# 2NR

## Infra

### 2NR --- Overview [Climate]

#### Infrastructure has bipartisan momentum now – but the aff derails it – that allows for unchecked warming that causes extinction as temperatures increase 6 to 9 degrees celsius and results in the escape of tons of frozen methane into the atmosphere, which makes earth uninhabitable. Any delay kills progress for climate legislation---that’s a narrow window to prepare, so any delay might be the difference between successful action and a no action at all------it’s try-or-die before tipping points make it irreversible.

#### Outweighs

#### A] Timeframe – warming is an inevitability and action is impossible absent congressional action NOW. Progress depends on US leadership and effective action in less than a month before the UN climate conference.

#### B] Probability – warming is a certainty and causes mass death while their impacts are speculative and not conclusive. Intervening actors don’t solve for warming but do for war proven by Chinese rise going contested economically and militarily.

#### Turns Nuke War – continued climate crisis makes resources and access to water and food scarce which causes migration to overcrowded cities that increases likelihood of pandemics, ethical conflicts, and state collapse that makes resource wars an inevitability---hotspots in Europe, Asia, and the West Pacific.

#### Turns Disease – continued climate crisis makes resources and access to water and food scarce which causes migration to overcrowded cities that increases likelihood of pandemics and disease. Kills effective response with lack of resources and social distancing legislation.

### Overview

#### Infrastructure passes now – 1NC BBC says that infrastructure has bipartisan support with agreements BUT PC and investment is key– it’s from October 28th – prefer recency it’s the only ev. descriptive of what’s happening now which subsumes all non-UQ and thumper args.

#### Infrastructure will pass now – dems are just touching up details

Duehren 10/29 [Andrew Duehren covers Congress and U.S. politics from The Wall Street Journal's Washington bureau. October 29, 2021. “Democrats Tackle Final Details of Biden’s $1.85 Trillion Framework” [https://www.wsj.com/articles/democrats-tackle-final-details-of-bidens-1-85-trillion-framework-11635536447 Accessed 10/29](https://www.wsj.com/articles/democrats-tackle-final-details-of-bidens-1-85-trillion-framework-11635536447%20Accessed%2010/29) //gord0]

WASHINGTON—Democrats turned to finalizing the details of President Biden’s [$1.85 trillion social-spending and climate framework](https://www.wsj.com/articles/democrats-budget-plan-what-11626301275?mod=article_inline), with some lawmakers pushing to add [measures lowering prescription drug prices](https://www.wsj.com/articles/lawmakers-push-to-include-medicare-drug-pricing-provision-in-biden-plan-11635516651?mod=article_inline) and repealing [a cap on the state and local tax deduction](https://www.wsj.com/articles/democrats-salt-tax-cap-high-earners-11635460218?mod=article_inline).

The White House [released the framework on Thursday](https://www.wsj.com/articles/biden-to-release-new-framework-on-1-75-trillion-social-spending-and-climate-package-11635422127?mod=article_inline) in a bid to quickly resolve the push-and-pull between the party’s progressive and centrist members, hoping to show progress on Mr. Biden’s agenda as he headed overseas for [a major climate conference](https://www.wsj.com/articles/cop26-glasgow-2021-un-climate-conference-11611254971?mod=article_inline).

House Speaker [Nancy Pelosi](https://www.wsj.com/topics/person/nancy-pelosi) (D., Calif.) used the framework to push for an immediate vote on [a parallel, roughly $1 trillion infrastructure bill](https://www.wsj.com/articles/infrastructure-bill-2021-what-11627515002?mod=article_inline) that progressives have held up for months to ensure movement on the social-spending and climate legislation. Progressives endorsed the framework Thursday, but continued to block the infrastructure vote, saying they needed more time to review the proposal and translate it into legislative text.

Rep. Pramila Jayapal (D., Wash.), the chairwoman of the Congressional Progressive Caucus, said she thought House Democrats could move forward with a vote on both pieces of legislation next week.

“We got to the best possible place we could get to, and now we’re ready to pass both bills through the House,” she told CNN Friday, saying votes could come within days.

Ms. Jayapal said that progressives support the legislation as it is laid out in the framework, which calls for funding for universal prekindergarten, child-care subsidies and a series of tax credits incentivizing reduced carbon emissions, among other measures. Democrats dropped several progressive priorities, including [a national paid-leave program](https://www.wsj.com/articles/manchin-calls-billionaires-tax-convoluted-as-democrats-seek-deal-11635352886?mod=article_inline), during the talks.

“I think we’ve made a lot of progress in a short amount of time,” said Rep. Colin Allred (D., Texas) on MSNBC Friday. “The main things have been ironed out. And now we just have to have the confidence in each other basically to take the votes.”

### AT: No Passage

#### Framing Issues:

#### (1) Ignore media bias.

**Easley 21** (Jason Easley 10-1, Managing Editor at POLITICUSUSA, “The Media Is Getting It Wrong. Democrats Are Close To Infrastructure Deal”, 10/1/2021, https://www.politicususa.com/2021/10/01/the-media-is-getting-it-wrong-democrats-are-close-to-infrastructure-deal.html)

DEMOCRATS ARE CLOSING IN ON SUCCESS, BUT THE CORPORATE MEDIA DOESN’T CARE.

The American people saw it with the withdrawal from Afghanistan. The corporate media in DC builds its own narrative and crafts its coverage to fit it. The media coverage on Afghanistan only shifted after polling showed that the media was wrong and the American people disagreed with them.

It has been years since America has seen actual political negotiation on big legislation, but that is what Democrats are doing. Our profit-driven corporate media needs drama and conflict to drive revenue and ratings. All of their coverage goes through a drama and conflict filter. They don’t know how to cover incremental progress and give and take.

Democrats are going to get infrastructure done, but the coverage has misled the American people on how they are getting there.

#### (2) Prefer predictive uniqueness---despite challenges, it will eventually pass.

Jaacobson 21 (Louiis Jacobson, correspondent @ Politifact, The Democrats’ reconciliation bill: What you need to know, <https://www.politifact.com/article/2021/sep/10/democrats-reconciliation-bill-what-you-need-know/>, y2k)

How serious are the centrists and progressives about derailing the process if they don’t get their way?

Experts said it’s certainly possible that either centrists or progressives would tank the bill if they can’t get everything they want, though such a course would be risky since the Democrats are at risk of losing their slim majorities in the 2022 midterm elections.

"It may be too early to be talking about a snowball’s chance in Hades, but the intraparty heat in the Democratic caucuses has already set off the pre-melt warning sirens," Wolfensberger said.

Goldwein said that while the factions’ positioning is deeply felt, he added that there’s a good chance that Democrats want to get to yes. "I think the leadership and the administration will lead them to a deal," he said.

#### (3) Their ev cites Mechininema – New 1.75 number secures their support- insiders agree

Carney 10-28-21 (Jordain, https://thehill.com/homenews/senate/579016-manchin-signals-hes-okay-with-175t-spending-framework-price-tag)

Sen. Joe Manchin (D-W.Va.) signaled on Thursday that he could support the $1.75 trillion price tag for Democrats' social spending plan, even as he hasn't said if he supports the overall framework deal. "We negotiated a good number that we worked off of, and we're all dealing in a good faith," Manchin told reporters. Asked if $1.75 trillion was too high, Manchin replied: "That was negotiated." ADVERTISEMENT Manchin's comments are his first indication that he supports a $1.75 trillion top line — the size of the framework deal that Biden announced. Democrats are proposing paying for their plan, in part, with tax increases focused on high-income households and corporations. The top line is dramatically smaller than the $3.5 trillion spending ceiling that Democrats paved the way for with a budget resolution earlier this year that teed up the spending deal. Progressives had hoped for a $6 trillion bill. But Manchin's preferred price tag has been substantially smaller. Manchin had said for weeks that he was at $1.5 trillion. Biden then threw out a top line of around $2 trillion, and Democrats over the past week said they hoped to get Manchin to come up to between $1.7 trillion and $2 trillion. Manchin's suggestion that he helped negotiate the $1.75 trillion top line for the deal on the spending framework comes as he sidestepped several times on Thursday saying if he supports the framework. “This is all in the hands of the House right now. I’ve worked in good faith and I look forward to continuing to work in good faith and that’s all I’m going to say,” Manchin told reporters earlier Thursday. ADVERTISEMENT Manchin has been at the center of a lobbying storm as Democrats try to lock down his support for different provisions of the spending framework. During a vote on Thursday, Senate Finance Committee Chairman Ron Wyden (D-Ore.), Senate Environment and Public Works Committee Chairman Tom Carper (D-Del.), Senate Democratic Whip Dick Durbin (D-Ill.), Senate Majority Leader Charles Schumer (D-N.Y.) and Sen. Angus King (I-Maine) stopped Manchin to speak with him. Sen. Kirsten Gillibrand (D-N.Y.), who is also trying to get Manchin's support for including a paid family leave plan in the package, was also spotted lobbying him on the Senate floor. Even as Manchin hasn't said whether he supports the framework, some of his Democratic colleagues told reporters on Thursday that they believe it has the backing of all 50 Senate Democrats. Ocasio-Cortez presses Biden on student debt: 'Doesn't need Manchin's... Manchin, Sinema put stamp on party, to progressive chagrin “It's clear that they back this plan," Sen. Chris Coons (D-Del.) told reporters about Manchin and Sen. Kyrsten Sinema (D-Ariz.), adding that he had spoken to both of them. Sen. Tim Kaine (D-Va.) added that he also believed there were 50 votes for the framework deal. "Joe Biden would not have announced this deal and put Sens. [Sinema] and Manchin’s name in the first paragraph of the announcement unless he felt a high degree of confidence," Kaine said.

