### 1AC – Contention 1

#### We got lucky with COVID – future pandemics will be much worse and existing provisions in TRIPs are not used --- the status quo can’t solve.

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A proponent of IP protections may insist TRIPS already includes built-in exceptions adequate to the task. Article 31 grants governments rights to issue licenses for using a patent during the patent term without a patent holder’s consent. This exception was used 144 times between 2001 and 2016 to create flexibilities for 89 countries.29 In 2017, it was extended to allow licensed countries to export products to countries that lack production capacity. Isn’t that enough?

In reply, Article 31 will not take us very far. While useful for some applications, it is cumbersome. For example, for pharmaceutical products, after applying for an exception, exporting countries must prove products go only to destination nations, are readily identifiable based on variations of colour or shape, and include only product necessary to meet requirements of an eligible country; importing nations must notify the TRIPS

council of receipt. Fulfilling these requirements would needlessly delay the vital task of vaccinating the world.

Finally, critics might point to the case of Moderna, which voluntarily pledged (in October 2020) not to enforce its patents during the pandemic. Since companies have not lined up to produce Moderna’s vaccine, doesn’t that show the ineptitude of temporary waivers? In reply, a single pledge by a single company is a start, but insufficient to catalyse the global changes needed. In conclusion, loosening the grip of IP protections is not a miracle fix, and there are many other barriers to a safer world. This paper filled a gap in current debates about IP protections for COVID-19 vaccines by focusing on ethics. In the final analysis, a temporary waiver of IP protections is the world’s best bet.

#### Developing countries need assistance – it’s time for the U.S. to step up to the plate and do its job

Stone 21 – Judy Stone is an Infectious Disease specialist; “Covid Vaccine Equity - Developing Countries Need Our Help”; Forbes, May 11, 2021; <https://www.forbes.com/sites/judystone/2021/05/11/vaccine-equitydeveloping-countries-need-our-help/?sh=10939a363ec8> //advay

A few months ago India was doing relatively well and the U.S. was getting crushed by a devastating second Covid-19 wave. Now it’s the reverse. Public health measures were implemented too sporadically (U.S.) and reversed too quickly (both), with predictable results. While the U.S. is beginning to focus attention on the growing catastrophe in India, not enough attention is being given to other areas in the region. Countries like Bangladesh, Nepal, Pakistan, Laos and others in the region may soon be matching the explosive growth of Covid in India. Nepal is one of the poorest countries. Although it has a population of 30 million people, there are only 1595 ICU beds and 480 ventilators throughout the entire country. (This is not much less than in India, at ~1 ICU bed/19,000, but the US has ~1/3800). There are only 80 physicians per 100,000 people, compared to 93 per 100,000 in India or 259 per 100,000 in the US. With a 50% positivity rate for Covid testing, how long do you think those few beds and limited healthcare will last before being completely overwhelmed. Cases in Nepal have increased by 1,645% in the past month. Thailand had a similar rate of increase, with most of their cases being the U.K. variant B.1.1.7, which is known to be more transmissible. Part of the problem in Nepal is that its Prime Minister, Oli, like India’s PM Modi, and Donald Trump had allowed religious festivals and large political gatherings to continue as politically expedient, at the expense of public health and safety. Heavily reliant on tourism to support its economy, Mount Everest has been opened to climbers; there have been outbreaks reported from the base camp although the government has denied this. And much as our former president recommended injecting bleach, PM Oli has reportedly suggested gargling with guava leaves, which is at least less immediately hazardous, although still as useless as treatment. This uncontrolled pandemic will endanger us all by increasing the likelihood of further mutations emerging and spreading globally. India has a new “variant of interest,” called B.1.617⁠, which is also spread more rapidly. The South African variant, B.1.351, is also circulating in India, along with the UK’s B.1.1.7⁠. This—and the huge number of cases—are what prompted the US to ban travel from India. One of the problems in the region is that India’s Serum Institute was to supply much of the area with vaccines. Instead, India is desperate, unable to meet its own country’s needs, and has banned the export of vaccines. Nepal has instead turned to China and Russia, who are engaging in vaccine diplomacy who are donating supplies while the US has been sitting on the sidelines.

#### It’s not too late---COVID will continue across the developing worlds for years to come. Plus, the plan helps for black swan future pandemics.

Brink **Lindsey 21**. Vice President, Niskanen Center; Writes for Brookings, “Why Intellectual Property and Pandemics Don’t Mix,” Brookings, June 3, 2021, <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/>, RJP, **DebateDrills**.

Although focusing on these immediate constraints is vital, we cannot confine our attention to the short term. First of all, the COVID-19 pandemic is far from over. Although Americans can now see the light at the end of the tunnel thanks to the rapid rollout of vaccines, most of the world isn’t so lucky. The virus is [currently raging in India and throughout South America](https://www.nytimes.com/interactive/2021/world/covid-cases.html), overwhelming health care systems and inflicting suffering and loss on a horrific scale. And consider the fact that Australia, which has been successful in suppressing the virus, recently announced it was sticking to plans to keep its borders closed until mid-2022. Criticisms of the TRIPS waiver that focus only on the next few months are therefore short-sighted: this pandemic could well drag on long enough for elimination of patent restrictions to enable new vaccine producers to make a positive difference.

Furthermore, and probably even more important, this is almost certainly not the last pandemic we will face. Urbanization, the spread of factory-farming methods, and globalization all combine to increase the odds that a new virus will make the jump from animals to humans and then spread rapidly around the world. Prior to the current pandemic, the 21st century already saw outbreaks of SARS, H1N1, MERS, and Ebola. Everything we do and learn in the current crisis should be viewed from the perspective of getting ready for next time.

#### A temporary waiver is sufficient---it creates momentum for America to repeat against harsher future pandemics which spills over

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The extraordinary circumstances of a global pandemic demand more than minimal or even moderate social responsibility. Everyone in a position to help must show the high degree of social responsibility the moment calls for. Governments, especially in wealthy nations, should stand up to influence peddling by pharmaceutical companies,26 and should do their part, beginning with WTO members voting for a temporary waiver to IP protections for COVID-19 vaccines.

