with the intent of Congress when it provided authority for waiving the notice requirement. It may be that Congress intended that the waiver of notice permitted under the Act would not extend beyond the filing date, and this may be the central question in reconciling Arkla and City of Piqua.

The fourth and fifth related elements are "reliance" and "equity." The principle of reliance could be applied to estop one party from denying the existence of the new rate where the other party has rightfully relied on a contract. "Reliance" was recently considered by the Fifth Circuit in Dorchester,96 where the court held that the Commission properly refused to apply a new rate retroactively because both parties relied on and benefitted from the filed rate. 97 , Another aspect of reliance and equity is the possibility of fraudulent conduct by one party. While reaffirming the strict rule against applying any rate other than the filed rate, the Court in Arkla admittedly "save[d] for another day the question whether the filed rate doctrine applies in the face of fraudulent conduct." '

The sixth, and final, element is the consideration of public policy,9 9 which must be balanced against the preceding five elements in order to allow the Commission to meet the Congressional mandate that all rates be just and reasonable in light, of prevailing conditions. Congress has specified its intent in establishing policy for the sale of natural gas,"°° which should override the first five elements should they be in clear conflict.

In denying the Commission's petition for rehearing of the Columbia decision, the court held that the FERC was free to consider new orders under which the filed rate doctrine could be waived,'01 which now leaves the issue to the Commission to establish a clear and consistent policy. Whatever policy is adopted by the FERC, the issue is one of great interest within the industry and will likely be reviewed by the Courts. It is in the public interest that the Commission promulgate some specific principles governing the circumstances in which the filed rate doctrine may be waived. The natural gas industry would be aided by clear and consistent regulations in making long term economic decisions. Further delays caused by litigation do not serve the industry or the public interest.

#### 4 – Agencies lack experience and expertise – rates may seem reasonable to the agency, but are the result of a price-fixing regime.

Gorodetsky ‘9 [Julia; Winter; Corporate securities lawyer for Andrews Kurth LLC; *Tulane Environmental Law Journal,* “Analogy By Necessity: The Filed Rate Doctrine and Judicial Review of Agency Inaction,” <https://www.jstor.org/stable/pdf/43294073.pdf?refreqid=excelsior%3A40dc35292abcd134d36ab5a0d941bbc6>; KS]

Unfortunately, the actions by the regulators are very troubling. FERC's failure to detect market manipulation in California stems from the agency's general lack of familiarity with deregulation and market- based tariffs monitoring.159 FERC has extensive expertise with cost-of- services rates, but market-based tariffs are very different.160 Thus, while FERC has the expertise to determine just and reasonable cost-of-service rates, it lacks similar expertise in determining which market-based rates are just and reasonable.161 Further, FERC has failed to make the requisite findings to address this problem. Until recently, FERC had never taken upon itself to devise rules and parameters for efficient markets.162

Thus, judicial deference to FERC's expertise in the context of market-based tariffs is unwarranted because the agency lacks both experience and expertise in the subject matter. Further, FERC is not equipped with the proper jurisdictional authority to retroactively remedy the claims resulting from tariffs FERC itself has found to be unfair and unreasonable.163 Given the situation, judicially enforced antitrust laws would be more efficient in addressing potential market power manipu- lation. Unlike FERC, courts possess a solid and constantly evolving expertise in dealing with competitive markets.164 Further, courts are more responsive than agencies to legislative actions aimed at remedying potential market power abuse. Also, courts can issue retroactive remedies.165

During California's crisis, FERC was confronted by a market which operated extremely fast and which was not structurally competitive.166 Further, FERC was faced with "aggressive traders and generators primed to find and use loopholes in the protocols to increase their companies' profits and their personal bonuses.”167

FERC, however, did not take these competitive market realities into account. It analyzed the filed market-based rates by looking at the market share of the regulated utility under the faulty assumption that insufficient market share effectively denies the potential for market manipulation.168 FERC assumed that generators with market shares of less than twenty percent were incapable of exercising market power.16 However, the numbers employed by FERC were erroneously borrowed from the measures used by DOJ and FTC in analyzing a firm's market power in nonelectricity markets.170 The unique characteristics of the electricity market confer market power on a utility with market share as small as one percent during peak hours of demand.171

The lack of synchronization between retail and wholesale rates, which contributed greatly to the California crisis, further highlight FERC's inexperience with market-based rates. It also shows the income- patibility between the filed rate doctrine and maintenance of a properly functioning competitive market.

When California froze its retail prices, it assumed that FERC would impose much lower wholesale prices during the period of transition to the newly deregulated market.172 If such calculations were correct, the "headroom" between retail and wholesale prices would have allowed utilities to recover costs following the state-ordered unbundling.173 This assumption proved to be a serious miscalculation on the part of the state.174 When the wholesale prices soared, Pacific Gas and Electric Company started to accumulate massive debts and eventually filed for bankruptcy, unable to recover costs in the retail market.175

While the state retail market based its rate calculation on a mistaken assumption in regards to wholesale rates, FERC's wholesale rates were approved based on retail tariffs.176 FERC required that wholesale seller either show that they lacked market power or that they took measures to mitigate such power in order to have their rates approved.177 One of the "measures" taken by the wholesale sellers was to successfully claim that the retail market rate freeze would prevent them from passing higher costs to the consumers.178 However, FERC's decision to approve these wholesale rates, no matter how faulty, was immune from judicial review pursuant to the filed rate doctrine.179 In Pacific Gas & Electric Co. v. Lynch, the California district court held that FERC was not "obligated to adjust wholesale rates to harmonize with retail rates," even if FERC did rely on the state retail price freeze in its initial calculation of market- based rates.180

Further, FERC's authority to impose penalties only extends to ordering prospective refunds for rates not found to be "just and reasonable.”181 FERC cannot administer any other monetary penalties against violators.182 Thus, FERC is not effective in policing deregulated markets and deterring future violations.183 Further, the "just and reasonable" rate standard does not account for the fact that the market- based rate may seem "reasonable" to FERC yet be a result of a price- fixing conspiracy, and thus higher than the rate dictated by free market competition.184 Thus, antitrust violations could pass FERC's review unnoticed.

FERC's Order, issued on December 15, 2000, in response to California's electricity crisis, revealed the extent of FERC's inability to discipline the wholesale market.185 The Order announced that FERC would not intervene and stated two major conclusions.186 One acknowledged that FERC was under the obligation to ensure that wholesale prices were just and reasonable and that the state's current wholesale rates, all previously filed and approved by the FERC, were neither just nor reasonable.187 That conclusion notwithstanding, FERC refused to cap the current wholesale prices.188 The second conclusion referred to the demand for retroactive relief, which FERC denied.189 It cited the filed rate doctrine as justification for the assertion that all rates previously found by FERC to be just and reasonable were not eligible for a refund.190

FERC's Order made it clear that the filed rate doctrine applied to cost-of-service and market-based rates alike, thus revealing FERC to be a "paper tiger" incapable of disciplining competitive markets.191 The file rate doctrine became a legal loophole for rampant abuse in the already dysfunctional California market. 192 The Order, coupled with the knowledge that FERC was probably incapable of deterring price and market power manipulation, invited utilities to "game the system at will" by manipulating electrical supply and demand and driving prices upwards.193 Predictably, prices increased substantially, and the general result of the FERC Order was that "[t]he equivalent of outright looting occurred in plain sight.194

The extent of FERC 's lack of expertise in dealing with deregulate market prices was further confirmed by the findings of the Senate Committee on Governmental Affairs staff report in regards to FERC investigation of the Enron scandal.195 The report cited a "shocking absence of regulatory vigilance on FERC's part and a failure to structure the agency to meet the demands of the new, market-based system that the agency itself has championed.”196

#### Filed rate prohibits the CP – no retroactive remedies.

Spence 12 [David B. Spence, Rex G. Baker Centennial Chair in Natural Resources Law at the University of Texas School of Law, and Professor of Business Government & Society. Robert Prentice, Professor and Department Chair, Business, Government and Society, McCombs School of Business, UT Austin. The Transformation of American Energy Markets and the Problem of Market Power.” 1/1/12. https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3184&context=bclr]

The California crisis revealed that while FERC had anticipated some of the forms of unfair competition that emerged after restructuring (such as discrimination by owners of gas and electric transmission lines in favor of their affiliates), it apparently had not foreseen some of the ways in which sellers on competitive wholesale markets were able to capture and abuse market power, or to influence prices in the spot and derivatives markets. Exercising its continuing responsibility to regulate competition and ensure that wholesale rates (including market-based rates) were “just and reasonable,”149 the agency’s initial response to the crisis focused on preventing and deterring wholesale sellers from acquiring and abusing market power. FERC’s previous grants of authority to charge market prices for energy had always been conditioned on the sellers’ lack of market power; however, long-standing precedent under both the FPA and the NGA—the so-called “filed rate doctrine”150— prohibited FERC from retroactively penalizing sellers who charged market rates that had been “filed” with FERC.151 In the wake of the California crisis, courts affirmed the agency’s conclusion that the market rates charged by FERC-authorized sellers in the California spot markets were “filed rates” for purposes of the filed rate doctrine.152 Therefore, in the event a seller authorized to charge market-based rates acquires market power—the power to capture scarcity rents by influencing price—the only remedy available to FERC at the time was to revoke that seller’s authority to charge market-based rates prospectively. FERC can do this in either of two ways: (1) by reimposing cost-based rates for that seller, or (2) by imposing rate caps for that seller in the relevant market (what it calls “mitigation”).