#### (4) New budget deal will pass with Biden push. That’s key to climate change and restoring US leadership.

Mascaro 10-28-21 (Lisa, https://www.wusa9.com/article/news/nation-world/paid-leave-billionaire-tax-biden-plan-manchin-sinema/507-0cac52b0-0a31-4eae-bb21-7d7d2d5f4194)

WASHINGTON — President Joe Biden declared Thursday he had reached a “historic economic framework” with Democrats in Congress on his sweeping domestic policy package, a hard-fought yet dramatically scaled-back deal announced just before he departed for overseas summits. Biden's remarks at the White House came after he traveled to Capitol Hill to make the case to House Democrats for the still-robust domestic package — $1.75 trillion of social services and climate change programs — that the White House believes can pass the 50-50 Senate. “It will fundamentally change the lives of millions of people for the better,” Biden said of the agreement, which he badly wanted before the summits to show the world American democracy still works. “Let's get this done.” Together with a nearly $1 trillion bipartisan infrastructure bill heading for final votes possibly as soon as Thursday, Biden claimed it would be a domestic achievement modeled on those of Franklin Roosevelt and Lyndon Johnson. “I need your votes,” Biden told the lawmakers earlier, according to a person who requested anonymity to discuss the private remarks. Biden was eager to have a deal in hand before departing for the global summits. But final votes are still a ways off. At best, he left with a revised package that has lost some top priorities, frustrating many Democrats still pressing to include them as the president’s ambitions make way for the political realities of the narrowly divided Congress. Paid family leave and efforts to lower prescription drug pricing are now gone entirely from the package, drawing outrage from some lawmakers and advocates. Still in the mix, a long list of other priorities: Free prekindergarten for all youngsters, expanded health care programs — including the launch of a new $35 billion hearing aid benefit for people with Medicare — and $555 billion to tackle climate change. There's also a one-year extension of a child care tax credit that was put in place during the COVID-19 rescue and new child care subsidies. An additional $100 billion to bolster the immigration and border processing system could boost the overall package to $1.85 trillion if it clears Senate rules. One pivotal Democratic holdout, Sen. Kyrsten Sinema of Arizona, said, “I look forward to getting this done.” However, another, Joe Manchin of West Virginia, was less committal: “This is all in the hands of the House right now." The two Democrats have almost single-handedly reduced the size and scope of their party’s big vision. Republicans remain overwhelmingly opposed. Taking form after months of negotiations, Biden's emerging bill would still be among the most sweeping of its kind in a generation, modeled on New Deal and Great Society programs. The White House calls it the largest-ever investment in climate change and the biggest improvement to the nation’s healthcare system in more than a decade. In his meeting with lawmakers at the Capitol, Biden made clear how important it was to show progress as he headed to the summits. “We are at an inflection point,” he said. “The rest of the world wonders whether we can function.”

## CP

Concede perm answer condo

### Counter Interp

#### CI – The negative gets one conditional advocacy – solves all your offense by creating an objective limit on negative advocacies – the status quo is always a logical option because they could always choose not to act.

#### Negate:

#### [1] Logic – proving a CP is bad doesn’t prove the plan is good, a policy maker can always choose not to act. Logic outweighs- it’s the basis of all rational arguments and a side constraint.

#### [2] Neg Flex- we are inherently reactionary; we need in round flexibility to test the plan and have a fighting chance. If they had phenomenal answers to the CP, the debate would be over after the 1AR which is educationally bankrupt. Neg flex outweighs 1AR time allocation---they have infinite prep time to rigorously test their affirmative and do extensive research.

#### [3] Prevents ideological extremism – defending against both sides forces a defense of the plan, not its ideology – best for nuanced decision making and balance. << dispo doesn’t solve this specific offense because teams could straight turn the counterplan and run away from having to debate multiple positions>>

#### [4] Negation theory – In the real-world policies are attacked from the left and the right. Since there is only one negative in the debate this requires contradictory arguments and hence conditionality. If the plan is the middle ground, they should have to win middle good, not lesser of 2 evils.

#### [5] The 1AR should be hard- it’s the turning point in the debate. Conditionality forces in round strategic thinking which removes coaching from the equation. The aff doesn’t have to contradict themselves or undercover- they need to make tough choices.

#### [6] Argument innovation – unidimensional 1NCs discourage the neg from prepping multiple strategies against a case. Research is the most important part of debate education-it’s the only skill we take into the real world.

### Defense

#### [1] The status quo is inherently conditional- we can say no warming and warming good, plus argue an infinite number of SQ policies will solve warming.

#### [2] Aff advantages check abuse-they get infinite prep, the first and last speech, and the right to choose case area and plan wording

#### [3] Straight turn checks- they can stick us with the net benefit or read add-ons that apply whether or not we kick the counterplan

#### [4] All arguments are conditional -- we can always read DAs or philosophy positions and decide not to go for them.

#### [5] Permutations – they can make an infinite permutation on every advocacy and decide which ones to go for or even collapse to multiple perms in the 2ar.

### AT: Dispo Solves

#### [1] Arbitrary, choose conditions to kick advocacies without solving our arguments.

### AT: Strat Skew

#### [1] This is no different from T or theory—those are conditional and they just have to prove the aff world or interpretation is better.

#### [2] C/I solves.

#### [3] Impact turn—TIME AND STRATEGY PRESSURE ARE GOOD.

#### [4] Don’t evaluate the minor imbalances conditionality creates—if you want to play a fair game, play monopoly or football.

#### [5] Neg flex outweighs 1AR time allocation---they have infinite prep time to rigorously test their affirmative and do extensive research

### AT: Clash

#### [1] Turn, condo increases clash because it allows the aff to test the negative in multiple ways, their interp encourages debaters to research one argument throughout the entire topic rather than stepping beyond their boundaries and prepping multiple counterplans that all interact with the affirmative in different ways.

#### [2] Condo is the best of both worlds-we get breadth in the 1nc and 1ar from multiple positions that both engage the affirmative in different ways and then in the 2nr and 2ar we get much more depth because the debate tailors down to the plan versus another advocacy.

#### [3] No impact because the 2nr will inevitably do things like go for no RVIs on a shell or concede defense on a disad which means that there is no impact to condo because even if these arguments weren’t conditional we wouldn’t have to answer your arguments.

### Heg DA 2NR---Overview

#### 1] US Heg is the only impact filter that can prevent rogue state nuke prolif, terror groups, tensions in the world’s hotspots like Korea, Baltics States, Middle East, Asia etc. These threats are constantly emerging and will go nuclear.

#### 2] Pursuit inevitable---decline causes global war.

Beckley 15 (Michael Beckley is a research fellow in the International Security Program at Harvard Kennedy School’s Belfer Center for Science and International Affairs., “The Myth of Entangling Alliances Michael Beckley Reassessing the Security Risks of U.S. Defense Pacts”, <http://live.belfercenter.org/files/IS3904_pp007-048.pdf>)

The finding that U.S. entanglement is rare has important implications for international relations scholarship and U.S. foreign policy. For scholars, it casts doubt on classic theories of imperial overstretch in which great powers exhaust their resources by accumulating allies that free ride on their protection and embroil them in military quagmires.22 The U.S. experience instead suggests that great powers can dictate the terms of their security commitments and that allies often help their great power protectors avoid strategic overextension.

For policy, the rarity of U.S. entanglement suggests that the United States’ current grand strategy of deep engagement, which is centered on a network of standing alliances, does not preclude, and may even facilitate, U.S. military restraint. Since 1945 the United States has been, by some measures, the most militarily active state in the world. The most egregious cases of U.S. overreach, however, have stemmed not from entangling alliances, but from the penchant of American leaders to define national interests expansively, to overestimate the magnitude of foreign threats, and to underestimate the costs of military intervention. Scrapping alliances will not correct these bad habits. In fact, disengaging from alliances may unleash the United States to intervene recklessly abroad while leaving it without partners to share the burden when those interventions go awry.

#### 3] Unipolarity solves interventions by providing the US with the freedom of action to avoid ill-advised fights. BUT retrenchment causes prolif of proxy conflicts and adventurism.

**Anderson 19** (Noel Thomas Anderson 19. Assistant professor in the Department of Political Science at the University of Toronto. “Competitive Intervention, Protracted Conflict, and the Global Prevalence of Civil War.” International Studies Quarterly 63(3): 692-706.)

Systemic Dimensions: The Varying Prevalence of Competitive Intervention

The framework articulated above not only provides a comprehensive account of the duration effects of competitive intervention on civil wars—it also highlights a candidate explanation for the recent decline in the prevalence of intrastate conflict. Insofar as state decisions to aid combatants are consistent with competitive state policy-making, temporal variation in geopolitical competition between states should affect trends in the prevalence of competitive intervention. Variation in the prevalence of competitive intervention should in turn affect temporal trends in the prevalence of internal conflict through the duration effects described above.

Consider the pervasiveness of US-Soviet competition during the Cold War. Bipolarity extended the geographic scope of concern and broadened the range of factors included in the competition between the superpowers. American and Soviet leaders worried that challenges to the existing distribution of power might raise doubts about the credibility of their alliance commitments, thereby encouraging their allies to drift toward neutrality or, worse still, switch sides (Hironaka 2005, 107–11). Because challenges to the status quo were perceived to threaten the relative balance of power and credibility, they were resisted. Yet, because any action by one superpower was perceived as an attempt to gain a geostrategic advantage, it demanded a response. The end result was a proliferation of US-Soviet competitive intervention, wherein the superpowers committed resources to opposing government and rebel forces fighting on the periphery of their spheres of influence.

That many civil wars during the Cold War were superpower proxy wars is a well-rehearsed perspective, but what is missing from existing accounts is an explanation for why superpower sponsorship should be associated with longer conflicts. If foreign civil wars played such a key role in the larger Cold War struggle, why did the superpowers not do what was necessary to help their respective sides win? The theory outlined above provides an answer: challenges to the relative balance of power and credibility necessitated reflexive responses, but the impossible stakes of direct confrontation advised caution. While the superpowers were compelled to intervene, they were simultaneously—and paradoxically—compelled to do so with restraint.

Superpower rivalry also had secondary duration effects. Constrained by the need to both deter and avoid direct confrontation, Washington and Moscow employed indirect strategies for projecting power. Military aid was an integral element of their competition for influence, and accordingly, money and weapons diffused not only to civil wars, but across the international system. This assistance empowered client states, providing a set of Cold War framings and superpower arms that could be used to justify and implement independent foreign policy objectives. Notably, the superpowers struggled to control their clients’ adventurism; by exploiting fears of defection to the opposing bloc, clients found ways to commandeer superpower aid for their own self-interested ends (Krause 1991). The net result was a proliferation of interventions by otherwise weak states in civil wars across the globe.

In the post–Cold War period, by contrast, state clients have a harder time garnering American aid. Regional powers continue to intervene in civil wars, but they can no longer rely on the reflexive support of the USSR when conflicts of interest arise vis-à-vis US policy, nor can they threaten defection to the Soviet-bloc in the face of American sanction. In the unipolar period, the United States has greater choice in which state clients it chooses to support, enjoys greater flexibility to discipline adventurism by weaker powers, and maintains “command of the commons” to restrict flows of economic and military aid around the globe (Posen 2003). Together, these features of the unipolar system constrain foreign adventurism by lesser powers relative to the Cold War period, thereby reducing—though not eliminating—the prevalence of competitive interventions among neighboring states and regional rivals. In this way, the transition from a bipolar to unipolar system not only terminated superpower proxy warfare, but also decreased the rate of competitive intervention by lesser powers.