Against our proposal it might be claimed a temporary waiver is not enough. Manufacturing COVID-19 vaccines requires technical know-how, technology, raw materials and equipment, which are lacking in many LMICs. Pfizer, for example, says its vaccine requires 280 components from 86 suppliers in 19 countries, along with specialised equipment and trained personnel.27 Since it takes more than simply waiving IP to vaccinate the world, what good is a temporary waiver?

In response, we agree temporarily losing the right to exclude companies from manufacturing vaccines is not enough. However, it can help break the logjam, creating a climate favourable to investment, since it removes the threat of being sued or prosecuted. Expedient investment strategies should focus on developing and repurposing existing capacities; Guzman notes that some middle-income countries are already producing COVID-19 vaccines, and some manufacturers in LMICs are already able to manufacture viral vector vaccines, such as AstraZeneca’s, and to contribute to the fill-and-finish stage of vaccine production.28

#### Future pandemics at 10x more deadly – absent a solution we’re all going to die

Ceballos 5/27 Gerardo Ceballos [PhD, Dr Gerardo Ceballos is an ecologist and conservationist at the Universidad Nacional Autonoma de Mexico. He is particularly recognized for his influential work on global patterns of distribution of diversity, endemism, and extinction risk in vertebrates. He is also well-known for his contribution to understanding the magnitude and impacts of the sixth mass extinction.], 5/27/21, “THE SIXTH MASS EXTINCTION AND THE FUTURE OF HUMANITY”, Population Matters, <https://populationmatters.org/news/2021/05/sixth-mass-extinction-and-future-humanity> DD AG

Somewhere, sometime in late 2019, a coronavirus from a wild species, perhaps a bat or a pangolin, infected a human in China. This could have been an obscure event, lost without trace in the annals of history, as it is very likely this has occurred many times in the last centuries. But this particular event was somehow different. The coronavirus became an epidemic first and a pandemic later. Covid-19 became the worst pandemic since the Spanish flu in 1918. The horrific human suffering it has caused, and its economic, social and political impacts, are still unraveling.

The reason Covid-19 and more than forty other very dangerous viruses, such as Lassa fever, HIV and Ebola, have jumped from wild animals to humans in the last four decades is the destruction of natural environments and the trafficking and consumption of wild animals.

The wildlife trade is to satisfy the insatiable and extravagant demand for these species in the Asian market, in countries such as China, Vietnam and Indonesia. The illegal wildlife trade is a gigantic business. It is as lucrative as the drug trade, but without the legal implications. The immense appetite of China and other Asian societies for exotic animals has promoted exponential growth in trade and profits. Wild and domestic animals sold in “wet markets” are kept in unsanitary and unethical conditions. There, feces, urine and food waste from cages at the top spill into cages at the bottom, creating the perfect conditions for viruses to leap from wild animals to domestic animals and humans. Thousands of wildlife species or their products are traded annually.

Wildlife trade is one of several human impacts, including habitat loss and fragmentation, pollution, toxification and invasive species, that have caused the extinction of thousands of species and threaten many more. Indeed, most people are unaware that the current extinction crisis is unprecedented in human history. Extinction occurs when the last individual of a species dies. The UN recently estimated that one million species, such as the panda, the orangutan and the Sumatran rhino, are at risk of extinction.

The second finding is that population extinctions, which are the prelude to species extinctions, are occurring at very fast rates (Ceballos et al., 2017). Around 32 percent of a sample of 27,000 species have declining populations and have experienced massive geographic range contractions. Population extinctions are a very severe and widespread environmental problem which we have called “Biological Annihilation”.

Finally, our third finding indicates that the magnitude of the extinction crisis is underestimated because there are thousands of species on the brink of extinction (Ceballos et al., 2020). Those species will likely become extinct in the near future unless a massive conservation effort is launched soon.

Many times, people have asked me why we should care about the loss of a species. There are ethical, moral, philosophical, religious and other reasons to be concerned. But perhaps the one that is most tangible for most people is the loss of ecosystem services, which are the benefits that humans derive from the proper function of nature. Ecosystem services include the proper mix of gases in the atmosphere that support life on Earth, the quantity and quality of water, pollination of wild crops and plants, fertilization of the soil, and protection against emerging pests and diseases, among many others. Every time a species is lost, ecosystem services are likely to erode and human well-being is reduced.

The loss of so many ecosystems and species is pushing us towards the point of collapse of civilization. The good news is that there is still time to reduce the current extinction crisis. The species and ecosystems that we manage to save in the next 10 – 15 years will define the future of biodiversity and civilization. What it is at stake is the future of mankind.

### 1AC – Contention 2

#### It’s all up to Biden – currently we’re failing to meet ends for other nations because Biden’s too lazy to pick up a pen and sign an order to waive IP

AELP et. al 21 – American Economic Liberties Project, Center for Economic and Policy Research, Consumer Action, Debt Collective, Democracy For America, Demand Progress Education Fund, Electronic Frontier Foundation, The Freedom BLOC, Greenpeace US, Indivisible, Open Markets Institute, People’s Parity Project, Project Blueprint, Revolving Door Project, Social Security Works – this is aoncsorituium of orgs fighting for the waiver via executive power; “Copy of RDP IP and vaccines letter 3.0”; April 19, 2021; <https://www.eff.org/files/2021/04/28/zients_ip_and_vaccines_letter_4-19-21.pdf> //advay