#### Struck down or links to the net-benefit.

Quinn 20 [Jennifer Quinn-Barabanov is a partner and co-leader of Steptoe and Johnson’s Energy Litigation practice. Shaun Boedicker is a member of the Energy practice in Steptoe’s Washington, D.C., office. “Filed Rate Doctrine: A Powerful Tool in Energy Litigation.” 6/1/2020. https://www.powermag.com/filed-rate-doctrine-a-powerful-tool-in-energy-litigation/]

The regulatory landscape for the energy industry has changed significantly in the past few decades, but a century-old Supreme Court canon—the filed rate doctrine—continues to be a valuable tool for regulated parties in litigation. The doctrine can provide a basis for a court to dismiss many types of lawsuits, including antitrust, tort, and contract claims. Evaluating the extent to which a claim may improperly infringe upon a filed rate, whether at the state or federal level, is a critical first step in litigation that may save parties substantial time and money.

### Politics DA

#### Voting rights thumps AND fails in a dramatic fashion.

Bresnahan ’1-13 [Josh, Anna Palmer and Jake Sherman; 2022; reporters of Politico fame; Punchbowl News, “The Top,” https://email.punchbowl.news/t/ViewEmail/t/A5E9ED1585E321072540EF23F30FEDED/BAC1DEE27B160F321726EA5DA1051479?alternativeLink=False]

Please pause for a moment and consider just how much political capital President Joe Biden and Senate Majority Leader Chuck Schumer are spending right now on voting rights and scrapping the filibuster. Biden went to Atlanta on Tuesday to make a major speech on this, and now he’s coming to Capitol Hill today to lobby Democratic senators during a closed-door party meeting.

Schumer’s office has been a bit like Grand Central Station at rush hour. Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) have been cycling in and out of there – and other Capitol meeting spots – multiple times each day. The two moderate Democrats are listening to appeals from colleagues about why they should scrap the 60-vote threshold to cut off debate or allow a carveout for voting rights. Manchinema, however, have remained consistent: it won’t happen.

Let’s leave aside for a second the substance of the voting rights bill. We all understand that it’s unlikely to pass, right? And there are plenty of Senate Democrats – and many on the House side too – that wonder why the White House is pressing so hard on this. And why is Schumer forcing vulnerable lawmakers to do away with the filibuster? The vast majority of Democratic senators are ready to scrap the 60-vote threshold – if they can win. They can’t right now. And worse than that, Senate Democrats don’t have a graceful way out this political jam. It’s a bit reminiscent of when Senate Minority Leader Mitch McConnell said he wouldn’t lift the debt limit earlier this year. McConnell’s position was unsustainable and in the end, he had no choice left but to fold.

#### Biden is falling apart.

Bresnahan ’1-14 [Josh, Anna Palmer and Jake Sherman; 2022; reporters of Politico fame; Punchbowl News, “The Top,” https://email.punchbowl.news/t/ViewEmail/t/B1F44FC6F9A9E1332540EF23F30FEDED/BAC1DEE27B160F321726EA5DA1051479?alternativeLink=False]

An unhappy new year for Democrats

Schumer’s remarks capped an absolutely brutal week for the Biden administration and the Senate Democratic leadership, one filled with miscues, missteps and miscalculations. In fact, it’s been a tough month, ever since Sen. Joe Manchin (D-W.Va.) went on Fox News to derail the Build Back Better Act – President Joe Biden’s top legislative priority – a week before Christmas.

This week, though, was especially painful. Consider:

→ Omicron-related Covid cases continue to surge nationally, although they may have peaked in the Northeast.

→ Media outlets are doing stories on why grocery store shelves are empty. This is never a good sign.

→ Biden went to Georgia to talk about voting rights. The trip was, at least partially, marred by the fact that Stacey Abrams and voting rights groups didn’t show up for the Biden event.

→ The president’s fiery speech in Georgia was cheered by the base, yet criticized by some in Democratic leadership. Senate Majority Whip Dick Durbin (D-Ill.), for instance, said it might’ve gone a little too far. Speaker Nancy Pelosi had some tips for Biden as well:

“The only criticism I would make, too, I wouldn't say they were criticisms – observations. Nobody knows who Bull Connor is. If we’re making the case to say we’re going to be w Martin Luther King or Bull Connor – who’s that? Are we going to be with Martin Luther King … and John Lewis or the people who unleashed the fierce dogs on them. That’s who Bull Connor is. Strom Thurmond? Not a lot of us have a lot of happy memories about Strom Thurmond.”

→ Not long after Biden returned to D.C., Senate Minority Leader Mitch McConnell – who the president calls a longtime friend – was on the floor railing against the speech. McConnell slammed Biden’s remarks as “incorrect, incoherent, and beneath his office.” Biden, who was visiting the Capitol to pay his respects to the late Sen. Harry Reid (D-Nev.), dropped by McConnell’s office for a brief visit. McConnell wasn’t in.

→ For the third time in the last several months, Biden came to the Hill only to leave empty handed. It happened twice before during the House debate over the Build Back Better Act. On Thursday, Biden planned a trip to the Capitol, only to be upstaged by first-term Democratic Sen. Kyrsten Sinema (Ariz.). Sinema went to the floor shortly before the president got there to say she wasn’t going to support efforts to get rid of the filibuster, as Biden has demanded.

Following a lunch with Senate Democrats, Biden told reporters he had no idea whether he could pass voting rights legislation. And shortly after Biden left, Manchin issued a lengthy statement saying he’d never weaken the filibuster. Biden later had the pair to the White House for a “candid and respectful exchange of views about voting rights.” But there’s no sign their positions have changed, and neither senator issued a statement afterward.

→ The Supreme Court on Thursday rejected the Biden administration’s “vaccine or test” mandate for large employers, another blow to the president's plan to try to contain Covid. The high court let stand a separate mandate for health-care workers, however.

→ The December inflation report released on Wednesday by the Bureau of Labor Statistics showed consumer prices rising at the fastest rate in nearly 40 years. This may have put a final nail in the coffin of the Build Back Better Act in its current form.

→ The latest Quinnipiac poll showed Biden’s job approval rate at 35%, with his disapproval at 54%. If you dig into the data, it’s even worse than just that bad topline. Biden is deep underwater on his handling of both Covid and the economy.

→ The Biden administration is taking criticism from the moderate and progressive wings of the party, and at the moment, their entire agenda is completely stalled. The White House’s retort is that it is doing hard things and these hard things take time and, well, they’re hard.

After noting that Biden hasn’t given up on BBB or voting rights, White House Press Secretary Jen Psaki told reporters on Thursday: “Our effort is to do hard things, try hard, and keep at it… We can certainly propose legislation to see if people will support bunny rabbits and ice cream, but that wouldn’t be very rewarding to the American people.”

Here are some data points about just how stalled the Democrats’ agenda is:

→ The BBB is nowhere. We imagine much of February will be spent trying to revitalize it ahead of the State of the Union March 1.

#### Court shields.

Mazzone ’18 [Jason; August 9; Professor of Law at the University of Illinois at Urbana-Champaign; Chicago-Kent Law Review, “Above Politics: Congress and the Supreme Court in 2017,” [vol.](https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=4207&context=cklawreview) 93]

Absent, too, in the modern Congress is any real sense that the Supreme Court can be brought to heel: say, by constitutional amendment, by stripping the Court of funding, by hauling in members of the Court to justify their rulings before congressional investigatory committees, by appointing special counsels to review and report back on what the Court does, by impeaching the Justices (or locking them up), or by simply ignoring or defying judicial rulings. Perhaps the Court does not rule in ways that offend enough members of Congress (or their constituents) for them to invest the energy—and political capital—required to generate these sorts of measures. Perhaps, instead, members of Congress do not consider such measures appropriate in our constitutional system. In either case, modesty on the part of Congress is the result, even in an era when a single party controls both the Congress and the White House. The lesson for the Court is that so long as it continues doing—more or less—what is has done in recent years, it has very little to fear from the Congress.