## CAse

# 1NC

### 1

#### Interpretation: Reduce means unconditional and permanent

**Reynolds 59** – Judge (In the Matter of Doris A. Montesani, Petitioner, v. Arthur Levitt, as Comptroller of the State of New York, et al., Respondents [NO NUMBER IN ORIGINAL] Supreme Court of New York, Appellate Division, Third Department 9 A.D.2d 51; 189 N.Y.S.2d 695; 1959 N.Y. App. Div. LEXIS 7391 August 13, 1959, lexis)

Section 83's counterpart with regard to nondisability pensioners, section 84, prescribes a reduction only if the pensioner should again take a public job. The disability pensioner is penalized if he takes any type of employment. The reason for the difference, of course, is that in one case the only reason pension benefits are available is because the pensioner is considered incapable of gainful employment, while in the other he has fully completed his "tour" and is considered as having earned his reward with almost no strings attached. It would be manifestly unfair to the ordinary retiree to accord the disability retiree the benefits of the System to which they both belong when the latter is otherwise capable of earning a living and had not fulfilled his service obligation. If it were to be held that withholdings under section 83 were payable whenever the pensioner died or stopped his other employment the whole purpose of the provision would be defeated, i.e., the System might just as well have continued payments during the other employment since it must later pay it anyway.  [\*\*\*13]  The section says "reduced", does not say that monthly payments shall be temporarily suspended; it says that the pension itself shall be reduced. The plain dictionary meaning of the word is to diminish, lower or degrade. The word "reduce" seems adequately to indicate permanency.

#### Violation: Companies can still choose exclusive patent protection and data exclusivity

1NC Feldman 3 Robin Feldman 2-11-2019 "‘One-and-done’ for new drugs could cut patent thickets and boost generic competition" <https://www.statnews.com/2019/02/11/drug-patent-protection-one-done/> (Arthur J. Goldberg Distinguished Professor of Law, Albert Abramson ’54 Distinguished Professor of Law Chair, and Director of the Center for Innovation)//SidK + Elmer

I believe that one period of protection **should be enough**. We should make the legal changes necessary to prevent companies **from building patent walls** and piling up mountains of rights. This could be accomplished **by a “one-and-done” approach** for patent protection. Under it, a drug would receive just one period of exclusivity, and no more. The choice of which “one” could be left entirely in the hands of the pharmaceutical company, with the election made when the FDA approves the drug. Perhaps development of the drug went swiftly and smoothly, so the remaining life of one of the drug’s patents is of greatest value. Perhaps development languished, so designation as an orphan drug or some other benefit would bring greater reward. The choice would be up to the company itself, based on its own calculation of the maximum benefit. The result, however, is that a pharmaceutical company chooses whether its period of exclusivity would be a patent, an orphan drug designation, a period of data exclusivity (in which no generic is allowed to use the original drug’s safety and effectiveness data), or something else — but **not all of the above** and more. Consider Suboxone, a combination of buprenorphine and naloxone for treating opioid addiction. The drug’s maker has extended its protection cliff eight times, including obtaining an orphan drug designation, which is intended for drugs that serve only a small number of patients. The drug’s first period of exclusivity ended in 2005, but with the additions its protection now lasts until 2024. That makes almost two additional decades in which the public has borne the burden of monopoly pricing, and access to the medicine may have been constrained. Implementing a one-and-done approach in conjunction with FDA approval underscores the fact that these problems and solutions are designed for pharmaceuticals, not for all types of technologies. That way, one-and-done could be implemented through **legislative changes to the FDA’s drug approval system**, and would apply to patents granted going forward. One-and-done would apply to both patents and exclusivities. A more limited approach, a baby step if you will, would be to invigorate the existing patent obviousness doctrine as a way to cut back on patent tinkering. Obviousness, one of the five standards for patent eligibility, says that inventions that are obvious to an expert or the general public can’t be patented. Either by congressional clarification or judicial interpretation, many pile-on patents could be eliminated with a ruling that the core concept of the additional patent is nothing more than the original formulation. Anything else is merely an obvious adaptation of the core invention, modified with existing technology. As such, the patent would fail for being perfectly obvious. Even without congressional action, a more vigorous and robust application of the existing obviousness doctrine could significantly improve the problem of piled-up patents and patent walls. Pharmaceutical companies have become adept at maneuvering through the system of patent and non-patent rights to create mountains of rights that can be applied, one after another. This behavior lets drug companies keep competitors out of the market and beat them back when they get there. We shouldn’t be surprised at this. Pharmaceutical companies are profit-making entities, after all, that face pressure from their shareholders to produce ever-better results. If we want to change the system, we must change the incentives driving the system. And right now, the incentives for creating patent walls are just too great.

#### Vote neg:

#### 1—Limits—there are dozens of conditions that the aff could use to justify offsets in expansion: manufacturing, innovation, distribution, etc—makes NEG prep impossible.

#### 2—Ground—they don’t result in a tangible change to a world without IP Protections, unless the conditions are triggered—wrecks DA ground predicated on IPR good

#### No RVI’s – illogical to win for meeting the burden of being fair, and encourages unfair affs to bait out T arguments and go for the RVI

#### Competing Interps – reasonability is arbitrary and forces the judge to intervene to decide if aff defense is sufficient. If its not, it collapses because you compare offense vs defense which is definitionally competing interps.

### 2

#### **U.S dominance over biotech now BUT misguided policy cedes control to China.**

**Gupta 6/11** [“As Washington Ties Pharma's Hands, China Is Leaping Ahead.”, Gaurav Gupta, Opinion | America Risks Ceding Its Biotech Dominance to China | Barron's, Barrons, 11 June 2021, [www.barrons.com/articles/as-washington-ties-pharmas-hands-china-is-leaping-ahead-51623438808](http://www.barrons.com/articles/as-washington-ties-pharmas-hands-china-is-leaping-ahead-51623438808)., Gaurav Gupta, a physician, is the founder of the biotechnology investment firm Ascendant BioCapital.] // Lex AKu

There should be no doubt that we are living at the dawn of a golden age of biomedical innovation. The American scientific engine that produced Covid-19 vaccines in record time was fueled by a convergence of advances in genomics, biomarkers, data science, and manufacturing years in the making. The first Food and Drug Administration approvals of a host of new product formats—oligonucleotide, bispecific, oncolytic virus, CAR-T, and lentivirus/AAV—all took place within the last decade. These represent an unprecedented expansion of the armamentarium that physicians have at their disposal to treat and cure disease. In the last few years, [47% of all new medicines](https://www.efpia.eu/media/554521/efpia_pharmafigures_2020_web.pdf) were invented by U.S. biopharma companies, with [homegrown startups](https://www.cbo.gov/publication/57126) driving the majority of innovation. The bulk of the remainder were developed by foreign companies specifically for the U.S. market. An indirect benefit of these trends is that most novel therapeutics undergo clinical development and early commercial launch here in the U.S. The rest of the world understands that the American patient has earlier and broader access to groundbreaking therapies via these mechanisms. Indeed, the past decade is filled with examples of medical “firsts” for American patients: the first cure for Hepatitis C, the first gene therapy for blindness, the first immunotherapy for cancer. Future rewards will be greater still if we preserve our current system of incentivizing and protecting. The remarkable innovation capacity of our biopharmaceutical industry ought to be a source of national pride. Yet while “Made in America” is the global standard for medicines in development today, misguided policy risks ceding our scientific prowess to other countries in the future. This is particularly true in the case of China, where biotechnology has become a strategic pillar for the health of its people and economy. From 2016 to 2020, the market capitalization of all Chinese biopharma companies increased exponentially from [$1 billion to over $200 billion](https://www.bloomberg.com/news/articles/2021-03-01/xi-mobilizes-china-for-tech-revolution-to-cut-dependence-on-west). China saw over [$28 billion](https://www.bioworld.com/articles/506978-china-sees-five-year-highs-in-life-sciences-investments-and-partnering) invested in its life sciences sector in 2020, double the previous year’s amount. Returns on China’s investment are already arriving. The FDA approved a drug developed in China for the first time ever in 2019. While China’s innovation capacity currently remains behind America’s, my experiences as a biopharma professional make it clear they are doing everything they can to catch up and catch up fast. In fact, when I speak to Chinese biotechnology executives, they boast that they can run clinical trials faster than their U.S. counterparts. The danger of misguided policies that disincentivize pharmaceutical innovation in the U.S. is effectively driving that same innovation to China. If we close off the market in the U.S. at the same time that China is opening its market to innovative new products, then we will see companies choose to first launch impactful novel medicines in China, based on clinical trials conducted in China. Because the FDA rarely accepts data generated entirely outside the U.S., this relocation of research capacity will negatively affect Americans’ access to cutting-edge therapies. The biotechnology field is advancing rapidly. Promising technologies such as targeted protein degradation and gene editing are perhaps not far from being developed into impactful medicines, and the U.S. risks these technologies being mastered by Chinese companies.