While the U.S. is nearing the end of its own COVID-19 pandemic, the world at large will still need access to this technology for years to come: current estimates hold that developing-world countries may be unable to secure vaccines for their own populations until 2023 3 , and developed-world populations may need supplemental vaccines and boosters to inoculate against new COVID-19 strains in as little as a few months. Moreover, the more people worldwide remain unvaccinated, and thus susceptible to current COVID-19 strains, the more opportunities the virus has to mutate, only accelerating these cycles of vaccine need worldwide. In other words, so long as the technology needed to produce COVID-19 vaccines remains solely in the hands of private, for-profit entities, who have a strong interest in restricting access to extract better terms, the world will constantly face waves of the crushing supply shortages that have defined American life for the past several months — all for no reason other than private firms jealously guarding the requisite technology. The administration has tools to prevent such artificial supply shortages both abroad and at home, yet it has thus far failed to mobilize them. Indeed, the conditions which enable manufacturers like Pfizer, Moderna, and Johnson & Johnson to force the entire world into dependence on their for-profit deployment of vaccine creation technologies are driven largely by one aspect of our medicinal supply chain over which the federal government has enormous power: the granting of intellectual property protections, including patents, copyrights, trade secret protections, and more. We know that voices within the administration have advocated for robust action to use intellectual property policy for the public interest as it pertains to COVID-19 vaccines. We strongly urge you to not only heed those voices, but to use the various executive powers available to the administration to undo the power of intellectual property in the American pharmaceutical industry as maximally as possible. As a general guiding policy principal, public health must be prioritized ahead of the interests of those who ostensibly own intellectual property, both now and in the future, in both appointments and concrete actions. This must begin with COVID-19 vaccines, starting immediately by supporting action in the World Trade Organization to waive requirements under the TRIPS Agreement, and continuing to use

#### An executive order of the TRIPs waiver on the U.S. solves – avoids the slow process of congress and strengthens executive power

AELP et. al 2021 – American Economic Liberties Project, Center for Economic and Policy Research, Consumer Action, Debt Collective, Democracy For America, Demand Progress Education Fund, Electronic Frontier Foundation, The Freedom BLOC, Greenpeace US, Indivisible, Open Markets Institute, People’s Parity Project, Project Blueprint, Revolving Door Project, Social Security Works – this is aoncsorituium of orgs fighting for the waiver via executive power; “Copy of RDP IP and vaccines letter 3.0”; April 19, 2021; <https://www.eff.org/files/2021/04/28/zients_ip_and_vaccines_letter_4-19-21.pdf> //advay

March-in Rights Under The Bayh-Dole Act

While U.S. support of a TRIPS waiver at the WTO is necessary to free the existing COVID-19 vaccines from intellectual property protections, the United States federal government must still enact domestic policy to carry out the waiver’s intent. Thankfully, there are measures under American law to waive at least some of the requisite intellectual property rights through existing executive power. Under the Bayh-Dole Act of 1980, a federal agency which provided funding toward the creation of an invention — such as a vaccine — can require the invention’s patent-holder to grant licenses to responsible applicants. Two of the three COVID-19 vaccines currently in use in the U.S. were created in part thanks to $13 billion worth of government-sponsored research under Operation Warp Speed, and previous vaccine related investments totalling $17.2 billion prior to 2020. 11 The Bayh-Dole Act narrowly allows forced licensing of patented technologies, but has no power over other forms of intellectual property, such as copyrights or trade secrets. Still, it is a powerful tool that has gone underutilized even since the Bayh-Dole Act’s passage in 1980, most especially in the field of pharmaceuticals. Where COVID-19 vaccine-related technologies that were developed through government funding are specifically patented, and not protected through other forms of intellectual property, the administration must utilize these provisions of the Bayh-Dole Act immediately. However, the Bayh-Dole Act provisions — known as “march-in rights” — is now imperiled by a late-Trump era rulemaking process. The National Institute of Standards and Technology (NIST) recently concluded its comment period on a rulemaking process that would narrow interpretation of the Bayh-Dole Act to eliminate march-in rights on drug patents. 12 The technical provision being addressed is a rule change to interpret a requirement that the subject inventions be made “available to the public on reasonable terms” to preclude price as allowable grounds for march-in, no matter how unreasonable or extortionate such pricing might be and no matter how much the government had de-risked research & development and even clinical trials. NIST is under no obligation to proceed with enacting the rule after the comment period closes. If NIST Acting Director Dr. James Olthoff does not affirmatively commit to refusing further activity on the Trump-era rule, the administration must immediately replace him. In fact, the U.S. should reverse course 180 degrees and adopt a new regulation clarifying that unreasonable pricing provides legitimate grounds for march-in. This ahistorical rule would ignore the clear arguments in favor of march-in rights over drug prices at the time of Bayh-Dole’s passing. 13 The only beneficiaries of such a rule would be multibillion-dollar pharmaceutical corporations. Average Americans, moreover, would lose access to one of the federal government’s strongest potential tools for curbing the price of prescription drugs and medications, which is a priority for the President. Section 1498 Powers The federal government can also invoke 28 USC § 1498, also known as Section 1498, to pay patent holders for immediate use of patented technologies. This statute has been used during both world wars, and in the aftermath of 9/11, 14 so its usage during a time of global crisis is unquestioned. Thus, it can and should be used during the COVID-19 crisis to pay for immediate usage of patented vaccine technologies, where applicable. Moreover, nothing requires Section 1498 to solely be used during discrete national emergencies. Using Section 1498 would directly save lives at home and abroad, and it merely requires some discretionary funding and a Presidential signature. Personnel And Intellectual Property The COVID-19 pandemic had powerfully demonstrated how the artificial constraints of intellectual property can drive public health outcomes that lead to unnecessary loss of life, solely for the sake of the institutional, competitive interests of pharmaceutical firms. These outcomes are immoral, antithetical to the strategic and diplomatic interests of the United States, and in part avoidable by merely exerting existing executive-branch powers. Thus, we call on the administration to consider the lessons of the COVID-19 pandemic when nominating appointees to intellectual property-related positions across the federal executive branch, most especially for the Director of the Patent and Trademark Office, the Director of the National Institute of Standards and Technology, and the Commissioner of Food and Drugs. We urge you and all Biden administration officials to use maximally the executive branch’s existing powers to undo the power of intellectual property provisions in responding to the COVID-19 pandemic, whilst looking in the long-term at ways of rethinking and reorganizing IP rights in the pharmaceutical industry altogether, especially through existing executive-branch powers.