Conclusion

After President Trump nominated Neil Gorsuch to fill the vacancy on the Supreme Court left by the death of Justice Scalia, fifteen House Republicans sponsored a Resolution that “the House firmly supports the nomination of Neil Gorsuch to the Supreme Court” and “the Senate should hold a swift confirmation of this nomination.”229 The proposed resolution died, without further action, in the Committee on the Judiciary. While Gorsuch was, of course, confirmed, the failure of the Republican-controlled House to pass a simple resolution supporting the nomination is telling. After an election season in which the Supreme Court figured very prominently, aside from the Senate’s confirmation of a new Justice, Congress in 2017 accomplished nothing with respect to the Supreme Court. Various bills and resolutions—some sponsored by Republicans, others by Democrats, and some garnering bipartisan support—targeted statutory and constitutional rulings by the Court and sought also to impose new regulations upon the Court’s activities. Even the most modest of these proposals failed to advance through the legislative process and become law. We like to think that the Supreme Court, guided solely by the rule of law, is above politics. The experience of 2017 suggests that the Court may also be above politics in the quite different sense that its rulings and activities are largely immune to political response and redress.

#### Warming will be gradual, cushioned by inevitable intermediate mitigation.

Wade ’21 [Robert H.; 2021; Professor of Global Political Economy at the London School of Economics, DPhil and MPhil in Social Anthropology from Sussex University, Master’s in Economics from Victoria University, BA in Economics from Otago University; Global Policy Journal, “What is the Harm in Forecasting Catastrophe Due to Man-Made Global Warming?,” https://www.globalpolicyjournal.com/blog/22/07/2021/what-harm-forecasting-catastrophe-due-man-made-global-warming]

Conclusion

I have argued that the “plausible” risks of climate change are commonly exaggerated within the climate community. Recall for example, Christiana Figueres, 2020, “The scary thing is that after 2030 it basically doesn’t really matter what humans do”; Kevin Drum, 2019, “[The Green New Deal] would only change the dates for planetary suicide by a decade or so”; Frank Fenner, 2010, “We’re going to become extinct. Whatever we do now is too late.” Many more in the same doomsday vein.

We have seen that the standard global warming models have a powerful built-in bias to exaggerate the rate of future temperature rise, as seen in (most of) them “hindcasting” temperature rises several times faster than actually observed. We have seen that forecasters commonly take “worst-case scenarios” as “likely scenarios in the absence of radical action” (eg reaching net zero carbon emissions by 2050), to the point where Nature recently published a paper sub-titled, “Stop using the worst-case scenario for climate warming as the most likely outcome”.

The dismaying thing is that scientists and advocates have been making catastrophising global warming forecasts of this kind for decades past, normally dated some 10 to 30 years into the future. The due date comes without catastrophe, but never a retrospective holding to account. Rather, on to the next catastrophising forecast another 10 to 30 years ahead. Scientists-writers-activists know the catastrophe forecasts get the attention, the clicks, the research funding. We saw the exaggeration mechanism spelled out by Richard Betts of the BBC, Holman Jenkins of the Wall St Journal, and climate scientist Judith Curry.

The built-in exaggeration of the costs of climate change blunts the parallel with nuclear power plants. We know with high certainty the costs of nuclear explosions. We know the costs of global temperature going above 1.5 C above “pre-industrial” much less certainly, and we can see the mechanisms by which the likely costs are being systematically exaggerated.

On the other hand, there is abundant evidence that even without the doomsday exaggerations the plausible risks of climate change could be very serious, in particular because of the inherent political economy difficulty of getting needed global or regional cooperation when political action is mostly at the level of sovereign nation states (see the G20).

Coal power generation is the single biggest source of GHG emissions, and emissions from coal consumption will probably not fall fast, whatever the promises. First, coal is cheap, accessible and generates reliable power for many developing countries; in Asia, coal alone generates 40 percent of energy consumption, much higher than the world average of 29 percent. (12) Second, developing countries, including China, assert a strong claim on carbon space to power their economic development. They see it partly as a matter of fundamental justice, since developed countries emitted most of the CO2 that is already in the atmosphere and seas as the necessary condition for them becoming developed. Developed countries promise finance and technical assistance on a massive scale to accelerate the energy transition in developing countries – and have a long track record of leaving promises as promises. (See the global distribution of Covid vaccines. See the results of vaunted “voting reform” in the World Bank, leaving the US with 17% and China with 6%.) What is more, the Japanese government plans up to 22 new coal power plants, as it closes nuclear plants in the wake of Fukushima.

Then comes a question: does drawing attention to the doomsday exaggerations of the CCC – “disaster”, “catastrophe”, “extinction”, “fiddling while the planet burns” - serve to reduce the political and public pressures for necessary ameliorative action, in a world where powerful fossil lobbies seek to block or delay such action for reasons independent of “evidence”? Should “Third Way” essays like this one not be published, because “give them (deniers, sceptics) an inch and they will take a mile”? To what extent must mass publics be “panicked” in order to induce enough collective political and business action – national, international – to substantially slow the growth of GHG emissions? If we can sustain emission- and temperature-curbing action only by holding up the certainty of disaster, catastrophe, extinction, then better to let the doomsday exaggerations continue as the necessary condition for that ameliorative action. What is the harm, when the alternative is ruin for humanity and the biosphere?

The danger is that the repeated wild exaggerations produce a public backlash, a discrediting, and a strengthening of the many “deniers” who see “leftists, governments, and the United Nations” as the source of malevolence in the world. A more accurate accounting of the evidence would (hopefully) produce a more calibrated and sustained public and business response.

What to do? (13)

The IPCC should allocate some 10% of its budget to a Red Team, dedicated to independent scrutiny of its evidence and conclusions (especially the Summary for Policymakers). (14) The IPCC should revise its mandate to require it explicitly to focus on interactions between natural forces and human actions, as it is now almost required not to, biassing its assessment of the state of scientific knowledge towards “man-made global warming” as an almost separate system.

Learned societies should more actively seek to understand and publicize the reasons for repeated large-scale discrepancies between “hindcasts” and “forecasts” on the one hand and actual observations on the other, discrepancies strongly biased towards “disaster”.

It is particularly important that the knee-jerk attribution of extreme weather events to global warming be challenged with reference to evidence. Judith Curry explained – quoted earlier -- why CCC advocates have a powerful incentive to attribute cases of extreme weather to global warming, tout court. She has recently written, “Apart from the reduced frequency of the coldest temperatures, the signal of global warming in the statistics of extreme weather events remains much smaller than that from natural climate variability, and is expected to remain so at least until the second half of the 21rst century.” She goes on to amplify a point made earlier about the limits of the climate models used for the IPCC assessment reports: they are driven mainly by predictions of future GHG emissions. They do not include predictions of natural climate variability arising from solar output, volcanic eruptions or evolution of large-scale multi-decadal ocean circulations. They do a particularly poor job of simulating regional and decadal-scale climate variability. (15)

Participants on both sides have to learn the art of respecting the principle of free speech while maintaining the standards of civil discourse.

While I have stressed the CCC’s support for urgent and radical changes to the way we live, work and govern, some CCC champions argue that the world economy could continue on a largely unchanged growth trajectory provided that we switch fast from fossil fuels to renewables. Indeed, this switch is beginning to happen fast, with coal and nuclear energy production unable to compete without subsidies in areas where natural gas, wind and solar resources are readily available.

But to say that life can continue as before provided we substitute renewables for fossil fuels obscures the huge difficulties for many developing countries of getting out of fossil fuels while growing fast enough to reduce the income gap with developed countries.

We must give high priority to investments in “clean coal” technologies, such as carbon capture, storage and use, to make the dirtier coal cleaner in existing and new coal-power plants; and link coal-power retirement to the coming on-stream of attractive alternatives. The multilateral development banks have recently or will soon announce bans on coal power. The G7 leaders meeting in mid 2021 promised to stop using government funds to finance new international coal power plants by the end of 2021. China’s Belt and Road Initiative should increase its pressure on host countries to cut back on dirty coal and boost clean coal and renewables.