#### One and done model kills innovation—chilling effect.

**Magiera 2021** (Melissa S., J.D. Candidate, 2021, Indiana UniversityRobert H. McKinney School of Law; B.S. 2017, Indiana University Purdue University Indianapolis – Indianapolis, Indiana. Recipient of the Papke Prize for Best Note in Volume 54, endowed by and named in honor of David R. Papke, former R. Bruce Townsend Professor of Law and faculty advisor to the Indiana Law Review “Leaving the Evergreening Problem to the Patent Experts--The USPTO, the PTAB, and the Federal Circuit” Indiana Law Review, 54(1), 195-220.)DR 21

Additionally, the pharmaceutical industry spends millions of dollars in researching new uses or safer ways to administer known drugs.94 A new use or method of administering or making a known drug should be rewarded with a patent; if not, many pharmaceutical companies will treat the discovered drugs as “one-and-dones.” 95 Patents are meant to be issued for innovations, not for products.96 Just because a patent is granted on a medicine does not mean that the innovation relating to the drug ends; in fact, many pharmaceutical companies continue to research “new ways to make the medicine, new populations who can benefit from its use, better ways to get it to and into patients, and new versions that expand options for patents.” 97 The effect of this legislation, if enacted, likely would be to focus on lowering the price of medicine for patients at the cost of denying rightful patents to pharmaceutical companies that could have made new medical advances for the good of society. 98 Any pharmaceutical company would be scrutinized for any additional innovation of a drug and may be subject to penalties.99 Eventually, this means that the pharmaceutical companies could halt further research on any patented drug, even if there is a better, undiscovered use for that drug. 100 If enacted, the legislation could also “erode[] incentives and threaten[] innovation,” which is what the patent system was created to protect. 101

#### Secondary patents are necessary for innovation of otherwise mediocre drugs—core to cancer and HIV treatments

**Holman 2018** (Christopher, Professor of Law, University of Missouri-Kansas City School of Law. “Why Follow-On Pharmaceutical Innovations Should Be Eligible For Patent Protection” <https://www.ip-watch.org/2018/09/21/follow-pharmaceutical-innovations-eligible-patent-protection/> September 21, 2018)DR 21

The attack on secondary pharmaceutical patents is based in part on the flawed premise that follow-on innovation is of marginal value at best, and thus less deserving of protection than the primary inventive act of identifying and validating a new drug active ingredient. In fact, follow-on innovation can play a critical role in transforming an interesting drug candidate into a safe and effective treatment option for patients. A good example can be seen in the case of AZT (zidovudine), a drug ironically described in the Guidelines as the “first breakthrough in AIDS therapy.” AZT began its life as a failed attempt at a cancer drug, and it was **only years later that its potential application in the fight against AIDS was realized**. Follow-on research resulted in **a method-of-use patent** directed towards the use of AZT in the treatment of AIDS, and it was this patent that incentivized the investment necessary to bridge the gap between a promising drug candidate and a safe, effective, and FDA-approved pharmaceutical. Significantly, because of the long lag time between the first public disclosure of AZT and the discovery of its use in the treatment of AIDS, patent protection for the molecule per se was unavailable. In a world where follow-on innovation is unpatentable, there would have been no patent incentive to invest in the development of the drug, and without that incentive AZT might have languished on the shelf as simply one more failed drug candidate.

Other examples of important drugs that likely never would have been made available to patients without the availability of a “secondary” patent include Evista (raloxifene, **used in the treatment of** osteoporosis and to reduce the risk of invasive breast cancer), Zyprexa (olanzapine, used in the treatment of schizophrenia), and an orally-administrable formulation of the antibiotic cefuroxime.

Pharmaceutical development is prolonged and unpredictable, and frequently a safe and effective drug occurs only as a result of follow-on innovation occurring long after the initial synthesis and characterization of a pharmaceutically interesting chemical compound. The inventions protected by secondary patents can be just as critical to the development of drugs as a patent on **the active ingredient itself.**

#### Biotech leadership key to future military primacy.

**Moore 21**[(Scott Moore is a political scientist and administrator at the University of Pennsylvania and the author of a forthcoming book, “How China Shapes the Future,” on China’s role in public goods and emerging technologies.) 8-8-2021, "In Biotech, the Industry of the Future, the U.S. Is Way Ahead of China," Lawfare, https://www.lawfareblog.com/biotech-industry-future-us-way-ahead-china]//Lex AKu

A [continuing refrain](https://phys.org/news/2020-10-america-edge-peril.html) from Washington in recent years has been that the United States is falling behind China in the development of critical emerging technologies. In some fields, this may be true. But not in biotechnology. To be sure, China’s biotech sector is growing at a torrid pace, and some of its firms are becoming leaders in [certain areas](https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_china_biotechnology_moore.pdf), such as cancer treatment. Yet the U.S. retains a dominant position in research, development and commercialization, accounting for [almost half](https://itif.org/publications/2018/03/26/how-ensure-americas-life-sciences-sector-remains-globally-competitive) of all biotech patents filed from 1999 to 2013. The triumph of its biotechnology industry during the coronavirus pandemic, producing two highly effective vaccines using an entirely new approach based on [messenger RNA](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/mrna.html), and in record time, shows that the U.S.’s competitive **edge in biotechnology remains largely intact. And that has important implications as Washington gears up for a sustained period of geopolitical competition with Beijing. Biotech is such a critical area for technological competition between the U.S. and China because it is transforming fields from medicine to military power**. The great advances of the 19th century, like chemical fertilizers, resulted from mastering chemistry. In the 20th century, mastery of physics led to nuclear energy—and, more ominously, nuclear weapons. In the 21st century, **bio**logy **offers a similar mix of peril and promise. This was illustrated dramatically by the award of the 2020 Nobel Prize for the discovery of an enzyme system known as CRISPR-Cas9, which allows an organism’s genomes to be edited** with high precision. It is a transformational breakthrough. But while CRISPR shows great promise in the development of [new cures](https://www.nature.com/articles/d41586-020-03476-x) for long-untreatable diseases, it **could also lead to a whole new generation of** [**deadly bioweapons**](https://foreignpolicy.com/2019/11/08/cloning-crispr-he-jiankui-china-biotech-boom-could-transform-lives-destroy-them/). That’s a prospect that increasingly alarms U.S. intelligence officials. In 2016, then-Director of National Intelligence James Clapper [warned Congress](https://www.technologyreview.com/s/600774/top-us-intelligence-official-calls-gene-editing-a-wmd-threat/) that **“[r]esearch in genome editing conducted by countries** with different regulatory or ethical standards than those of western countries probably in**creases the risk of the creation of potentially harmful biological agents** or products.” Although Clapper didn’t name specific countries, it soon became clear that he was referring mainly to China. Four years later, his successor, John Ratcliffe, issued a far more [pointed warning](https://www.wsj.com/articles/china-is-national-security-threat-no-1-11607019599) that “**China has even conducted human testing on members of the People’s Liberation Army in hope of developing soldiers with biologically enhanced capabilities. There are no ethical boundaries to Beijing’s pursuit of power.” Such capabilities are almost certainly only speculative—but they underscore why biotech leadership is so important for national security** as well as economic competitiveness. Beijing has long envied the United States’s dominant position in biotechnology and spent heavily to overtake it. Biotech has been a priority sector for state investment since the 1980s, and by [one estimate](https://www.brookings.edu/wp-content/uploads/2020/04/FP_20200427_china_biotechnology_moore.pdf) Beijing had poured some $100 billion into the sector by 2018. Nowhere did it lavish more attention or invest more of its propaganda power than in developing a coronavirus vaccine. State media have spent months [crowing](https://www.globaltimes.cn/content/1190615.shtml) that “China is working around the clock for breakthroughs in COVID-19 vaccines.” Yet despite this push, China’s vaccine program quickly took on a Potemkin air. In February 2020, barely two months after the onset of the pandemic and after a supposedly crash vaccine effort, a military doctor stood in front of a Chinese flag to receive what was billed as an experimental vaccine dose but was widely suspected to be a [staged photo op](https://www.sciencemag.org/news/2020/11/global-push-covid-19-vaccines-china-aims-win-friends-and-cut-deals). Now, having [spent months](https://www.nytimes.com/2021/01/13/business/chinese-vaccine-brazil-sinovac.html) talking up its two primary vaccine candidates to developing countries like Brazil and Indonesia, both of which have entered into purchase agreements with Chinese biotech firms, Chinese officials face [severe mistrust](https://www.nytimes.com/2021/01/13/business/chinese-vaccine-brazil-sinovac.html) among their nation’s overseas partners. For China’s leaders, the disappointing returns on their big bet on biotechnology look likely to cause them more headaches at home as well as abroad—there are [already signs](https://www.sciencemag.org/news/2020/11/global-push-covid-19-vaccines-china-aims-win-friends-and-cut-deals) that affluent Chinese place more trust in foreign-developed coronavirus vaccines than the homegrown ones produced at such great expense. For U.S. officials, though, China’s relative underperformance in vaccine development presents an opportunity to reassert the United States’s leadership in biotechnology and public health and bolster the nation’s depleted soft power in the process. The Biden administration has already signaled it will reengage in multilateral bodies such as the World Health Organization. Yet the U.S. shouldn’t stop there. Washington should begin thinking now about how to emulate the success of the President’s Emergency Plan for AIDS Relief (PEPFAR)—which, though imperfect, is widely regarded as one of the most successful single public health interventions in history—to address growing disparities in access to coronavirus vaccines between countries. At the moment, vaccine supplies are controlled largely by rich countries, creating the risk of moral and public health failure if the gap persists. While COVID-19, the respiratory disease caused by the novel coronavirus, differs in many respects from AIDS, PEPFAR combined research, prevention, and access to therapeutics. Developing a comparable institutional structure to close the coronavirus vaccine access gap is the right thing to do—but it would also go a long way to restoring America’s battered global reputation. At the same time, the United States can’t afford to rest on its laurels in biotechnology, or any other field. Aside from China, other nations like Singapore and Israel have also invested heavily to develop their biotechnology sectors, with Israel in particular giving rise to a thriving biotech industry. U.S. public investment in basic scientific research and development has meanwhile [been on the decline](https://www.wsj.com/articles/how-the-u-s-surrendered-to-china-on-scientific-research-11555666200) for decades, and there are worrying signs that America’s once world-beating innovation ecosystem is less productive, and less entrepreneurial, than it once was. Despite strengths in translational research, moreover, the frontiers of biology increasingly sit at the [intersection with other disciplines](https://www.startus-insights.com/innovators-guide/biotech-innovation-map-reveals-emerging-technologies-startups/) like computer science, meaning that funding agencies, universities and other organizations need to break down disciplinary silos. Boosting support for biotechnology research, while reforming how that money is used, will go a long way toward shoring up the United States’s leading position in the global biotech sector. The U.S. biotechnology sector also faces other threats, not least growing espionage and intellectual property theft by foreign actors, especially those linked to China. Several high-profile cases brought by the U.S. Department of Justice’s China Initiative have involved biotechnology researchers, and American biotech firms have been [top targets](https://www.jdsupra.com/legalnews/chinese-and-russian-hackers-targeting-78355/) for cyber theft and intrusion. Sustained outreach to researchers and research institutions is critical to preventing such theft. But efforts to clamp down on the threats posed by espionage and intellectual property theft can easily go too far and must preserve the researcher mobility and data-sharing that is essential to doing cutting-edge science. Beyond its shores, the United States should work with its partners and allies to enhance export controls on dual-use biotechnology—used for both peaceful and military gain—especially DNA templates. Many forms of genetic material and synthetic biology products are [already subject](https://www.bis.doc.gov/index.php/documents/regulations-docs/2332-category-1-materials-chemicals-microorganisms-and-toxins-4/file) to U.S. export controls, but gaps remain, and screening for genetic sequence orders relies primarily on voluntary regulation by biotech firms. Better coordinating export controls among major economies and U.S. allies can dramatically reduce the risk of sophisticated bioweapons development in the decades to come.