#### Biden’s exec power key now – solves climate action, fopo, immigration, racism, Trumpism, etc.

Posner 21 – Eric Posner, a professor at the University of Chicago Law School, is the author of, most recently, “The Demagogue’s Playbook: The Battle for American Democracy From the Founders to Trump.”; “Why Joe Biden Must Not Shy Away From the Full Power of the Presidency”; Jan. 21, 2021; <https://www.nytimes.com/2021/01/21/opinion/joe-biden-executive-power.html> //advay

The Biden administration has signaled an ambitious legislative agenda, including plans to reform immigration, stimulate the economy and strengthen the federal Covid-19 response. Mr. Biden, who was a senator for most of his political career, respects Congress and has emphasized the importance of acting through it. During the presidential campaign, he was not shy about criticizing then-President Donald Trump for abusing his executive authority. Mr. Biden is not alone: Many Democrats think that a lesson of the Trump years, culminating in the siege of the Capitol, is that presidential power needs to be curtailed. Power that has accreted to the presidency over the years should be transferred back to Congress. Executive branch agencies, above all the Justice Department, should enjoy more autonomy. Oversight of the presidency should be strengthened. Only with such reforms can we be sure that future presidents will not abuse their powers. This discomfort with the “imperial presidency,” as the historian Arthur Schlesinger Jr. called it, is not new. Liberals have worried about an excessively powerful presidency since at least Richard Nixon. But Democrats should be careful what they wish for. While undoubtedly many reforms of the presidency are overdue — including elements of the Protecting Our Democracy Act, which would increase congressional oversight and reduce conflicts of interest — a weakened presidency would hamper national governance, and Democratic policies in particular. Consider, for example, climate regulation. When the Democrats controlled the presidency and both houses of Congress in 2009, the American Clean Energy and Security Act (also called the Waxman-Markey bill), which would have reduced greenhouse gas emissions, was blocked by the Senate. Yet a great deal of progress was made on climate regulation during President Barack Obama’s terms. The reason is that he unilaterally implemented climate regulations, drawing largely on authority to regulate pollution granted to the Environmental Protection Agency by the Clean Air Act of 1970. Mr. Biden will want to advance the climate agenda by expanding and strengthening these regulations.

Another urgent issue is immigration. In 2010, Congress debated the Dream Act, which would have granted legal status to people who entered the country illegally as children. Again, the Senate blocked the bill. Mr. Obama subsequently granted protections to so-called Dreamers, using his unilateral authority under the immigration laws. Mr. Biden has proposed an ambitious immigration reform to Congress, but legislation might take months or years — or, as has happened so often, it might never pass. He is using his unilateral authority to reverse the travel ban against certain countries and other Trump-era executive actions that burdened undocumented immigrants and other foreigners, but if legislation fails, he might do more with his executive authority to make progress on his immigration goals. Mr. Obama enjoyed two major legislative successes: the Dodd-Frank Act, which strengthened financial regulation, and the Affordable Care Act, which subsidized health insurance. But when changes were needed for both laws to correct technical errors, Congress balked. Mr. Obama kept the laws alive through unilateral actions, some of them on the boundary of legality. True, when Mr. Trump took power, he reversed some of Mr. Obama’s unilateral actions, causing damage to the environment, the immigration system, health insurance and financial regulation. He also used his unilateral powers to unleash a destructive trade war. But the point is that now, with Mr. Biden in the Oval Office, it will be difficult — if not impossible — to reverse Mr. Trump’s reversals unless Mr. Biden has the same powers to engage in unilateral action that Mr. Trump, Mr. Obama and earlier presidents enjoyed.

Liberals also complain there are too many emergency statutes, which give the president enhanced powers to implement programs based on a declaration of emergency that is mostly unreviewable by courts. And yet a major complaint against Mr. Trump was that he failed to fully use his emergency powers to address the Covid-19 pandemic; he could have, for example, increased restrictions on movement to help curtail the contagion and done more to help states buy protective equipment and to distribute vaccines. For Mr. Biden to follow through on his plan to formulate a more aggressive response to the pandemic, he will need to rely on the emergency powers that Mr. Trump disregarded. Mr. Biden will accomplish little if he cannot use the president’s traditional unilateral powers to the same extent that Mr. Trump did. The Democratic margin in the Senate — zero — is too slim for Mr. Biden to push ambitious laws through Congress, which is balky and slow even when majorities in both houses are broadly in agreement with the president. But of even greater significance, Democrats should understand that because of the structure of the U.S. constitutional system, they benefit from a powerful presidency more than Republicans do. It’s not just that Congress by its nature moves slowly and gets little done, which often suits Republicans just fine, as they tend to prefer the status quo. Congressional approval requires the consent of the Senate, which is disproportionately influenced by conservative senators from largely rural states. If power is moved from the presidency back to Congress, national policy will shift to the right, on average, over time. A possible lesson of the Trump years is that the risk of abuse by the president is so great that the presidency should be stripped of powers even if that means that the U.S. government will be permanently impaired. If this is true, Democrats who plan to act on this view should prepare themselves for a diminished national government that will be unable to solve the country’s most pressing problems. Mr. Biden, who signed 17 executive orders and other directives in his first day of office, seems to be aware of this.

**Presidential authority now is key to sweeping climate action**

**Levitz 18**

Eric Levitz, Political Columnist and Associate Editor-New York Magazine's Daily Intelligencer, A Progressive President Could Accomplish a Lot by Following Trump’s Example, June 3, 2018, http://nymag.com/daily/intelligencer/2018/06/trump-is-paving-the-way-for-an-imperial-socialist-presidency.html