A high and immediate priority is to build a robust financing and technical assistance mechanism for help from developed to developing countries. The Paris Agreement instituted a Mitigation pillar and an Adaptation pillar. Intense debate took place around the third, Loss and Damage, the name of a mechanism to compensate for the destruction that Mitigation and Adaptation cannot prevent. Developed countries by and large have sought to marginalize the Loss and Damage pillar, as they have long sought to marginalize Special and Differential Treatment for developing countries in trade and investment agreements. “Finance is something that really rich countries, particularly the US, have made sure that there is no progress and not even discussion on”, remarked Harjeet Singh, senior advisor at Climate Action Network International. (16)

My “forecast” is that in the next two to three decades to midcentury we will make rapid progress in scientific knowledge about weather and climate, helped by longer and more accurate satellite and ocean records and by a new generation of climate models that operate at one to ten kilometers scale (as distinct from the current models’ 50 kilometer scale). We will probably continue to make rapid progress in decoupling GHG from GDP growth, with a combination of state direction-setting and private innovation focused on transformations in energy, transport, buildings, industry and agriculture, using incentives like research and development subsidies and tax credits for technology investment, and penalties for carbon-intensive activities. (17) In transport, this entails coordination across urban planning decisions, public transport investment, future of remote working, infrastructures for electric charging and hydrogen loading. (18) Transformations in these systems are already underway, and the prospect of vast new green investments, supported and under-written by the state, will intensify them. These green investments will open productive investment opportunities previously limited by stagnant wages and rising debt, which have driven investment into increasingly speculative ventures. If by two or three decades ahead it looks as though the second half of this century could well experience globally extreme climate and ocean events, we will be much more knowledgeable about what to do than we are today. (19)

### Chilling DA

#### Absent legislation, mergers will be blocked.

Swartz ’22 [Jon; January 1; reporter, citing antitrust attorney Valarie Williams; MarketWatch, “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>]

Agencies are more aggressively scrutinizing tech-related deals, antitrust attorney Valarie Williams told MarketWatch. Whether investigations block mergers, they “can be disruptive and stop mergers if not discourage them,” she said.

“Legislation or not, that will not affect at all DoJ and FTC in antitrust enforcement based on existing law,” Williams said. “The pendulum has definitely swung after years of inactivity and readily-approved mergers.”

#### Antitrust enforcement of Big Tech will be unprecedented in 2022.

Swartz ’22 [Jon; January 1; reporter; MarketWatch, “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>]

Antitrust enforcement of Big Tech is expected to take place on a scale never before seen in 2022, following years of escalating rhetoric from Washington.

#### Legislation is guaranteed.

Swartz ’22 [Jon; January 1; reporter, citing Sen. Edward Markey, D-Mass., and Jim Steyer, CEO of Common Sense Media; MarketWatch, “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>]

As U.S. regulators prepare to crack down, legislators are ramping up bills for votes, the culmination of years of hearings and policy discussions.

“This is a watershed moment for Big Tech accountability, and 2022 will be the year that these companies finally face the regulation that will end their harmful and deceptive practices,” Sen. Edward Markey, D-Mass., told MarketWatch. Markey, author of the landmark Child Online Protection Act of 1998, has toiled on a sequel for years and is confident it will happen in 2022.

Next year could shape up as the biggest for tech legislation since Bill Clinton’s presidency, when the Telecommunications Act of 1996 significantly amended the Communications Act of 1934, according to Jim Steyer, CEO of Common Sense Media, a lobbying and advocacy organization, and co-chair of the Future of Tech Commission, appointed by White House in April.

#### Antitrust legislation will be brought to the floor in 2022

Swartz ’22 [Jon; January 1; reporter; MarketWatch, “Big Tech heads for ‘a year of thousands of tiny tech papercuts,’ but what antitrust efforts could make them bleed?” <https://www.marketwatch.com/story/big-tech-heads-for-a-year-of-thousands-of-tiny-tech-papercuts-but-what-antitrust-efforts-could-make-them-bleed-11640640776>]

Facebook whistle-blower Frances Haugen’s impact “energized Congress on bipartisan bills” while Biden’s executive order “sent a clear message” that acquisitions won’t occur at the same pace. “The federal government, in the form of the FTC and Justice, will take longer looks at potential combinations” like Nvidia and Arm, Steyer said.

The House has introduced six bills, the Senate has at least three major pieces of legislation, and more are expected. Rep. David Cicilline, D-R.I., a key architect of the House’s six bills, has said he expects “we’ll be in a position to bring the bills to the floor” by the fall.

#### All metrics show the US innovation is falling behind.

Kersten ’21 [Alexander; 4/14/21; Director of the Renewing American Innovation Project @ Center for Strategic and International Studies; Master of Arts in Law and Diplomacy from the Fletcher School of Law and Diplomacy @ Tufts University; “Why Renewing American Innovation? The “Endless Frontier Act” and Biden’s Bid for Maintaining U.S. Global Competitiveness”; https://www.csis.org/analysis/why-renewing-american-innovation-endless-frontier-act-and-bidens-bid-maintaining-us-global; AS]

The China Challenge

China today poses both a technological and security threat to the United States that no country has in modern history. U.S. companies operating under free market rules struggle to compete against state-backed Chinese firms that can ignore a poor quarter while enjoying one of the largest, most-protected markets in the world. With the support of the central government, key Chinese firms are free to innovate and compete in the global market without financial worries while Chinese scientists can focus on research and development instead of seeking grants for their university or research institution. According to Tulane University professor and former Aspen Institute CEO Walter Isaacson in 2019, China has modeled its approach along the lines of U.S. scientist Vannevar Bush’s 1945 report Science: The Endless Frontier, which, besides being the inspiration behind the name of the proposed legislative package, promoted government funding of basic research together with universities and industry—a priority of the Franklin D. Roosevelt administration. As the Chinese government sets long-term strategic goals like Made in China 2025, which was part of China’s 13th Five-Year Plan of 2016-2020, the United States needs to return to its post-World War II values of equating leadership in science and technology with national security and prosperity.

Today, U.S. companies locked in close competition lack the incentives to maintain in-house capabilities for innovation, like they did in the mid-century era of AT&T’s Bell Labs, DuPont’s central R&D unit, Xerox PARC, and others. Heightened competition, shareholder pressures, and new incentives pushed firms to cut these in-house research units back in the 1980s. Since then, the share of applied research in total corporate R&D expenditures fell from 30 percent in 1985 to below 20 percent in 2015—all well below the peak of almost 40 percent in the 1950s. Of course, the Harvard Business Review in 2014 famously suggested that, despite being the source of great inventions throughout history, China today is a “land of rule-bound rote learners” where breakthroughs are rare. Because of this, some argue the Chinese are not great innovators and China’s state-backed system could itself breed complacency and come back to bite it in the near future. However, even by then, experts warn, the United States will have missed the train on many important technologies and will be struggling to catch up.

Despite Silicon Valley and the millennial generation’s supposed penchant for innovative disruption, U.S. total factor productivity has been slowing since the 1970s. Productivity today is the lowest in more than a century. Innovation, historically a clear driver of U.S. productivity, means the creation of ideas and inventions that are translated into practical value and improve the quality of people’s lives directly or via their ability to grow the economy. Whether measured in terms of triadic patents (patents filed in the United States, Europe, and Japan), most available measures of productivity, or even startup company creation, the United States’ trademark innovative spirit has been gradually dampening for decades. And if not for China’s meteoric rise this century, the United States might still be sleepwalking—optimistically but without a serious plan—instead of waking up to the need for a coherent national strategy.

U.S. Complacency, and How We Got There

Noted George Mason University economist Tyler Cowen and other experts have recognized a growing “complacency” in American life as the indicator of a societal shift from the United States’ early dynamism. From the turn of the twentieth century until roughly the moon landing of 1969, the breakneck pace of groundbreaking technologies that directly affected the quality of life and the structure of U.S. society was simply astounding. Yet, since the first moon landing in 1969, only the internet and its application to more and more parts of our lives can claim to have made any meaningful impact—meaning that physically the world of 1969 is much more like that of 2021 than 1969 was of the early twentieth century. This, of course, is not meant to discredit the great advances in medicine and human genomics made in the last few decades, for example, but to show how the rate of society-changing innovations has not maintained the pace that existed from the mid-nineteenth century until roughly 1969.

In the developed world, this slowdown has unfortunately contributed to wage stagnation, the shrinking of the middle class, and greater political polarization domestically. Coinciding with the waning days of the Soviet Union’s power in the 1980s, the U.S. innovation decline was masked at home. Further, the Soviets of that period no longer posed a technological threat to the United States. Japan on the other hand, posed a great technological threat in the 1980s but was and is a staunch U.S. ally, and not a security threat. Unchallenged abroad and riding the dual-edged optimism of the internet boom of the 1990s and the victory over communism, the United States missed the ways in which it was giving up the advantages that made it such a powerhouse in the mid-twentieth century.