#### Primacy and allied commitments solve arms races and great power war – unipolarity is sustainable and prevents power vacuums and global escalation.

**Brands 18** [(Hal, Henry Kissinger Distinguished Professor at Johns Hopkins University's School of Advanced International Studies and a senior fellow at the Center for Strategic and Budgetary Assessments) "American Grand Strategy in the Age of Trump," Page 129-133]

**Since World War II, the United States has had** a military second to none. Since the Cold War, America has committed to having overwhelming military primacy. The idea, as George W. Bush declared in 2002, that America must possess “strengths beyond challenge” has featured in every major U.S. strategy document for a quarter century; it has also been reflected in concrete terms.6 From the early 1990s, for example, the United States consistently accounted for around 35 to 45 percent of world defense spending and maintained peerless global power-projection capabilities.7 Perhaps more important, U.S. primacy was also unrivaled **in key** overseas strategic regions—Europe, East Asia, the Middle East. From thrashing Saddam Hussein’s million-man Iraqi military during Operation Desert Storm, to deploying—with impunity—two carrier strike groups off Taiwan during the China-Taiwan crisis of 1995– 96, Washington has been able to project military power superior to anything a regional rival could employ even on its own geopolitical doorstep. This military dominance has constituted the hard-power backbone of an ambitious global strategy. After the Cold War, U.S. **policymakers committed to averting** a return to the unstable multipolarity of earlier eras, and to perpetuating the more favorable unipolar order. They committed to building on the successes of the postwar era by further **advancing** liberal political values **and an open** international economy, and to suppressing international scourges such as rogue states, nuclear proliferation, **and** catastrophic terrorism. And because they recognized that military force remained the ultima ratio regum, they understood the centrality of military preponderance. Washington would need the military power necessary to underwrite worldwide alliance commitments. It would have to preserve substantial overmatch versus any potential great-power rival. It must be able to answer the sharpest challenges to the international system, such as Saddam’s invasion of Kuwait in 1990 or jihadist extremism after 9/11. Finally, because prevailing global norms generally reflect hard-power realities, America would need the superiority to assure that its own values remained ascendant. It was impolitic to say that U.S. strategy and the international order required “strengths beyond challenge,” but it was not at all inaccurate. American primacy, moreover, was eminently affordable. At the height of the Cold War, the United States spent over 12 percent of GDP on defense. Since the mid-1990s, the number has usually been between 3 and 4 percent.8 In a historically favorable international environment, Washington could enjoy primacy—and its geopolitical fruits—on the cheap. Yet U.S. strategy also heeded, at least until recently, the fact that there was a limit to how cheaply that primacy could be had. The American military did shrink significantly during the 1990s, but U.S. officials understood that if Washington cut back too far, its primacy would erode to a point where it ceased to deliver its geopolitical benefits. Alliances **would** lose credibility; **the stability of key** regions **would be** eroded; rivals would be emboldened; international crises would go unaddressed. American primacy was thus like a reasonably priced insurance policy. It required nontrivial expenditures, but protected against far costlier outcomes.9 Washington paid its insurance premiums for two decades after the Cold War. But more recently American primacy and strategic solvency have been imperiled. THE DARKENING HORIZON For most of the post–Cold War era, the international system was— by historical standards—remarkably benign. Dangers existed, and as the terrorist attacks of September 11, 2001, demonstrated, they could manifest with horrific effect. But for two decades **after the Soviet collapse, the world was characterized by** remarkably low levels of great-power competition, high levels of security in key theaters such as Europe and East Asia, **and** the comparative weakness of those “rogue” actors—Iran, Iraq, North Korea, al-Qaeda—who most aggressively challenged American power. During the 1990s, some observers even spoke of a “strategic pause,” the idea being that the end of the Cold War had afforded the United States a respite from normal levels of geopolitical danger and competition. Now, however, the strategic horizon is darkening, due to four factors. First, great-power military competition is back. The world’s two leading authoritarian powers—China **and** Russia—are **seek**ing regional hegemony, contesting global norms such as nonaggression and freedom of navigation, and developing the military punch to underwrite these ambitions. Notwithstanding severe economic and demographic problems, Russia has conducted a major military modernization emphasizing nuclear weapons, high-end **conventional capabilities**, and rapid-deployment **and** **special op**erations forces— and utilized many of these capabilities in conflicts in Ukraine and Syria.10 China, meanwhile, has carried out a buildup of historic proportions, with constant-dollar defense outlays rising from US$26 billion in 1995 to US$226 billion in 2016.11 Ominously, these expenditures have funded development of power-projection **and** antiaccess/area denial (**A2**/AD) tools necessary to threaten China’s neighbors and complicate U.S. intervention on their behalf. Washington has grown accustomed to having a generational military lead; Russian and Chinese modernization efforts are now creating a far more competitive environment.

### 3

#### CP Text: The member nations of The WTO ought to maintain current IP protections and implement an at-risk approach whereby all profits from follow-on patents are vested as a bounty paid to the first firm who successfully invalidates the patent.

#### The CP solves the case while maintaining incentives to innovate.

Hacohen 2020 [Uri Y. Hacohen, Research fellow at the Law, Economics, and Politics Center (LEAP), University of California at Berkeley School of Law “EVERGREENING AT RISK” Harvard Journal of Law & Technology Volume 33, Number 2 Spring 2020. <https://poseidon01.ssrn.com/delivery.php?ID=319121006065081093000109068104109104056074007011089060073092002025097002014072001125123036060024038014002024000099127091111024103054002035031024118110112114119001030008080030066026103080031021096103093009083066088112093123024123087065020112014002008100&EXT=pdf&INDEX=TRUE>] CT