But the craziest aspect of the Energy Department’s proposal isn’t that it puts the profits of coal magnates above the survival of the planet. That much, we have learned to expect. The wild thing about Trump’s plan is that it rests on an **interpretation of executive authority** that is **incredibly dangerous to the conservative movement.** Generally speaking, the president is not supposed to be able to unilaterally direct subsidies at his favorite industries; that’s Congress’s job. But Trump’s attempt to pay back his coal-magnate donors would never survive on Capitol Hill — it is that rare energy policy that is opposed by wind power, solar energy, and oil companies, alike. Thus, the administration has decided to simply deliver the handouts itself — by invoking the Defense Production Act, a Cold War–era law that empowers the president to “effectively nationalize private industry to ensure the U.S. has resources that could be needed amid a war or after a disaster.” As Bloomberg notes, this authority was most famously exercised by Harry Truman, who used it to cap wages and impose price controls on the steel industry during the Korean War. If our current president can wield this power to prop up coal plants, it’s hard to see why a future one couldn’t use it to **shut them down**: Surely, **allowing climate change to proceed at its current pace poses a dire threat** to America’s national resources. How well could the U.S. respond to a foreign invasion once its major coastal cities are swallowed by the sea? Senate Republicans have refused to abolish the legislative filibuster out of an (accurate) belief that **it is in the conservative movement’s long-term interests to maintain barriers to major legislation**. Budget reconciliation rules make it possible for Senate majorities to (temporarily) cut taxes with 51 votes, while **60 is still required to enact new regulations** or permanent expansions of the welfare state. What’s more, the upper chambers’ political geography makes it **all but impossible for Democrats to assemble 60 progressive Senate votes.** But **Democrats are extremely competitive at the presidential level**, having won the popular vote in six of the last seven elections. And with his **expansive interpretations of executive authority**, Trump is **setting precedents** that could **allow the next progressive president to accomplish a tremendous amount without clearing** **any of Congress’s veto points**. To be sure, the construction of the imperial presidency has been a bipartisan enterprise, and Barack Obama contributed his own innovations. And yet, **Trump has set about expanding the powers of his office** with a shameless audacity that his predecessor couldn’t match — but that **his successor just might**. For example, Barack Obama was troubled by the excesses of America’s criminal-justice system, and the fact that it imposes heavy sentences on so many nonviolent drug offenders. But his capacity to ameliorate this reality through the exercise of his pardon power was **constrained by** the Justice Department’s **established** **procedures** (in addition, of course, to political concerns): The federal government has an Office of the Pardon Attorney, which is tasked with assessing the merit of each individual pardon application by carefully consulting a long list of official criteria for clemency. But **none** of this is **legally binding**. The president’s power to pardon people for federal offenses is **absolute**. He can technically issue a pardon as rapidly as one might post a tweet; and in fact, Trump has done just that. The president’s pardons of Dinesh D’Souza, Joe Arpaio, Kristian Saucier, Scooter Libby, and Jack Johnson were all reportedly doled out unilaterally, without the Justice Department’s guidance or approval. When Barack **Obama** was president, this approach to issuing pardons was **unprecedented**. **When the next progressive takes office, it will not be**. And **if that president is sufficiently committed** to the cause of combating mass incarceration, she will be able to **cite Trump’s example** as she rapidly empties the federal prisons of (at least) nonviolent drug offenders. Similarly, one could imagine the Warren-Sanders administration finding a **progressive use for the expansive trade powers** that Trump has claimed. Creatively abusing another Cold War–era law, Trump has assumed the right to unilaterally impose tariffs on any nation he chooses — so long as he offers a specious national-security justification for doing so. After the next Democratic president uses the Defense Production Act to **rapidly reduce America’s carbon emissions**, it could threaten massive tariffs on any (developed) foreign nation that refuses to aggressively pursue its own emission-reductions targets — thereby turning America’s coveted consumer market into a force for climate justice. But a Democratic president could make less extravagant (and politically risky) progress by **applying the spirit of Trump’s audacious power grabs to legal areas he hasn’t explored**. For example, there’s strong case that — under existing law — the Executive branch already has the authority to override pharmaceutical patents, so as to provide low-cost drugs to the beneficiaries of government programs. As a team of medical and legal scholars from Yale and Harvard University explained in a 2016 op-ed for the Washington Post: The government can use its power of eminent domain, allowing it to acquire the land for a reasonable price … The government should employ an analogous power — government patent use — to negotiate lower prices, or buy low-cost, generic versions of drugs for use in government programs. This is possible because existing law gives the federal government limited immunity to challenges from patent holders: Patent holders cannot stop the government from making or buying products that infringe on their patents, and can sue only for reasonable compensation. Federal agencies have previously relied on this mechanism to purchase items produced by companies other than the patent holders, ranging from lead-free bullets to electronic passport readers. This is just one small example of how **a sufficiently bold left-wing president could go about exploiting existing law to unilaterally enact progressive change**. Turning America’s post offices into public banks is another. **It is exceedingly difficult to pass laws in the United States; but for that very reason, it is also hard to repeal them**. One consequence of that latter fact: When White House lawyers want to find **imprecisely worded grants of authority to the Executive** branch, **they have no shortage of places to look. To be sure**, a president’s **capacity to exercise such unilateral powers** is **contingent on judicial approval**, **and** Mitch McConnell is doing everything in his power to ensure that an imperial, progressive president will have a hard time winning the judiciary’s rubber stamp. And of course, the presidency’s ever-expanding authorities — and **Congress’s ever-diminishing willingness to check the** **power** of its own party’s president — are alarming developments for American democracy. But so are steadily rising global temperatures and sea levels. So, **if** conservatives **recoil** at the thought of a **future Democratic president claiming extraordinary powers to combat climate change**, they should implore the current Republican one to **stop inventing** new, extraordinary **justifications for** exacerbating **it**.

**Warming causes extinction**

--Delay risks extinction and legislation can’t solve

**Schultz 16**

Robert A. Schultz, retired Professor and Chair of Computer Information Systems at Woodbury University, 2016, “Modern Technology and Human Extinction,” <http://proceedings.informingscience.org/InSITE2016/InSITE16p131-145Schultz2307.pdf>