Industry experts have also suggested that the United States put its position up for grabs when it began to outsource important production—which President Biden alluded to during the signing of a February 2021 executive order aimed at reducing supply chain bottlenecks. Starting in the 1970s and 1980s, the United States began to outsource production of semiconductors and displays mostly to Taiwan and South Korea, which today account for almost half of all semiconductor manufacturing capacity in the world. Further, adding in mainland China and Japan shows that a whopping three-quarters of all semiconductor manufacturing capacity comes from East Asia—a sharp departure from 1990, when the United States still provided about 50 percent of all global manufacturing capacity. Removing itself from the production process means the United States misses out on important chances for innovating as well as for developing a strong high-tech manufacturing workforce.

#### No emerging tech impacts – gradualism and hype.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

# 1AR

## Energy

### 1AR – AT: Floodgates

#### 3. Stone isn’t a link card – its about repealing *Twombly* which heightened pleading requirements for antitrust cases – the plan doesn’t change those – and their ev doesn’t say more antitrust would be bad, just that assuming more antitrust will happen as a result of the *American Needle* case is unlikely – Michigan reads #GoBlue

Stone 10—(JD from Northwestern, former law clerk to Justice Antonin Scalia on the United States Supreme Court). Judd E. Stone & Joshua Wright. 2010. “Antitrust Formalism Is Dead! Long Live Antitrust Formalism! Some Implications of American Needle v. NFL” Cato Sup. Ct. Rev, 369–70. Accessed 11/5/21 via Westlaw.

\*\**Bell Atlantic Corp. v. Twombly* was a 2007 case that held parallel action alone isn’t illegal under the Sherman Act unless accompanied by evidence of an agreement

But what of Twombly itself? One potential response to Twombly already proposed in multiple circles is simple legislation codifying the previous pleading requirements. This action would presumably lead to a large increase in cases at the margin between, as Twombly put it, merely “conceivable” versus “plausible.”152 These cases would be by necessity among the weakest antitrust suits present, requiring the most extensive discovery in order to vindicate the least obvious consumer harms. Antitrust has seen this pattern play out before, however; it was due to the massive proliferation of private actions that inspired much of the error-cost protections not only ensconced in the consumer harm requirements of Section 2 but narrowing Section 2's scope altogether. To borrow a phrase, the cautionary tale for repealing Twombly is that opening the floodgates to all conceivable antitrust claims is a strategic maneuver that will favor plaintiffs in only the very shortest of temporal horizons--before the antitrust “system” of rules reacts accordingly.

The expectation that American Needle represents a permanent shift toward more expansive antitrust enforcement is thus misguided. The narrowing of Copperweld was made possible by the successful implementation of the Twombly filter, and necessitated by Copperweld's failure in application. The Court's decision to broadly scuttle \*406 the single-entity defense was heavily informed by error-cost principles, if unfortunately implemented in a particularly formalistic way, and does not insinuate sweeping pro-plaintiff changes to Section 1 for the foreseeable future. Indeed, even as American Needle was argued, Chief Justice Roberts maintained substantial hesitancy over even the use of the Rule of Reason, which remained “a continuing project of [the] Court.”153 This work will almost certainly continue as it has for the last 30 years: motivated by a sincere concern for error costs and consistency with economic learning and empirical data.154

## Econ

#### Inflation is the #1 concern.

Schroeder ’21 [Pete and Howard Schneider; November 8; reporters, citing a Federal Reserve survey; Reuters, “Inflation tops pandemic as investor concern -Fed report,” https://www.reuters.com/business/inflation-tops-pandemic-investor-concern-fed-report-2021-11-08/]

WASHINGTON, Nov 8 (Reuters) - Concerns over higher inflation and tighter monetary policy have become the top concern for market participants, pushing aside the COVID-19 pandemic, the Federal Reserve said on Monday in its latest report on financial stability.

At the same time, the semiannual report also flagged the growing use of stablecoins and "so-called meme stocks" as issues that merit attention and pose new types of potential risks to the financial system.

Roughly 70% of market participants surveyed by the Fed flagged inflation and tighter Fed policy as their top concern over the next 12 to 18 months, ahead of vaccine-resistant COVID-19 variants and a potential Chinese regulatory crackdown.

#### Inflation is the top fear.

Frank ’12-16 [Robert; 2021; reporter, citing a CNBC survey; CNBC, “How bad is inflation? Even millionaires are worried about it,” https://www.cnbc.com/2021/12/16/cnbc-millionaire-survey-inflation-is-a-top-economic-concern.html]

Inflation is the number one economic fear among millionaires for the first time in recent history, according to the CNBC Millionaire Survey.

When asked about the biggest risk to the U.S. economy, inflation ranked first, alongside government dysfunction, according to the survey of investors with $1 million or more in investible assets. The results marked the first time that inflation ranked as a top worry among millionaire investors and suggests that even the wealthiest Americans are worried about the upward spiral in prices.

#### Inflation causes recession.

Viser ’1-12 [Matt and Jeff Stein; 2022; reporters, citing Lawrence Summers, an American economist who served as the 71st United States Secretary of the Treasury from 1999 to 2001 and as the 8th Director of the National Economic Council from 2009 to 2010; the Washington Post, “Democrats worry Biden could pay the political price for rising inflation,” https://www.washingtonpost.com/politics/democrats-worry-biden-could-pay-the-political-price-for-rising-inflation/2022/01/12/6f76ba68-73c7-11ec-8b0a-bcfab800c430\_story.html]

But economic experts see continued danger for the administration in the economy’s current trajectory. Some economists have warned of the risk of a “wage-price spiral” in which worker pay and prices skyrocket simultaneously as each tries to catch up with the other. That trend could be difficult to arrest without an intervention from the Federal Reserve that risks plunging the United States back into recession.

“The danger is we’re starting to see a dynamic of wage-price spiral in which rising wages lead to rising prices, which lead to rising prices, which lead to rising wages,” said Larry Summers, who served in senior positions in the Clinton and Obama administrations but has been critical of Biden’s $1.9 trillion stimulus package.

“The crucial macroeconomic insight from the experience of the 1960s and 1970s is that an overheated economy leads to not just high inflation but accelerating inflation,” Summers added. “We currently have an overheated economy, and there’s not much reason to think anytime soon it’s going to cool off.”

## Chilling

#### Competitiveness ranking proves.

Litow ’21 [Stanley; 7/2/21; Professor @ Duke and Columbia; “U.S. Competitiveness Needs a Shot in the Arm”; https://www.barrons.com/articles/u-s-competitiveness-needs-a-shot-in-the-arm-51625246155; AS]

The IMD World Competitiveness Ranking, now in its 33rd year, ranks 64 economies on whether each “promotes the prosperity of its people by measuring economic well-being through hard data and survey responses from executives.” The top four global economies—all of them like the U.S affected by Covid—are in northern Europe: Switzerland, Sweden, Denmark, and the Netherlands. Singapore was No. 5. The U.S. ranking, in 10th place this year, has stagnated, as its results in areas like economic performance, government efficiency, and infrastructure declined. China, meanwhile, is up to 16th from 20th a year ago.

#### Innovation is low and not dynamic.

Rizzo ’21 [Andrea Minuto; Head of International Affairs @ Italian Competition Authority; “Digital Mergers: Evidence from the Venture Capital Industry Suggests That Antitrust Intervention Might Be Needed,” *Journal of European Competition Law & Practice* 12(1); AS]

In recent years, a debate about the possible existence of a kill zone around technology incumbents has gone beyond venture capital circles to involve a broader audience.33 In the kill zone, incumbents allegedly have both the ability and the incentive to foreclose promising potential competitors. Their position allows them to collect large amounts of data and to identify emerging trends early and to react to them, whether by adopting aggressive exclusionary practices to protect their core market or by pre-emptive acquisitions of innovative start-ups at generous multiples.34 Exclusionary conduct and acquisitions may actually be complementary strategies, rather than substitutive ones, as the former may allow the incumbent to reduce the acquisition price.35

Despite the growing concern that the possible existence of a kill zone might negatively impact innovation, the venture capital industry itself has diverse views about the need to increase antitrust scrutiny against large digital incumbents changing the current approach to M&As. In particular, among the venture capitalists that have actively engaged with US antitrust enforcers36, even those that acknowledge the existence of a problem at the same time express their fears for the possible unintended consequences of changes introduced with the best of intentions.

Tackling incentives to innovate in the digital sector represents a multifaceted phenomenon, where the opposing sides are nevertheless part of the same coin. On one hand, venture capital has so far greatly contributed to the transformation of high-risk start-ups into fully fledged independent companies, participating in the creation of the most valuable public companies globally. Moreover, start-ups benefit in many ways from the ecosystems created by large technology incumbents, among others, by using their platforms as effective distribution channels.