The view advanced in this article is that patent policy, by improving the quality of pharmaceutical patents, should play a pivotal role in curbing the evergreening epidemic. The most natural approach to achieving this goal is to heighten patentability requirements for pharmaceutical inventions.277 Thus, more rigorous doctrines of utility or nonobviousness would potentially serve to weed out meritless patent applications on the front end.278 Many countries tinker with heightened patentability requirements;279 India, for example, forbids improvement patents to known pharmaceutical substances unless the applicant can show that the claimed improvement is therapeutically superior to the known substance.280 New legislation in this light has recently been proposed in the United States. 281 Nevertheless, a closer look at U.S. patent policy would suggest that the requirements of patentability for pharmaceutical inventions are already quite rigorous. Unlike in other industries in which innovators need only to prove operability to satisfy the utility requirement,282 inventors in the biotechnology and chemical fields must satisfy a heightened utility standard by proving a specific and concrete application for their inventions. 283 The burden of proving non-obviousness is also heavier for pharmaceutical inventions.284 A chemical compound is presumed obvious if it is structurally similar to a molecule in the prior art and if a skilled artisan would have the motivation to tinker with that molecule to come up with the claimed compound.285 To defeat a presumption of obviousness, an inventor would have to demonstrate “surprising properties” of the claimed molecule not present in the prior art.286 This showing is difficult to make especially after the Supreme Court’s seminal decision in KSR International Co. v. Teleflex Inc., which endorsed an expansive and flexible approach to obviousness and in effect made the claim of non-obviousness much harder to sustain.287 Indeed, the main cause for the proliferation of unwarranted or overbroad pharmaceutical patents is not the inadequacy of existing patentability standards but rather the insufficient scrutiny of these standards at the stage of issuance. During litigation, “with the benefit of a full evidentiary record, these [pharmaceutical] patents cannot withstand validity challenges.” 288 Thus, a different policy approach would be to keep the standards of patentability unchanged but improve their scrutiny during and after the examination process.289 Professor Gregory Dolin, for example, offered to reexamine patents subject to an ANDAtriggered litigation if the parties settled the challenge in a way that was presumed anticompetitive.290 In a similar vein, Professor John Thomas offered payment on behalf of the USPTO to third parties for providing valuable information during the examination process.291 Many countries allow outside experts to provide professional opinions to their agencies in hopes of improving the quality of the evaluation process.292 Policy prescriptions along these lines hit closer, but fail, to meet the target. A better approach would be to not rely on third parties (e.g., expert opinions) or objective signals (e.g., settlements above a certain amount) to trigger in-depth scrutiny of pharmaceutical patents of contestable merit. Instead, patent policy should bestow this task on the party the most qualified to assume it — patent owners themselves. The proposal in Section III.B takes this approach.B. Evergreening At Risk 1. Theory and Benefits. As explained in Part II, follow-on improvement patents (unlike the “first-generation” patents that cover new pharmaceutical products) bestow upon brand-name manufacturers disproportionate value. Driven by that imbalance, brand-name manufacturers are over-incentivized to procure and enforce poor quality and even meritless patents.293 It is hardly surprising, therefore, that a 2002 report by the FTC found that brand-name manufacturers lose their patent infringement cases against generics 73% of the time, with nearly half of these losses on invalidity grounds.294 This number of successful invalidation cases could potentially be even higher in the absence of generic manufacturers’ perverse incentives to prove noninfringement as opposed to invalidity.295 Another study from 2013, revealed that eighty-nine percent of the pharmaceutical patents at issue in settled litigation were “secondary” (covering an aspect other than the active ingredient), and that brandname manufacturers prevailed in these cases only 32% of the time.296 In a similar vein, a report from 2016 indicated that “claimants had a win rate of 14.6% in ANDA cases, compared to a 4.4% win rate for other types of patent cases.” 297 Since the private value of follow-on improvement patents is disproportionate compared to their social value, patent policy should aim to weaken the legal protection that is granted to such patents, at a minimum when such patents are invalid.298 Thus, under the proposed regime, follow-on improvement patents would no longer provide their owners with the available privilege to retain past monopoly profits made by enforcing such patents once they are invalidated.299 Instead, these wrongly gained profits would be vested as a bounty in favor of the first generic manufacturer who successfully invalidates the patent and opens the market to price-reducing competition. In other words, a brand-name manufacturer who enforces an invalid follow-on patent to exclude generic competition would be required to pay the successful patent invalidator the monopoly premium earned while generic competition was blocked. The monopoly premium would reflect the difference between the monopoly price charged while generic competition was blocked and the competitive price that would have been expected if generic entry had been allowed in a timely manner. To claim the bounty, the successful patent invalidator would have to show, at a minimum, that the enforcement of a follow-on patent served as the sine qua non for blocking a readily available generic entrant and that timely generic entry would have reduced the price of the drug. Other limitations could also be considered to further tailor the impact of the proposed regime.300 Consider again the case of Suboxone, a drug for the treatment of opioid use disorder discussed throughout the article. As explained in Section II.C, to stop Dr. Reddy’s from entering the market with its approved generic version of Suboxone, Indivior obtained a follow-on continuation patent from the USPTO. Armed with its new patent, Indivior sued Dr. Reddy’s for patent infringement and secured a preliminary injunction in July 2018, blocking Dr. Reddy’s from entering the market.301 In this case, the injunction did not last long because in November 2018, the Federal Circuit reversed the District Court decision and lifted the injunction.302 Under the proposed regime, if Indivior’s follow-on patent is subsequently proved invalid in litigation and any other limiting factors are satisfied, Dr. Reddy’s should be allowed to claim the monopoly premium that Indivior made in Suboxone sales between July and November 2018. If, in the absence of the Federal Circuit decision, the preliminary injunction would have endured until the end of the litigated conflict, Dr. Reddy’s claim to Indivior’s premium profits would have grown accordingly. Because Dr. Reddy’s is the only approved generic competitor in the market at this point, Indivior’s premium in selling price will be calculated based on the expected competition between two competing manufacturers in that market.303 The period of blocked generic competition would usually be triggered either by a court-granted preliminary injunction or by implementation of the thirty-month automatic stay.304 In some cases, however, a successful invalidator would be able to prove that the period of blocked generic competition predated the litigated conflict. This showing will be possible if the brand-name manufacturer had sued an earlier generic entrant for infringing the same follow-on patent and the two parties settled the case and agreed on delayed market entry.305 Under these circumstances, a late-coming patent challenger who successfully invalidated the patent could argue, that in the absence of the patent just invalidated, the previous generic challenger would have entered the market in a timely manner as was originally intended. For example, if Indivior opts to settle the case with Dr. Reddy’s without resolving the patent’s validity, the bounty would then pass over to the next generic challenger to successfully invalidate the patent. In this scenario, the bounty would be greater, as it would reflect both the longer term of Indivior’s unjustified monopoly and the greater reduction in price that would have been expected starting the minute the third market player obtained regulatory approval.306 The proposed regime is not the first to suggest that savvy patent policy should strive to discriminate between different layers of patents that cover the same pharmaceutical product. Notably, Professor Robin Feldman recently suggested that follow-on pharmaceutical improvements should be denied legal protection altogether.307 According to Feldman’s “one-and-done” principle, brand-name manufacturers should be allowed to choose only one term of legal protection for each drug (e.g., a patent or a regulatory exclusivity).308 Once the choice was made, subsequent improvements would not be protected even if eligible for a patent or a regulatory exclusivity because brand-name manufacturers would forever be estopped from enforcing these additional rights.309 Feldman’s proposition is insightful but also quite radical. As Tom Wilbur, a spokesperson for Pharmaceutical Research and Manufacturers of America (PhRMA), recently said, “[a]s long as these new medical advances meet the statutory requirements for patentability, they rightfully deserve patent protection.” 310 Many find Wilbur’s pushback convincing, agreeing that denying patent owners the right to assert their patents goes against established patent policy and could potentially even run afoul of Constitutional principles.311 Wilbur’s pushback is far less convincing, however, if these new medical advances do not meet the statutory requirements of patentability; namely, if the patents that cover them are proven invalid. Indeed, by limiting itself to cases of invalidity, the regime proposed in this article dodges the conventional “taking of property” criticism.312 The regime proposed here has two appealing properties. First and foremost, the suggested bounty aligns the incentives of brand-name manufacturers with the social interest. Unlike existing punitive regimes, such as the antitrust laws or the False Claim Act,313 a disgorgement-based approach nudges brand-name manufacturers away from pursuing and enforcing dubious patents but does not punish them for doing otherwise.314 The obligation to disgorge past profits would not put brand-name manufacturers in a worse position by deciding to enforce their invalid rights than they would have been had they not done so. 315 While brand-name manufacturers do stand to lose the research and development costs associated with establishing the incremental patented improvement, these costs are not unusually high, and they are likely to be dwarfed by the outsized monopoly profits that can be expected if the patents would survive judicial scrutiny.316 Let us assume, for example, that a blockbuster drug generates $100 million per year under a monopoly and $10 million once a generic competitor enters the market. By investing $20 million, a brand-name manufacturer can secure a new improvement patent, assert the patent against the generic entrant, trigger the thirty-month stay, and profit an additional $250 million by blocking competition. In this scenario, as long as the patent has more than an 8% chance of being held valid, an investment of $20 million would be worthwhile.317 Thus, in line with the social interest, brand name manufacturers’ motivations to pursue and enforce follow-on patents under the proposed regime would increase in direct proportion to the perceived strength and potential social value of such patents. While it would be unattractive for brand-name manufacturers to pursue and enforce weak followon patents with substantial chances of being invalidated, pursuing potentially stronger follow-on patents at risk of disgorgement would remain attractive. Second, the suggested approach also aligns the incentives of prospective generic invalidators with the social interest by promising them a greater reward for proving invalidity than what brand-name manufacturers are likely to offer them in return for dropping their invalidity challenges.318 As such, the proposed bounty regime dramatically reduces the adverse incentive for brand-name and generic manufacturers to engage in anticompetitive settlements­

### 4

#### Budget passes now – PC is key.

BBC 10-28-2021 (“Biden announces revamped $1.75 trillion social spending plan,” https://www.bbc.com/news/world-us-canada-59081791)

US President Joe Biden unveiled a revamped $1.75tn (£1.27tn) spending plan on Thursday, calling it a historic investment in the country's future. "No one got everything they wanted, including me," he said, acknowledging the struggle within his party to reach consensus on a pair of landmark bills. Narrow margins in Congress require nearly unanimous support from the Democrats for the bills to pass. They include major investments in infrastructure, climate and childcare. Mr Biden's Democratic party suggested this week that an agreement was on the horizon, ahead of Mr Biden's trip to Europe later on Thursday. President Biden will travel to Rome, the Vatican and later to Glasgow, Scotland for the United Nations climate conference, COP26. But it remains to be seen whether Mr Biden has achieved the level of cooperation needed from within his party to move the spending plan forward. This new proposal is thought to be a stripped-down version of the roughly $3.5tn social spending plan favoured by progressives. Mr Biden was expected to use his Thursday morning meeting with House Democrats to convince progressives in the party that this new version is close enough to the original bill, and to persuade progressives in the House of Representative to pass a separate, $1tn infrastructure bill that has already passed in the Senate. It's a delicate balance for Mr Biden, as he tries to appeal to his party's progressives - who say they need action on the social spending bill before passing infrastructure - and some moderates, for whom the infrastructure bill is priority. Others had concerns over the price tag of the original social spending bill. So what's in the proposed new spending plan? $555bn aimed at fighting climate change, mainly through tax-incentives for renewable and low-emission sources of energy $400bn for free and universal preschool for all 3- and 4-year-olds $165bn to lower health care premiums for the nine million Americans covered through the Affordable Care Act - also known as Obamacare $150bn to build one million affordable housing units A 50-50 seat split in the Senate - and certain Republican resistance - means Mr Biden must bring his entire party on board if he hopes to pass the spending bill. Two moderate Democrats, Senators Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, appeared to signal some support for the bill in separate statements on Thursday. "After months of productive, good-faith negotiations with President Biden and the White House, we have made significant progress," Ms Sinema said. "I look forward to getting this done." Both Ms Sinema and Mr Manchin are widely seen to have tanked the original bill by refusing to vote for it. For Mr Biden personally, a lot is riding on the fate of these two bills: his presidential legacy. "I don't think it's hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week," he told Democrats on Thursday morning, according to US media.

#### Pushing a WTO takes floor-time, energy, and political capital away from domestic legislation – big pharma and EU allies.

Bhadrakumar 5/9 M K Bhadrakumar is a former Indian diplomat. "Biden’s talk of vaccine IP waiver is political theater." Asia Times, May 9, 2021, asiatimes.com/2021/05/bidens-talk-of-vaccine-ip-waiver-is-political-theater.

On the other hand, Biden, whose political life of half a century was largely spent in the US Congress, is well aware of the awesome clout of the pharmaceutical companies in American politics. From that lobby’s perspective, the patent waiver “amounts to the expropriation of the property of the pharmaceutical companies whose innovation and financial investments made the development of Covid-19 vaccines possible in the first place,” as a senior scholar at the Johns Hopkins Center for Health Security puts it. The US pharmaceutical industry and congressional Republicans have already gone on the offensive blasting Biden’s announcement, saying it undermines incentives for American innovation. Besides, the argument goes, even with the patent waiver, vaccine manufacturing is a complex process and is not like simply flipping a switch. Senator Richard Burr, the top Republican on the US Senate Health Committee, denounced Biden’s decision. “Intellectual property protections are part of the reason we have these life-saving products,” he said. “Stripping these protections only ensures we won’t have the vaccines or treatments we need when the next pandemic occurs.” The Republican senators backed by Republican Study Committee chairman Jim Banks propose to introduce legislation to block the move. Clearly, Biden would rather spend his political capital on getting the necessary legislation through Congress to advance his domestic reform agenda rather than spend time and energy to take on the pharmaceutical industry to burnish his image as a good Samaritan on the world stage. Conceivably, Biden could be counting on the “text-based negotiations” at the WTO dragging on for months, if not years, without reaching anywhere. The US support for the waiver could even be a tactic to persuade pharmaceutical firms to back less drastic steps like sharing technology and expanding joint ventures to boost global production quickly. So far Covid-19 vaccines have been distributed primarily to the wealthy countries that developed them, while the pandemic sweeps through poorer ones such as India, and the real goal is, after all, expanded vaccine distribution. Biden is well aware that there will be huge opposition to the TRIPS waiver from the United States’ European allies as well. The British press has reported that the UK has been in closed-door talks at the World Trade Organization in recent months along with the likes of Australia, Canada, Japan, Norway, Singapore, the European Union and the US, who all opposed the idea.

#### Package is sufficient, necessary, and the last opportunity to solve climate change---extinction.

Leber 10/7 Leber, Rebecca. Rebecca Leber covers climate change for Vox. Before joining Vox, she was an environmental reporter at Mother Jones, where her investigations exposed government corruption and fossil fuel industry disinformation. She has worked as a staff writer at Grist, The New Republic, and ThinkProgress. A dozen more outlets have published her work over her decade as a climate journalist. "A last chance for US climate action: Democrats’ Build Back Better and infrastructure bills." Vox, 7 Oct. 2021, www.vox.com/22685920/democrats-infrastructure-build-back-better-climate-change.