There is **consensus** that there is a relatively **short window** to reduce carbon emissions **before drastic effects occur**. **Recent credible projections** of the result of **lack** of rapid drastic action is an average temperature increase of about **10o F by 2050**. This change alone will be **incredibly disruptive to all life**, but will also cause great weather and climate change. For comparison purposes, a 10 degree (Fahrenheit) decrease was enough to cause an ice layer 4000 feet thick over Wisconsin (Co2gether, 2012). Recently relevant information has surfaced about a massive previous extinction. This is the Permian extinction, which happened 252 million years ago, during which 95% of all species on earth, both terrestrial and aquatic, vanished. The ocean temperature after almost all life had disappeared was 15 degrees (Fahrenheit) above current ocean temperatures. Recent information about the **Permian extinction** indicates it was caused by a rapid increase in land and ocean temperatures, caused by the sudden appearance of stupendous amounts of carbon in the form of greenhouse gases (Kolbert, 2014, pp. 102-144). The origin of the carbon in these enormous quantities is not yet known, but one possibility is the **sudden release** of methane gases stored in permafrost. This is also a possibility in our current situation. If so, **extinction would be a natural side effect of human processes**. There is also a real but smaller possibility of what is called “**runaway greenhouse**,” in which the earth’s temperature becomes like Venus’ surface temperature of **800 degrees**. The threat of **extinction** here is not entirely sudden. The threat is, if anything, worse. Changes in the atmosphere--mainly increases in the concentration of greenhouse gases in the atmosphere-- can **start processes that can’t be reversed** but which take long periods of time to **manifest**. “Runaway greenhouse” may be the worst. Once again, suggestions of **technological solutions** to this situation should be treated with some skepticism. These proposals are often made by technophiles ignoring all the evidence that technology is very much subject to unanticipated side effects and **unanticipated failures**. What has happened concerning the depletion of the ozone layer should be a clear warning against the facile uses of technology through geoengineering to alter the makeup of the entire planet and its atmosphere. The complicating factor in assessing extinction likelihood from climate change is corporations, especially American fossil fuel corporations such as Exxon-Mobil and Shell. Through their contributions, they have been able to **delay legislation ameliorating** global warming and **climate change**. As mentioned before, recently released papers from Exxon-Mobil show that the corporation did accept the scientific findings about global warming and climate change. But they concluded that maintaining their profits was more important than acting to ameliorate climate change. Since it is not a matter of getting corporations to appreciate scientific facts, **the** **chances of extinction from climate change are good**. To ameliorate climate change, it is important to leave a high percentage of fossil fuel reserves in the ground. But this is exactly what a profit-seeking fossil fuel corporation **cannot do**. One can still hope that because fossil fuel corporations are made up of individuals, increasingly bad consequences of global warming and climate change will change their minds about profits. But because of the lag in effects, this mind change will probably be too late. So I conclude we will probably see something like the effects of the Permian extinction perhaps some time **around 2050**. (The Permian extinction was 95% extinction of all species.) This assumes the release of methane from the arctic will take place around then.

#### Laundry list of emerging and catastrophic threats --- the executive is key

**Royal ‘11**

John-Paul, Institute of World Politics, Class of 2011 Valedictorian, “War Powers and the Age of Terrorism,” <http://www.thepresidency.org/storage/Fellows2011/Royal-_Final_Paper.pdf>

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago. Non-state actors now **possess a level of destructiveness formerly enjoyed only by nation states.** Global terrorism, coupled with the threat of **w**eapons of **m**ass **d**estruction developed organically or obtained from rogue regimes, presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. In the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. Because large states were more powerful, they also had more to lose. They could be deterred" (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. Today however, we know that threats can emerge quickly. Terrorist organizations half-way around the world are able to wield weapons **of unparalleled destructive power**. These attacks are more **difficult to detect** and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats and the resultant changes to the international system, peace can no longer be considered the default state of American national security. Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attack on the United States. In the emerging security environment described above, pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries. For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond, as we approach the tenth anniversary of the September 11, 2001 attacks. Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists **is the most dangerous threat to the United States**. We know from the 9/11 Commission Report that Al Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of **w**eapons of **m**ass **d**estruction to be a religious **obligation** while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials” (National Commission 2004, 397). Considering these statements, rogue regimes that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, or **extremely unstable** nuclear countries such as Pakistan, pose a special threat to American national security interests. These nations were not necessarily a direct threat to the United States in the past. Now, however, due to proliferation of nuclear weapons and **missile tech**nology, they can inflict damage at considerably higher levels and magnitudes than in the past. In addition, these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, **rapid action** against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interests both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). Operations may take the form of **pre-emptive and sustained** action against those who have expressed hostility or declared war on the United States. **Only the executive branch can effectively execute this mission**, authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

#### Vesting power with the executive is best --- they’re best suited for effective responses and signaling, both of which interbranch fights prevent

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Tohid Asadi, PhD Candidate in American Studies at the University of Tehran, “PRESIDENTIAL-CONGRESSIONAL RELATIONS IN US FOREIGN POLICY DECISION-MAKING: A THEORETICAL TREATISE,” Вестник МГИМО-Университета. 2018. 4(61). С. 219-240

Despite the conventional view of Presidential dominance over foreign policy, US Presidents have not always been able to pursue their foreign policy agenda. The first serious Congressional challenge to the Presidential foreign policy prerogative was the Senate rejection of President Wilson’s Versailles Treaty in 1920. In the 1930s a strong Congress continued to inhibit Presidential initiatives in foreign policy preventing the US from playing a helpful role in Europe that many observers believe could have thwarted World War II [94]. After the attack on Pearl Harbor and US entry into World War II, however, the President and Congress agreed over the direction of foreign policy. Congressional acquiescence to the executive continued throughout the World War II and the later, Cold War. At times of war and national emergencies, the President as the Commander in Chief faces less challenges and the power tends to flow toward the executive as Congress usually supports President’s foreign policy decisions [80]. This was the case at the time of World War II and the Cold War. The rise of the Cold War specifically led to the existence of a policy consensus among the US foreign policy decision-makers and Congress was generally deferent to the executive leadership on foreign policy issues from 1947 to 1968» [86, p. 152]. Presidents were exceptionally powerful political actors during the 1950s and 1960s, the height of the Cold War, and the foreign policy bureaucracy «expanded and became an important tool for implementing the president’s containment policies» [80, pp. 31-32].

In spite of several Congressional powers in the arena of foreign policy, a growing trend of broadly interpreting the executive authority dates back to the beginning of the Cold War which placed the President at the heart of foreign policy decisions [23]. The particular issues comprising legislative-executive contestation may have changed in and after the Cold War era; yet, they remain, as Wittkopf and McCormic state, focused upon the broader question of the Presidential prerogative powers [99]. Rosner recognizes the emergence of a new Congressional assertiveness which could be fundamentally due to the reason that the balance of power, and the institutional and partisan relationships between the two branches of government were profoundly altered by end of the Cold War [81].