Furthermore, the incumbents might simply offer a better product or service. On the other hand, however, there seems to be evidence, on the investment side, highlighting a possible reduction of venture-backed start-ups operating in the same space where digital incumbents are active. As stated during these debates ‘funds have a limited size and they have to allocate capital and they would much rather pursue a market that has tailwinds behind it as opposed to a market that has matured and that has deep entrenched incumbents’.37 In markets dominated by incumbents, ‘(... ) start-ups building superior products (... ) may also find it difficult to secure VC investment’.38

In addition, some venture capitalists have expressed their views that competition to digital incumbents might likely arise from adjacent markets. A ‘viral’ success in a separate vertical could, as it grows, spill into the core market of a dominant player. These adjacent markets might be an area where antitrust agencies could focus more.

Some of the evidence described in the previous section is consistent with the existence of reduced first-time venture-backed funding in markets dominated by digital incumbents. Despite the evidence still being limited, it nevertheless provides suggestive food for thought and should trigger more detailed research on this complex topic. First of all, the existence and the magnitude of this reduction have to be further verified, for example, through a precise identification of the companies actually competing in the same space of digital incumbents and their evolution. The second step should then verify the existence of a causal link between the alleged aggressive behaviour of the incumbents in the kill zone and the reduction of venture capital financings, especially in the early stages of start-ups.

This reduction might, indeed, not necessarily pertain to the antitrust domain as it could stem from changing requirements of start-ups themselves as their technological and commercial needs evolve. The widespread ‘blitzscaling’ 39 strategy—where start-ups enter a digital niche with a narrow focus then gradually expanding—has been made possible by developments—such as the advent of smartphones, social media and cloud computing40—that allow for global reach and scalability41 at almost no initial technological cost, while marketing and human capital budgets may be on the rise at successive stages of the start-ups’ development.42

Moreover, changes have taken place also in the investment industry landscape through an expansion of the types of capital provided. Among others, non-traditional newer investors and sovereign wealth funds have invested in later-stage companies.43 Lastly, as for the exits through a sale, generous acquisitions might, as well, reflect prospective efficiencies deriving from the synergies between the acquirer and the acquired start-up.

However, the evidence thus far collected does suggest that current digital incumbents face very little threat of entry. Competition for the market dynamics are not necessarily symptomatic of the presence of the exploitation of market power, provided that incumbents still face, actual or potential, competitive pressures and could be substituted by a more efficient rival.44 What is needed is not just incremental innovation, but the drastic innovation that makes market leadership highly contestable. This is especially true for technology markets, where, as stated by Google itself, ‘changes tend to be revolutionary, not evolutionary’.45

Some recent studies and antitrust agency reports suggest that digital markets are becoming progressively less dynamic. Among others, the UK’s Digital Competition Expert Panel (UK Report46) observes that competition for the market does not appear to be able to solve competition issues linked to winner-take-all outcomes, as the next technological revolution is likely to focus on data that existing firms control to a large extent and that successful new entrants are generally acquired by incumbents. Moreover, Organisation for Economic Co-operation and Development (OECD) research suggests that, in digital-intensive sectors, mark-ups are increasingly higher47 while the decline in business dynamism occurs faster than in other sectors of the economy.48

As highlighted by the Stigler report49, key players in the digital industry remained the same over the last two technology waves, staying dominant through the shift to mobile and the rise of artificial intelligence, without significant impact on market share or profit margins.

Lastly, worrying evidence emerges also from the application of profitability analysis to digital incumbents. High profits substantially and persistently above the cost of capital 50 could signal that the market is not functioning properly, as in the long term, return on investment should equal the cost of capital. In that regard, the UK’s Competition and Markets Authority (CMA) has found, in the context of the sector enquiry into online platforms and digital advertising51, that the return on capital employed (ROCE) of Google and Facebook has been well above any reasonable estimate of a competitive benchmark for many years. In 2018, the estimated cost of capital for both Google and Facebook was around 9%, compared to actual returns on capital of over 40% for Google and around 50% for Facebook. Even though these results have to be interpreted with caution52, they seem to indicate that digital platforms are not facing the threat of entry and this evidence is consistent with the actual exploitation of market power.

Schumpeter 53 highlighted the prospect of new competition and innovation as incessantly playing a key role in fostering dynamic competition and economic efficiency. The evidence so far described may indicate that this impulse for creative destruction is fading in digital market.

#### Tech edge eroding across domains.

Darby & Sewall ’21 [Christopher; CEO @ In-Q-Tel; and Sarah; DPhil @ Oxford, Former Professor @ Harvard's Kennedy School of Government Executive Vice President for Policy @ In-Q-Tel, Former US Undersecretary of State for Civilian Security, Democracy, and Human Rights; “The Innovation Wars: America's Eroding Technological Advantage,” *Foreign Affairs* 100(2), p. 142-153; AS]

Since the early days of the Cold War, the United States has led the world in technology. Over the course of the so-called American century, the country conquered space, spearheaded the Internet, and brought the world the iPhone. In recent years, however, China has undertaken an impressive effort to claim the mantle of technological leadership, investing hundreds of billions of dollars in robotics, artificial intelligence, microelectronics, green energy, and much more. Washington has tended to view Beijing ’ s massive technology investments primarily in military terms, but defense capabilities are merely one aspect of great-power competition today—little more than table stakes. Beijing is playing a more sophisticated game, using technological innovation as a way of advancing its goals without having to resort to war. Chinese companies are selling 5G wireless infrastructure around the world, harnessing synthetic biology to bolster food supplies, and racing to build smaller and faster microchips, all in a bid to grow China’s power.

In the face of China ’ s technological drive, U.S. policymakers have called for greater government action to protect the United States ’ lead. Much of the conventional wisdom is sensible: boost R & D spending, ease visa restrictions and develop more domestic talent, and build new partnerships with industry at home and with friends and allies abroad. But the real problem for the United States is much deeper: a flawed understanding of which technologies matter and of how to foster their development. As national security assumes new dimensions and great-power competition moves into different domains, the government’ s thinking and policies have not kept pace. Nor is the private sector on its own likely to meet every technological need that bears on the country ’ s security.

In such an environment, Washington needs to broaden its horizons and support a wider range of technologies. It needs to back not only those technologies that have obvious military applications, such as hypersonic flight, quantum computing, and artificial intelligence, but also those traditionally thought of as civilian in nature, such as microelectronics and biotechnology. Washington also needs to help vital nonmilitary technologies make the transition to commercial success, stepping in with financing where the private sector will not.

AMERICA’S INNOVATION CHALLENGE

In the early decades of the Cold War, the United States spent billions of dollars dramatically expanding its scientific infrastructure.The Atomic Energy Commission, formed in 1946, assumed responsibility for the wartime labs that had pioneered nuclear weapons, such as the Oak Ridge National Laboratory, the headquarters of the Manhattan Project, and went on to fund academic research centers, such as the Lawrence Livermore National Laboratory.The Department of Defense, founded in 1947, was given its own massive research budget, as was the National Science Foundation, established in 1950. After the Soviets launched the Sputnik satellite, in 1957,Washington created the National Aeronautics and Space Administration, or NASA, to win the space race, as well as what would become the Defense Advanced Research Projects Agency, which was tasked with preventing a future technological surprise. By 1964, research and development accounted for 17 percent of all discretionary federal spending.

Partnering closely with academia and companies, the government funded a large variety of basic research—that is, research without a specific end use in mind.The goal was to build a technological foundation, defined primarily as conventional and nuclear defense capabilities, to ensure the country ’ s security.The research proved astonishingly successful. Government investment spawned cutting-edge capabilities that undergirded the United States ’ military superiority, from supersonic jets to nuclear-powered submarines to guided missiles.The private sector, for its part, got to capitalize on the underlying intellectual property, turning capabilities into products and products into companies. GPS-enabled technologies, airbags, lithium batteries, touchscreens, voice recognition—all got their start thanks to government investment.

Yet over time, the government lost its lead in innovation. In 1964, the U.S. government was spending 1.86 percent of GDP on R & D, but by 1994, that share had fallen to 0.83 percent. During that same period, U.S. corporate R & D investment as a percentage of GDP nearly doubled. The numbers tell only half the story. Whereas much of the government’ s R & D investment was aimed at finding new, game-changing discoveries, corporate R & D was mostly devoted to incremental innovation. The formula for growing revenue, the private sector realized, was to expand on existing products, adding functionality or making something faster, smaller, or more energy efficient. Companies focused on nearer-term technologies with commercial promise, rather than broad areas of inquiry that might take decades to bear fruit

#### Adaptation is guaranteed, zeroing the impact.

Lomborg ’21 [Dr. Bjorn; 2021; President of the Copenhagen Consensus Center, Former Director of the Danish Government's Environmental Assessment Institute, PhD in Political Science at the University of Copenhagen, M.A. in Political Science at the University of Aarhus, BA from the University of Georgia; Wall Street Journal, “Climate Change Calls for Adaptation, Not Panic,” https://www.wsj.com/articles/climate-change-adaptation-panic-exaggerating-disaster-11634760376]

It’s easy to construct climate disasters. You just find a current, disconcerting trend and project it into the future, while ignoring everything humanity could do to adapt. For instance, one widely reported study found that heat waves could kill thousands more Americans by the end of the century if global warming continues apace—but only if you assume people won’t use more air conditioning. Yes, the climate is likely to change, but so is human behavior in response.