The United States — the largest carbon polluter in history — is closer than it’s ever been to taking sweeping and lasting action on the climate crisis. The bad news is that if Democrats can’t pull it off, they may never get another opportunity like this — and the planet certainly won’t. Democratic leaders are trying to pass two major pieces of legislation — the $1 trillion bipartisan infrastructure bill and the up to $3.5 trillion Build Back Better Act — that they say can slash US pollution by up to 45 percent in the coming decade. In the outlined Build Back Better Act, Congress would flex its power to transform the electricity sector so that it runs on mostly clean energy, steer the transportation sector toward electric vehicles, and finally take action on methane pollution, one of the most harmful greenhouse gases. But there have been many recent moments when the precarious dealmaking in Congress seemed close to falling apart. One of the biggest sticking points has been with West Virginia Sen. Joe Manchin, who has questioned the party’s approach to passing both bills simultaneously. “What’s the urgency that we have?” Manchin asked on CNN’s State of the Union in late September. In part because of Manchin’s opposition, even progressive leaders have begun to manage expectations, signaling the ultimate bill will be less ambitious. Sen. Bernie Sanders of Vermont suggested that the $3.5 trillion figure would see some “give and take.” The package is likely to shrink to $2.3 trillion or less, the New York Times reported on Wednesday. So what is the urgency? Democrats only have one year before midterm elections could take away their narrow majorities in the House and Senate. That would leave them powerless to pass any legislation without help from Republicans. At the same time, the planet faces a rapidly closing window to avert the worst catastrophes of global warming. Every fraction of a degree will translate into lives and livelihoods lost. The world can’t afford another decade of American inaction, and what Congress does next will help determine the future of the climate. A last chance for Democrats Historically, the president’s party loses seats in Congress in midterm elections. Next November, Democrats could lose their narrow control of Congress if they lose even one Senate seat or more than a few House seats. “The middle of that Venn diagram — when we have leaders who care about science and we still have that window of opportunity — is now,” said Lena Moffitt, campaign director at the climate advocacy group Evergreen Action. Democrats in Congress are also relying on a roughly once-a-year process, known as budget reconciliation, to try and push the Build Back Better Act through the Senate. Reconciliation allows them to pass a budget with a simple majority, instead of the 60 votes that are usually required in the Senate. There might not be time or political will to make a similar move in 2022. And some Democrats remain unwilling to eliminate the Senate filibuster, which is the other way they could pass progressive policies. In short, if the historical pattern holds, Democrats may not get another chance under President Biden — or even this decade — to take serious action on climate. Some Republicans have been hinting at taking climate change more seriously, but much of the party’s leadership continues to downplay and deny climate science. The next time the US has an opening like this, climate change will likely be dramatically worse — and that much harder to stop. A flooded street of shops at night reflecting the lights in the water. Hurricane Ida caused record flooding in New Jersey in September. Climate change is already intensifying extreme weather such as tropical storms and heat waves. Anadolu Agency via Getty Images The best chance for the global climate Climate scientists have warned that once the atmosphere warms more than 1.5 degrees Celsius, we will live in a drastically changed world. If countries, corporations, and individuals don’t take immediate action to reduce pollution, the world may hit that grim milestone in just 10 years. Over the long term, if the world continues on its current polluting path, the world will warm more than double that amount, risking catastrophes humanity has never had to confront. The window to chart a new course is rapidly closing. And the world’s “last, best chance” to take decisive collective action is less than a month away, as John Kerry, who serves as President Biden’s climate envoy, has said. In early November, world governments will gather in Glasgow for the United Nations climate conference, COP26. Following up on the Paris climate accord, countries will pledge more ambitious pollution targets and tackle the challenge of financing a worldwide transition to clean energy. The US bears the most responsibility of any country for global warming, having released 20 percent of the world’s greenhouse pollution since 1850. Today, the country ranks second in emissions behind China. But the US also has the power to magnify its impact if it leads by example, or if it flexes its influence on the global economic system, for example by affecting global prices of fossil fuels by ending government subsidies. Climate experts say progress at the COP26 conference depends on the United States proving it can do its part, for symbolic as well as practical reasons. This is the first year the US officially returns to global negotiations after former President Donald Trump withdrew the country from the Paris climate accord. Now, Biden has to lead by example by showing that the country can swiftly change direction for good, demonstrating progress on its national pledge of cutting emissions 50 to 52 percent by 2030. “There is this sense of exhaustion about how long is it going to take for one of the biggest emitters in the world to do its fair share,” said Rachel Cleetus, the clean energy policy director at the Union of Concerned Scientists. It’s unclear whether Congress will deliver on climate-change legislation by the time the international community meets in Glasgow. But any steps forward would send “a very important signal that can really help catalyze more ambition from other countries,” Cleetus said.

## Case

### Advantage 1

#### 1] Pharma innovation high now – monetary incentive is the biggest factor.

**Swagel 21** Phillip L. Swagel, Director of the Congressional budget office 4-xx-2021, "Research and Development in the Pharmaceutical Industry," Congressional Budget Office, <https://www.cbo.goc/publication/57126#_idTextAnchor020> SJ//DA

**Every year, the U.S. pharmaceutical industry develops a variety of new drugs that provide valuable medical benefits. Many of those drugs are expensive and contribute to rising health care costs for the private sector and the federal government. Policymakers have considered policies that would lower drug prices and reduce federal drug expenditures. Such policies would probably reduce the industry’s incentive to develop new drugs.** In this report, the Congressional Budget Office assesses trends in spending for drug research and development (R&D) and the introduction of new drugs. CBO also examines factors that determine how much drug companies spend on R&D: expected global revenues from a new drug; cost to develop a new drug; and federal policies that affect the demand for drug therapies, the supply of new drugs, or both. What Are Recent Trends in Pharmaceutical R&D and New Drug Approvals? T**he pharmaceutical industry devoted $83 billion to R&D expenditures in 2019. Those expenditures covered a variety of activities, including discovering and testing new drugs, developing incremental innovations such as product extensions, and clinical testing for safety-monitoring or marketing purposes. That amount is about 10 times what the industry spent per year in the 1980s, after adjusting for the effects of inflation.** The share of revenues that drug companies devote to R&D has also grown: **On average, pharmaceutical companies spent about one-quarter of their revenues (net of expenses and buyer rebates) on R&D expenses** in 2019, which is **almost twice as large a share of revenues as they spent in 2000.** That revenue share is larger than that for other knowledge-based industries, such as semiconductors, technology hardware, and software. The number of new drugs approved each year has also grown over the past decade. On averace, the Food and Drug Administration (FDA) approved 38 new drugs per year from 2010 through 2019 (with a peak of 59 in 2018), which is 60 percent more than the yearly average over the previous decade. **Many of the drugs that have been approved in recent years are “specialty drugs.” Specialty drugs generally treat chronic, complex, or rare conditions, and they may also require special handling or monitoring of patients**. Many specialty drugs are biologics (large-molecule drugs based on living cell lines), **which are costly to develop, hard to imitate, and frequently have high prices.** Previously, most drugs were small-molecule drugs based on chemical compounds. Even while they were under patent, those drugs had lower prices than recent specialty drugs have. Information about the kinds of drugs in current clinical trials indicates that much of the industry’s innovative activity is focused on specialty drugs that would provide new cancer therapies and treatments for nervous-system disorders, such as Alzheimer’s disease and Parkinson’s disease. **What Factors Influence Spending for R&D?** Drug companies’ R&D spending decisions depend on three main factors: Anticipated lifetime global revenues from a new drug, **Expected costs to develop a new drug**, and Policies and programs that influence the supply of and demand for prescription drugs. Various considerations inform companies’ expectations about a drug’s revenue stream, including the anticipated prices it could command in different markets around the world and the expected global sales volume at those prices (given the number of people who might use the drug). The prices and sales volumes of existing drugs provide information about consumers’ and insurance plans’ willingness to pay for drug treatments. Importantly, when drug companies set the prices of a new drug, they do so to maximize future revenues net of manufacturing and distribution costs. A drug’s sunk R&D costs—that is, the costs already incurred in developing that drug—do not influence its price. **Developing new drugs is a costly and uncertain process, and many potential drugs never make it to market. Only about 12 percent of drugs entering clinical trials are ultimately approved for introduction by the FDA. In recent studies, estimates of the average R&D cost per new drug range from less than $1 billion to more than $2 billion per drug**. Those estimates include the costs of both laboratory research and clinical trials of successful new drugs as well as expenditures on drugs that do not make it past the laboratory-development stage, that enter clinical trials but fail in those trials or are withdrawn by the drugmaker for business reasons, or that are not approved by the FDA. Those estimates also include the company’s capital costs—the value of other forgone investments—incurred during the R&D process. Such costs can make up a substantial share of the average total cost of developing a new drug. The development process often takes a decade or more, and during that time the company does not receive a financial return on its investment in developing that drug. The federal government affects R&D decisions in three ways. First, it increases demand for prescription drugs, which encourages new drug development, by fully or partially subsidizing the purchase of prescription drugs through a variety of federal programs (including Medicare and Medicaid) and by providing tax preferences for employment-based health insurance. Second, the federal government increases the supply of new drugs. It funds basic biomedical research that provides a scientific foundation for the development of new drugs by private industry. Additionally, tax credits—both those available to all types of companies and those available to drug companies for developing treatmentscof uncommon diseases—provide incentives to invest in R&D. Similarly, deductions for R&D investment can be used to reduce tax liabilities immediately rather than over the life of that investment. Finally, the patent system and certain statutory provisions that delay FDA approval of generic drugs provide pharmaceutical companies with a period of market exclusivity, when competition is legally restricted. During that time, they can maintain higher prices on a patented product than they otherwise could, which makes new drugs more profitable and thereby increases drug companies’ incentives to invest in R&D. Third, some federal policies affect the number of new drugs by influencing both demand and supply. For example, federal recommendations for specific vaccines increase the demand for those vaccines and provide an incentive for drug companies to develop new ones. Additionally, federal regulatory policies that influence returns on drug R&D can bring about increases or decreases in both the supply of and demand for new drugs. Trends in R&D Spending and New Drug Development Private spending on pharmaceutical R&D and the approval of new drugs have both increased markedly in recent years, resuming a decades-long trend that was interrupted in 2008 as generic versions of some top-selling drugs became available and as the 2007–2009 recession occurred. **In particular, spending on drug R&D increased by nearly 50 percent between 2015 and 2019.** Many of the drugs approved in recent years are high-priced specialty drugs for relatively small numbers of potential patients. By contrast, the top-selling drugs of the 1990s were lower-cost drugs with large patient populations. R&D Spending R&D spending in the pharmaceutical industry covers a variety of activities, including the following: Invention, or research and discovery of new drugs; Development, or clinical testing, preparation and submission of applications for FDA approval, and design of production processes for new drugs; Incremental innovation, including the development of new dosages and delivery mechanisms for existing drugs and the testing of those drugs for additional indications; Product differentiation, or the clinical testing of a new drug against an existing rival drug to show that the new drug is superior; and Safety monitoring, or clinical trials (conducted after a drug has reached the market) that the FDA may require to detect side effects that may not have been observed in shorter trials when the drug was in development. In real terms**, private investment in drug R&D among member firms of the Pharmaceutical Research and Manufacturers of America (PhRMA), an industry trade association, was about $83 billion in 2019, up from about $5 billion in 1980 and $38 billion in 2000**.1 Although those spending totals do not include spending by many smaller drug companies that do not belong to PhRMA, the trend is broadly representative of R&D spending by the industry as a whole.2 A survey of all U.S. pharmaceutical R&D spending (including that of smaller firms) by the National Science Foundation (NSF) reveals similar trends.3 Although total R&D spending by all drug companies has trended upward, small and large firms generally focus on different R&D activities. **Small companies not in PhRMA devote a greater share of their research to developing and testing new drugs,** many of which are ultimately sold to larger firms (see Box 1). By contrast, a greater portion of the R&D spending of larger drug companies (including those in PhRMA) is devoted to conducting clinical trials, developing incremental “line extension” improvements (such as new dosages or delivery systems, or new combinations of two or more existing drugs), and conducting postapproval testing for safety-monitoring or marketing purposes.