«Research in American political development indicates that since the twentieth century it is the President, not Congress, who has the advantage in capturing the public’s attention» [17, p. 13]. As Lindsey states, the public fear of a nuclear combat in respect of the military equipment at the hands of the Soviet Union paved the way for Americans and their representatives in the Congress to put faith in broad executive authority at the international level [60]. The President dominated foreign policy with the ability to gain Congressional support due to strategic concerns of the Cold War environment, information advantages, and greater institutional powers and personal investment [74]. It is as a matter of fact that during the Cold War, key members of Congress did not strategize parallel to Presidential leadership; rather, «they compete with the President to exercise leadership over strategy» [92, p. 243]. In this period, the US Congress did have a role to play in the foreign policy; nonetheless, the role was less than dealing with tactical considerations [82].

The Vietnam War was another key event. The contradictions between elite political and economic instrumental rationalities and interests resulted in legitimation problems and loss of trust to the American system [29]. «Several arguments have been advanced in support of the President’s authority to continue use of the Armed Forces in Vietnam without a Congressional declaration of war as provided by the Constitution» [95, p. 1]. In such a situation, Congress could, for example, attempt to prevent repetition of the secret bombings and invasions in the War by mandating that the President should have immediately kept the designated committees of the Congress informed about the presence of any American troops on or over foreign territory in the absence of a war declaration [67]. Carson’s investigations indicate that although the decline of President Nixon’s authority also coincided with the beginnings of the decline of power of Southern Democrats in Congress, the Southern Congressional hawks advocated fighting a war without limits for a total victory when America became involved in Vietnam [19].

The Cold War placed foreign policy above adversarial politics which resulted in swifter and more decisive foreign policy-making by the Presidency and a generally complacent and compliant Congress up to the time of Vietnam War [33]. With the Cold War having posed a permanent threat to US national security, the era of Vietnam War led to accumulation of Presidential power in a manner never seen before. In the context of the War, as Neureiter notes, the Formosa Resolution, the Cuba Resolution, and the Berlin Resolution are of particular prominence, inasmuch as they endowed the President with greater war powers and weakened the role of the Congress within the US political system [68]. As Porter notes, President Eisenhower certainly knew that there was virtually no possibility of Congressional approval of unilateral intervention, since his Secretary of State John Foster Dulles had already informed the National Security Council that it would be impossible to get Congressional authorization in Indochina. However, the President was not «committed to do anything in the event of a subversive war in South Vietnam» [73, p. 85]. A major area where Congressional intervention contributed to foreign policy disasters was, according to John G. Tower the series of anti-war amendments in the early 1970s aiming at forcing the executive into early withdrawal from Southeast Asia and cutting off American aid to Vietnam, Laos and Cambodia. The result was, the former Congressman further notes, that the administration lost both credibility and flexibility in the peace negotiations [94, p. 237].

Obviously, the executive authority over the US foreign policy has never been absolute and the conventional view of Presidential dominance has been challenged more often than not in the post-Cold War era. The 1970s marked the beginning of Congressional resurgence in foreign policy due to events such as the Vietnam War and the Watergate scandal which undermined the Cold War consensus and induced members of Congress to take a more active role in foreign policy-making [20, p. 330]. The release of Pentagon Papers in 1971 showed that the Johnson administration had lied, not only to the public but also to the Congress and perhaps this was the starting point of Congressional reappearance in foreign policy-making resulting in the passage of the War Powers Act of 1973 [4]. The Watergate scandal and later on the Iran-Contra Affair led to more Congressional oversight of the executive branch, in consequence of which the view of Congress yielding its power in foreign policy to the Presidency partially lost the favor among the researchers. Scholars such as Ripley and Lindsay maintained that due to the resurgence of congressional activism in foreign policy, efforts to understand the process of foreign policy-making in the US without considering the role of Congress were futile [78]. Kissinger’s observation after the Vietnam War alludes to the importance of Congress in foreign policymaking, as he states that «the executive accepts that the Congress must have both the sense and the reality of participation: foreign policy must be a share enterprise» [38]. Regardless of this acceptance, the Congress, playing a reactive role in foreign policy most of the time, would rather have kept the status quo of the actual relations between the executive and legislative branch, in which the former usually overpowers the latter in the general run of events.

The decisions in the US foreign policy are made within a bureaucratic system, containing an amalgamation of various bodies, organizations and institutions. This bureaucratic arrangement, however, is extensively influenced by the weight of players of higher positions so much so that, in some occasions, such players might make decisions in an either partial or even utter contrast with the bureaucratic compromise. Hence, the power distribution in the existing structure of the US foreign policy decision-making cannot be analytically investigated through a pure bureaucratic reading. Decision-making in the US politics, and particularly in foreign policy, is a consensus-based process among the practically effective centers of power. The argument, in other words, is that US foreign policy decision-making arguably takes place within a functional synthesization of 1) compromised bureaucratic rationality, and 2) the ideological, partisan and institutional interests and tendencies of individuals in possession of power. Therefore, structure-agency dialectic sensibly sounds a fitting conceptual approach to examine US foreign policy, seeing that the decisions made are generally developed through consensus-based interactional dynamics between the players and bureaucracy in formal and informal layers. In sum, an improved understanding of US foreign policy necessitates an in-depth study of both structural roles, and the playing individuals; however, it is generally the context that determines the extent to each agent can overcome the structure.

It goes without saying that the relative influence of each power center has changed over the time, developing a natural ebb-and-flow of competitive power in US foreign policy decision-making [10]. However, the President is conventionally taken for granted for being the most leading official player in shaping the direction of the US foreign policy. Simultaneously, the daily conduct of US foreign policy is vested in bureaucracy. Compared to the executive branch, the decentralized and competitive nature of power hinders a comprehensive implementation of authority in the Congress. This study is not the first to figure out that the executive branch, regardless of all the existing bureaucracy, enjoys a competitive advantage over the legislative in making foreign policy decisions; however, a further important point to be taken into account is the manner in which, and the purpose for which this advantage works. In plain English, it could be claimed that based upon the requirements for conducting diplomacy and foreign policy presented by Hamilton, the Presidency is generally situated and equipped reasonably the best to deal with foreign affairs while the gamut of the Congressional role and authority in foreign policy varies based on the type of decisions made. For instance, the President usually has the upper hand in making crisis policy such as the times of war and national crisis.