Adaptation doesn’t make the cost of global warming go away entirely, but it does reduce it dramatically. Higher temperatures will shrink harvests if farmers keep growing the same crops, but they’re likely to adapt by growing other varieties or different plants altogether. Corn production in North America has shifted away from the Southeast toward the Upper Midwest, where farmers take advantage of longer growing seasons and less-frequent extreme heat. When sea levels rise, governments build defenses—like the levees, flood walls and drainage systems that protected New Orleans from much of Hurricane Ida’s ferocity this year.

Nonetheless, many in the media push unrealistic projections of climate catastrophes, while ignoring adaptation. A new study documents how the biggest bias in studies on the rise of sea levels is their tendency to ignore human adaptation, exaggerating flood risks in 2100 by as much as 1,300 times. It is also evident in the breathless tone of most reporting: The Washington Post frets that sea level rise could “make 187 million people homeless,” CNN fears an “underwater future,” and USA Today agonizes over tens of trillions of dollars in projected annual flood damage. All three rely on studies that implausibly assume no society across the world will make any adaptation whatever for the rest of the century. This isn’t reporting but scaremongering.

You can see how far from reality these sorts of projections are in one heavily cited study, depicted in the graph nearby If you assume no society will adapt to any sea-level rise between now and 2100, you’ll find that vast areas of the world will be routinely flooded, causing $55 trillion in damage annually in 2100 (expressed in 2005 dollars), or about 5% of global gross domestic product. But as the study emphasizes, “in reality, societies are likely to adapt.”

By raising the height of dikes, the study shows that humanity can negate almost all that terrible projected damage by 2100. Only 15,000 people would be flooded every year, which is a remarkable improvement compared with the 3.4 million people flooded in 2000. The total cost of damage, investments in new dikes, and maintenance costs of existing dikes will fall sixfold between now and 2100 to 0.008% of world GDP.

Adaptation is much more effective than climate regulations at staving off flood risks. Compare the two types of policies in isolation. Without any climate mitigation to help, dikes would still safeguard more than 99.99% of the flood victims you’d see if global warming continued on current trends. Instead of 187 million people flooded in 2100, there would be only 15,000. Climate policy achieves much less on its own. Without adaptation, even stringent regulations that keep the global temperature rise below 2 degrees Celsius would reduce the number of flood victims only down to 85 million a year by the end of the century.

Stringent climate policy still has only a mild effect when used in concert with dikes: Instead of the 15,000 flood victims you’d get with only adaptation, you’d have 10,000. And getting there would cost hundreds of trillions of dollars, which is hardly mitigated by the $40 billion drop in total flood damage and dike costs climate regulations would achieve. As I’ve explained in these pages before, this kind of policy has a high human cost: the tens of millions of people pricey climate regulations relegate to poverty.

You don’t have to portend doom to take climate change seriously. Ignoring the benefits of adaptation may make for better headlines, but it badly misinforms readers.

## Politics

#### B3 is dead.

Cadelago ’1-14 [Christopher; 2022; reporter; Politico, “With Biden’s signature legislation stalled, Democrats stare into political void,” https://www.politico.com/news/2022/01/14/dems-2022-build-back-better-527096]

Democrats are quietly preparing for life after Build Back Better.

With little progress on Joe Biden’s signature legislation, elected officials and operatives from across the president’s party are busy plotting how to run midterm campaigns without the benefit of a bill to bolster the social safety net and make generational investments to address climate change.

It’s far from the ideal position. And party leaders and campaign strategists are holding out hope that the White House may still be able to revive nascent talks around the initiative to at least salvage some popular elements. But in interviews with nearly two dozen Democrats involved in the upcoming election, there is an increasing sense that political inertia may well win out and that their party will be forced to radically adapt its core pitch to voters.

“I don’t think any of us are expecting anything else to pass,” said Colin Strother, a Democratic operative and veteran of House campaigns in Texas. Strother said the party in Washington has “underwhelmed, underachieved and undersold” it’s successes so far. “It has left our opponents emboldened, or supporters dejected and our prospects for 2022 dim if not dark. So we have a lot of work to do to dig out of this … We better have some golden fuckin’ shovels.”

Democrats gambled that the public would reward them for moving quickly on the Build Back Better agenda. Many individual items enjoy strong support from the public, including proposals to slash health insurance premiums and extend an ambitious expansion of the child tax credit, which was already being framed as a tax cut for the middle class. Perhaps the most potent element, people close to the White House argue, would be Democrats’ ability to torch Republicans for shielding corporations from paying higher taxes to help fund the plans.

But their ambitions came to an abrupt skid late last year, when Sen. Joe Manchin (D-W.Va.) announced he couldn’t support the latest iteration of the bill. With the legislation faltering and the White House pivoting to voting rights, campaigns are sketching out narrative arcs around their earlier achievements and how Republicans thwarted more progress. Stan Greenberg, the veteran Democratic pollster, stressed that losing the major bill could significantly increase the difficulty for Biden’s party in an already challenging political environment.

#### Manchin votes no. He’s a fossil fuel lobbyist.

Corbett ’22 [Jessica; January 8; staff writer; Common Dreams, “'Operating in Bad Faith': Manchin Reportedly No Longer Supports His Own BBB Counteroffer,” <https://www.commondreams.org/news/2022/01/08/operating-bad-faith-manchin-reportedly-no-longer-supports-his-own-bbb-counteroffer>]

U.S. Sen. Joe Manchin came under fire Saturday after The Washington Post reported that the West Virginia Democrat "does not currently support" passing even his own recent $1.8 trillion counteroffer to President Joe Biden's Build Back Better agenda.

"Sen. Manchin is operating in bad faith," tweeted Nida Allam, a progressive congressional candidate in North Carolina. "We need to be electing Democrats who are accountable to the American people and working families—not Dems who are reneging on deals which would support millions."

Journalist Judd Legum, who runs the newsletter Popular Information, said that "if you were a fossil fuel lobbyist and had to construct an ideal strategy not only to kill BBB but to gum up the works for as long as possible it would look a lot like what Manchin has been doing."

In a secretly recorded conversation published last summer by Unearthed, Greenpeace U.K.'s investigative journalism arm, a lobbyist for fossil fuel giant ExxonMobil said of Manchin, "I talk to his office every week."

Since then, House Democrats have passed a watered-down version of the Build Back Better package. However, progressives within and beyond Congress have grown increasingly alarmed about the bill's future, especially after the lower chamber caved to a few members of their own party and decoupled it from bipartisan infrastructure legislation.

Rep. Ilhan Omar (D-Minn.), one of the six progressives to oppose the decoupling, warned at the time that "passing the infrastructure bill without passing the Build Back Better Act first risks leaving behind child care, paid leave, healthcare, climate action, housing, education, and a roadmap to citizenship."

"The Squad was right to not trust Joe Manchin."

Noting the new reporting, former Ohio state Sen. Nina Turner said Saturday that "the Squad was right to not trust Joe Manchin."

Manchin—who, along with Sen. Kyrsten Sinema (D-Ariz.), has long held up a vote on the Build Back Better Act in the upper chamber—confirmed Tuesday that he is not currently talking with the White House about the package, telling reporters that "there is no negotiation going on at this time."

Citing three unnamed sources, the Post's Jeff Stein revealed that "privately, he has also made clear that he is not interested in approving legislation resembling Biden's Build Back Better package and that Democrats should fundamentally rethink their approach."

"Senior Democrats say they do not believe Manchin would support his offer even if the White House tried adopting it in full—at least not at the moment—following the fallout in mid-December," Stein continued, referencing a pair of White House statements that called out the senator by name and a Fox News appearance in which Manchin blasted the bill.

In response to Stein's revelation that Manchin's offer "may no longer be on the table," Jake Sherman of Punchbowl News tweeted that "it's definitely not."

"As of now, I have no reporting that Manchin will get back up to [$1.8 trillion]. I talk to him nearly every day and he continues to be exceedingly skeptical of anything," Sherman said. "Now, could something happen? Sure. Could it happen at [$1.8 trillion]? Maybe. Is that likely today? It doesn't seem so."