#### PFAD--1] 22% of new drugs being innovative is a lot 2] its not a q of percentage but actual number--even if its more old than new theres still a lot of new medicines being created

#### 3] No disease extinction.

**Barratt 17** (Owen Cotton-Barratt 17, et al, PhD in Pure Mathematics, Oxford, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute, 2/3/2017, Existential Risk: Diplomacy and Governance, https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf)

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### Their ev just says that it will be worse than COVID not incurable and no warrant for why mediicnes won’t be timely.

#### 4] It's illegal to extend a patent on the same drug—only new compounds can be patented

**Holman 2020** (Christopher, Professor of Law, University of Missouri-Kansas City School of Law; J.D., University of California, Berkeley; Ph.D., University of California, Davis “Congress should decline ill-advised legislative proposals aimed at evergreening of pharmaceutical patent protection” *University of the Pacific Law Review*, 51(3), 493-524)DR 21

When critics of the pharmaceutical industry initially began talking about "evergreening," the discussion often seemed to imply that pharmaceutical companies were literally re-patenting the same product. However, those more familiar with patent law have responded by pointing out that, as a general matter, pharmaceutical companies are not simply re-patenting a product, and that various doctrines of patent law work in conjunction to prevent a company from obtaining new patents on a product that is **already on the market**. For example, at a May 7 Congressional Hearing entitled Intellectual Property and the Price of Prescription Drugs: Balancing Innovation and Competition, Professor David Olson of the Boston College Law School explained to lawmakers that:

It is axiomatic patent law doctrine that a later-filed patent (other than a continuation) cannot cover an earlier invention. Thus, no patent that covers an earlier composition or biologic is valid. To the extent that a patent owner says that a later-filed patent, with a later priority date and expiration date covers the same subject matter as an earlier-filed patent, that person is plainly wrong .... New patents can be filed on different formulations of a previous drug, on different manufacturing processes, and on new uses of previous drugs. Although some may call this "evergreening," new uses of drugs and new ways of producing them are the kinds of innovations that the patent system is designed to encourage. It would be a very significant change in patent law to change the law to not allow these kinds of patents in the pharmaceutical field.

If, on the other hand, a patent owner files new method patents and then asserts that a competitor cannot make the originally-claimed drug without infringing the new method, **the new patent** is either **invalid** or being asserted too broadly. If the patent owner uses trade secret methods to produce its drug, and later seeks to patent those trade secret methods, then the patent owner is seeking an invalid patent and can be liable for fraud on the patent office if the patent owner did not disclose that the method was used as a trade secret for more than a year before filing. 9

#### 6 No extinction from pandemics

* Death rates as high as 50% didn’t collapse civilization
* Fossil fuel record caps risk at .1% per century
* health, sanitation, medicine, science, public health bodies, solve
* viruses can’t survive in all locations
* refugee populations like tribes, remote researchers, submarine crews, solve

Ord 20 Ord, Toby. Toby David Godfrey Ord (born 18 July 1979) is an Australian philosopher. He founded Giving What We Can, an international society whose members pledge to donate at least 10% of their income to effective charities and is a key figure in the effective altruism movement, which promotes using reason and evidence to help the lives of others as much as possible.[3] He is a Senior Research Fellow at the University of Oxford's Future of Humanity Institute, where his work is focused on existential risk. BA in Phil and Comp Sci from Melbourne, BPhil in Phil from Oxford, PhD in Phil from Oxford. The precipice: existential risk and the future of humanity. Hachette Books, 2020.

Are we safe now from events like this? Or are we more vulnerable? Could a pandemic threaten humanity’s future?10 The Black Death was not the only biological disaster to scar human history. It was not even the only great bubonic plague. In 541 CE the Plague of Justinian struck the Byzantine Empire. Over three years it took the lives of roughly 3 percent of the world’s people.11 When Europeans reached the Americas in 1492, the two populations exposed each other to completely novel diseases. Over thousands of years each population had built up resistance to their own set of diseases, but were extremely susceptible to the others. The American peoples got by far the worse end of exchange, through diseases such as measles, influenza and especially smallpox. During the next hundred years a combination of invasion and disease took an immense toll—one whose scale may never be known, due to great uncertainty about the size of the pre-existing population. We can’t rule out the loss of more than 90 percent of the population of the Americas during that century, though the number could also be much lower.12 And it is very difficult to tease out how much of this should be attributed to war and occupation, rather than disease. As a rough upper bound, the Columbian exchange may have killed as many as 10 percent of the world’s people.13 Centuries later, the world had become so interconnected that a truly global pandemic was possible. Near the end of the First World War, a devastating strain of influenza (known as the 1918 flu or Spanish Flu) spread to six continents, and even remote Pacific islands. At least a third of the world’s population were infected and 3 to 6 percent were killed.14 This death toll outstripped that of the First World War, and possibly both World Wars combined. Yet even events like these fall short of being a threat to humanity’s longterm potential.15 In the great bubonic plagues we saw civilization in the affected areas falter, but recover. The regional 25 to 50 percent death rate was not enough to precipitate a continent-wide collapse of civilization. It changed the relative fortunes of empires, and may have altered the course of history substantially, but if anything, it gives us reason to believe that human civilization is likely to make it through future events with similar death rates, even if they were global in scale. The 1918 flu pandemic was remarkable in having very little apparent effect on the world’s development despite its global reach. It looks like it was lost in the wake of the First World War, which despite a smaller death toll, seems to have had a much larger effect on the course of history.16 It is less clear what lesson to draw from the Columbian exchange due to our lack of good records and its mix of causes. Pandemics were clearly a part of what led to a regional collapse of civilization, but we don’t know whether this would have occurred had it not been for the accompanying violence and imperial rule. The strongest case against existential risk from natural pandemics is the fossil record argument from Chapter 3. Extinction risk from natural causes above 0.1 percent per century is incompatible with the evidence of how long humanity and similar species have lasted. But this argument only works where the risk to humanity now is similar or lower than the longterm levels. For most risks this is clearly true, but not for pandemics. We have done many things to exacerbate the risk: some that could make pandemics more likely to occur, and some that could increase their damage. Thus even “natural” pandemics should be seen as a partly anthropogenic risk. Our population now is a thousand times greater than over most of human history, so there are vastly more opportunities for new human diseases to originate.17 And our farming practices have created vast numbers of animals living in unhealthy conditions within close proximity to humans. This increases the risk, as many major diseases originate in animals before crossing over to humans. Examples include HIV (chimpanzees), Ebola (bats), SARS (probably bats) and influenza (usually pigs or birds).18 Evidence suggests that diseases are crossing over into human populations from animals at an increasing rate.19 Modern civilization may also make it much easier for a pandemic to spread. The higher density of people living together in cities increases the number of people each of us may infect. Rapid long-distance transport greatly increases the distance pathogens can spread, reducing the degrees of separation between any two people. Moreover, we are no longer divided into isolated populations as we were for most of the last 10,000 years.20 Together these effects suggest that we might expect more new pandemics, for them to spread more quickly, and to reach a higher percentage of the world’s people. But we have also changed the world in ways that offer protection. We have a healthier population; improved sanitation and hygiene; preventative and curative medicine; and a scientific understanding of disease. Perhaps most importantly, we have public health bodies to facilitate global communication and coordination in the face of new outbreaks.

### Advantage 2

#### 1] Secondary patents solves drug prices --- the improvement might be patented but generics of the original compound become incredibly cheap

**Holman 2016** (Christopher, Professor of Law, University of Missouri-Kansas City School of Law; J.D., University of California, Berkeley; Ph.D., University of California, Davis. “IN DEFENSE OF SECONDARY PHARMACEUTICAL PATENTS: A RESPONSE TO THE UN’S GUIDELINES FOR PHARMACEUTICAL PATENT EXAMINATION” *Indiana Law Review* 50, 2016)DR 21

Rather than the blanket presumption against patents on new formulations endorsed by the Guidelines, which would tend to deny patent protection for both minor improvements and highly significant improvements, the needs of patients would be better served if the market and the judgment of patients and healthcare providers were allowed to determine the value of a new formulation on an existing drug. If the improvement is of such significance that it justifies a substantial cost premium, then society has benefited from the development of this improved mode of drug delivery, and payment of the premium is justified, in the same way that it is by development of a therapeutically useful new active ingredient. If the improvement is nominal, then payers should refuse to pay the premium, which they can do by simply purchasing the original formulation from generic companies at a discounted price. If there are market inefficiencies that somehow induce payers to pay the premium even though the improvement is minimal, then those market inefficiencies should be addressed, rather than attempting to address it by changing the standard for patentability in a discriminatory manner that targets specific categories of inventions.

#### 2] Econ decline doesn’t cause war

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

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself. The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term. To be sure, I can’t rule out another powerful cause of war—stupidity—especially when it is so much in evidence in some quarters these days. So there is no guarantee that we won’t see misguided leaders stumbling into another foolish bloodletting. But given that it’s hard to find any rays of sunshine at this particular moment in history, I’m going to hope I’m right about this one.