#### Climate doesn’t cause extinction.

Kerr et al. 19 – Dr. Amber Kerr, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub. Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research. Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne. Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab. Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1. Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research. [Claim that human civilization could end in 30 years is speculative, not supported with evidence, 6-4-2019, https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/]

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat” – they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

#### Not existential AND their models fail.

Piper 19 – Kelsey Piper, citing John Halstead climate change mitigation researcher at the Founders Pledge. [Is climate change an "existential threat" — or just a catastrophic one? 6-28-2019, https://www.vox.com/future-perfect/2019/6/13/18660548/climate-change-human-civilization-existential-risk]

I also talked to some researchers who study existential risks, like John Halstead, who studies climate change mitigation at the philanthropic advising group Founders Pledge, and who has a detailed online analysis of all the (strikingly few) climate change papers that address existential risk (his analysis has not been peer-reviewed yet).

Halstead looks into the models of potential temperature increases that Breakthrough’s report highlights. The models show a surprisingly large chance of extreme degrees of warming. Halstead points out that in many papers, this is the result of the simplistic form of statistical modeling used. Other papers have made a convincing case that this form of statistical modeling is an irresponsible way to reason about climate change, and that the dire projections rest on a statistical method that is widely understood to be a bad approach for that question.

Further, “the carbon effects don’t seem to pose an existential risk,” he told me. “People use 10 degrees as an illustrative example” — of a nightmare scenario where climate change goes much, much worse than expected in every respect — “and looking at it, even 10 degrees would not really cause the collapse of industrial civilization,” though the effects would still be pretty horrifying. (On the question of whether an increase of 10 degrees would be survivable, there is much debate.)

Does it matter if climate change is an existential risk or just a really bad one?

That last distinction Halstead draws — of climate change as being awful but not quite an existential threat — is a controversial one.

That’s where a difference in worldviews looms large: Existential risk researchers are extremely concerned with the difference between the annihilation of humanity and mass casualties that humanity can survive. To everyone else, those two outcomes seem pretty similar.

To academics in philosophy and public policy who study the future of humankind, an existential risk is a very specific thing: a disaster that destroys all future human potential and ensures that no generations of humans will ever leave Earth and explore our universe. The death of 7 billion people is, of course, an unimaginable tragedy. But researchers who study existential risks argue that the annihilation of humanity is actually much, much worse than that. Not only do we lose existing people, but we lose all the people who could otherwise have had the chance to exist.

In this worldview, 7 billion humans dying is not just seven times as bad as 1 billion humans dying — it’s much worse. This style of thinking seems plausible enough when you think about past tragedies; the Black Death, which killed at least a tenth of all humans alive at the time, was not one-tenth as bad as a hypothetical plague that wiped us all out.

Most people don’t think about existential risks much. Many analyses of climate change — including the report Vice based its article on — treat the deaths of a billion people and the extinction of humanity as pretty similar outcomes, interchangeably using descriptions of catastrophes that would kill hundreds of millions and catastrophes that’d kill us all. And the existential risk conversation can come across as tone-deaf and off-puttingly academic, as if it’s no big deal if merely hundreds of millions of people will die due to climate change.

Obviously, and this needs to be stressed, climate change is a big deal either way. But there are differences between catastrophe and extinction. If the models tell us that all humans are going to die, then extreme solutions — which might save us, or might have unprecedented, catastrophic negative consequences — might be worth trying. Think of plans to release aerosols into the atmosphere to reflect sunlight and cool the planet back down in the manner that volcanic explosions do. It’d be an enormous endeavor with significant potential downsides (we don’t even yet know all the risks it might pose), but if the alternative is extinction then those risks would be worth taking.

But if the models tell us that climate change is devastating but survivable, as most models show, then those last-ditch solutions should perhaps stay in the toolkit for now.

Then there’s the morale argument. Defenders of overstating the risks of climate change point out that, well, understating them isn’t working. The IPCC may have chosen to maintain optimism about containing warming to 2 degrees Celsius in the hopes that it’d spur people to action, but if so, it hasn’t really worked. Maybe alarmism will achieve what optimism couldn’t.

That’s how Spratt sees it. “Alarmism?” he said to me. “Should we be alarmed about where we’re going? Of course we should be.”

Swedish teenager Greta Thunberg has taken an arguably alarmist bent in her advocacy for climate solutions in the EU, saying, “Our house is on fire. I don’t want your hope. ... I want you to panic.” She’s gotten strong reactions from politicians, suggesting that at least sometimes a relentless focus on the severity of the emergency can get results.

So where does this all leave us? It’s worthwhile to look into the worst-case scenarios, and even to highlight and emphasize them. But it’s important to accurately represent current climate consensus along the way. It’s hard to see how we solve a problem we have widespread misapprehensions about in either direction, and when a warning is overstated or inaccurate, it may sow more confusion than inspiration.

Climate change won’t kill us all. That matters. Yet it’s one of the biggest challenges ahead of us, and the results of our failure to act will be devastating. That message — the most accurate message we’ve got — will have to stand on its own.

#### It’s a tail-end scenario in the far future.

Kerr et al. 19 – Dr. Amber Kerr, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub. Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research. Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne. Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab. Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1. Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research. [Claim that human civilization could end in 30 years is speculative, not supported with evidence, 6-4-2019, https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/]

Scientists who reviewed IFLScience’s story found that it failed to provide sufficient context for this report—differentiating, for example, between speculative claims and descriptions of peer-reviewed research. In particular, the story’s headline (“New Report Warns ‘High Likelihood Of Human Civilization Coming To An End’ Within 30 Years”) misrepresents the report as a likely projection rather than an exploration of an intrinsically unlikely worst case scenario.

See all the scientists’ annotations in context.

REVIEWERS’ OVERALL FEEDBACK

These comments are the overall assessment of scientists on the article, they are substantiated by their knowledge in the field and by the content of the analysis in the annotations on the article.

Amber Kerr, Researcher, Agricultural Sustainability Institute, University of California, Davis:

The content of the IFLScience article is mostly an accurate representation of the contents of the Breakthrough report, but the article tends to gloss over important caveats and probabilities that are given in the report. The least accurate part of the IFLScience article is the headline, which is an outright misrepresentation of the report. The article title states that there is, overall, a “high probability” of human civilization coming to an end in 30 years. This is extremely misleading. What the Breakthrough report actually says is that, in the most unlikely, “long-tail” biophysical scenario where climate feedbacks are much more severe than we expect, THEN there is a high likelihood of human civilization coming to an end. But the report authors explicitly state that this “high-end scenario” is beyond their capacity to model or to quantitatively estimate.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

The article uncritically reproduces claims from a recent report released by an Australian thinktank regarding the purported “end of human civilization” due to climate change over the next 30 years. While there is plenty of scientific evidence that climate change will pose increasingly existential threats to the most vulnerable individuals in society and to key global ecosystems, even these dire outcomes aren’t equivalent to the “annihilation of intelligent life,” as is claimed in the report.

Andrew King, Research fellow, University of Melbourne:

The report this article is based on describes a scenario which is unlikely, but several aspects of what is included in the report are likely to worsen in coming decades, such as the occurrence of deadly heatwaves. The conclusion of a high likelihood that human civilisation will end is false, although there is a great deal of evidence that there will be many damaging consequences to continued global warming over the coming decades.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

I don’t think it’s so easy to discount the essential warning of this report. However, it would have been stronger if the authors were more careful not to mention the unsupported concept of near-term human extinction, and the unsupported probabilistic claim that there is a “high likelihood” of their 2050 scenario which includes the collapse of civilization. I do not understand why non-scientist writers (neither report author is a scientist) feel a need to exaggerate sound scientific findings, when those findings are already quite alarming enough. I feel that humanity should undertake urgent climate action just as the report authors do, but I feel that misrepresenting the science is unhelpful and unnecessary.

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is a classic case of a media article over-stating the conclusions and significance of a non-peer reviewed report that itself had already overstated (and indeed misrepresented) peer-reviewed science – some of which was already somewhat controversial. It appears that there was not a thorough independent check of the credibility of the message.

Notes:

[1] See the rating guidelines used for article evaluations.

[2] Each evaluation is independent. Scientists’ comments are all published at the same time.

ANNOTATIONS

The statements quoted below are from the article; comments are from the reviewers (and are lightly edited for clarity).

New Report Warns “High Likelihood Of Human Civilization Coming To An End” Within 30 Years

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

The headline overstates the conclusions of the report (which is already overdoing things). The reports says it presents a scenario, and under that scenario and all the assumptions within it, the report claims that there is a “high likelihood of human civilization coming to and end” – but even then, the report itself does not give the end of civilisation within 30 years. The process supposedly leading ultimately to collapse begins around 2050 but takes a long time to take effect. Also the processes themselves are not well-grounded in science, as they over-interpret published work.