From time to time, the Congress has been able to exert its influence over the US foreign relations to the extent of directing the executive policies. Congressional influence is supposed to be at its height when making structural policies inasmuch as the Congress enjoys the power of the purse, deciding how resources are distributed to achieve particular foreign policy objectives. In retrospective, nonetheless, even the power of the purse did not turn out to be of benefit for the Congress to implement this supposed authority in the occasions like Iran-Contra Affair. In other words, the process of US foreign policy decision-making occasionally lacks the essential structural efficiency to prevent the executive branch from circumventing the Constitution. An executive branch operating in secrecy without legislative accountability is undoubtedly dangerous; therefore, a host of specialized means and preventive measures are required to be taken and practiced in order to avoid such danger and help keep US political structure in checks and balances. Very much in line with what Noorbaloochi states, historical incidents such as the Iran-Contra Affair further confirms the fact that centralized decision-making procedures result in detrimental policies [69]. Making foreign policy is commonly considered as a ‘shared enterprise’ of the executive and legislative branches, though the two are not asserted to be the sole decision-makers.

### 1AC – Solvency

#### The patent system for pandemic-related drugs is currently out of balance---there’s spurious over-patenting under the guise of innovation, which paradoxically hurts innovation by juicing profits. A temporary waiver in the U.S. for pandemics rebalance the system.

Brink **Lindsey 21**. Vice President, Niskanen Center; Writes for Brookings, “Why Intellectual Property and Pandemics Don’t Mix,” Brookings, June 3, 2021, <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/>, RJP, **DebateDrills**.

When we take the longer view, we can see a fundamental mismatch between the policy design of intellectual property protection and the policy requirements of effective pandemic response. Although patent law, properly restrained, constitutes one important element of a well-designed national innovation system, the way it goes about encouraging technological progress is singularly ill-suited to the emergency conditions of a pandemic or other public health crisis. Securing a TRIPS waiver for COVID-19 vaccines and treatments would thus establish a salutary precedent that, in emergencies of this kind, governments should employ other, more direct means to incentivize the development of new drugs. Here is the basic bargain offered by patent law: encourage the creation of useful new ideas for the long run by slowing the diffusion of useful new ideas in the short run. The second half of the bargain, the half that imposes costs on society, comes from the temporary exclusive rights, or monopoly privileges, that a patent holder enjoys. Under U.S. patent law, for a period of 20 years nobody else can manufacture or sell the patented product without the permission of the patent holder. This allows the patent holder to block competitors from the market, or extract licensing fees before allowing them to enter, and consequently charge above-market prices to its customers. Patent rights thus slow the diffusion of a new invention by restricting output and raising prices.The imposition of these short-run costs, however, can bring net long-term benefits by sharpening the incentives to invent new products. In the absence of patent protection, the prospect of easy imitation by later market entrants can deter would-be innovators from incurring the up-front fixed costs of research and development. But with a guaranteed period of market exclusivity, inventors can proceed with greater confidence that they will be able to recoup their investment.For the tradeoff between costs and benefits to come out positive on net, patent law must strike the right balance. Exclusive rights should be valuable enough to encourage greater innovation, but not so easily granted or extensive in scope or term that this encouragement is outweighed by output restrictions on the patented product and discouragement of downstream innovations dependent on access to the patented technology.Unfortunately, the U.S. patent system at present is out of balance. Over the past few decades, the expansion of patentability to include software and business methods as well as a general relaxation of patenting requirements have led to wildly excessive growth in these temporary monopolies: the number of patents granted annually has [skyrocketed roughly fivefold](https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm) since the early 1980s. One unfortunate result has been the rise of “non-practicing entities,” better known as patent trolls: firms that make nothing themselves but buy up patent portfolios and monetize them through aggressive litigation. As a result, a law that is supposed to encourage innovation has turned into a [legal minefield](https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=4620&context=clr) for many would-be innovators. In the pharmaceutical industry, firms have abused the law by piling up patents for trivial, therapeutically irrelevant “innovations” that allow them to [extend their monopolies](https://www.i-mak.org/wp-content/uploads/2018/08/I-MAK-Overpatented-Overpriced-Report.pdf) and keep raising prices long beyond the statutorily contemplated 20 years. Patent law is creating these unintended consequences because policymakers have been caught in an ideological fog that [conflates “intellectual property” with actual property rights](https://www.niskanencenter.org/wp-content/uploads/2019/09/LT_IPMisnomer-2-1.pdf) over physical objects. Enveloped in that fog, they regard any attempts to put limits on patent monopolies as attacks on private property and view ongoing expansions of patent privileges as necessary to keep innovation from grinding to a halt. In fact, patent law is a tool of regulatory policy with the usual tradeoffs between costs and benefits; like all tools, it can be misused, and as with all tools there are some jobs for which other tools are better suited. A well-designed patent system, in which benefits are maximized and costs kept to a minimum, is just one of various policy options that governments can employ to stimulate technological advance—including tax credits for R&D, prizes for targeted inventions, and direct government support.

#### The plan seamlessly shifts to a direct support model during pandemics, which allows pharma companies to profit and innovate while speeding up the process---that solves but avoids the innovation DA.

Brink **Lindsey 21**. Vice President, Niskanen Center; Writes for Brookings, “Why Intellectual Property and Pandemics Don’t Mix,” Brookings, June 3, 2021, <https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/>, RJP, **DebateDrills**.

**PUBLIC HEALTH EMERGENCIES AND DIRECT GOVERNMENT SUPPORT**

For pandemics and other public health emergencies, patents’ mix of costs and benefits is misaligned with what is needed for an effective policy response. The basic patent bargain, even when well struck, is to pay for more innovation down the road with slower diffusion of innovation today. In the context of a pandemic, that bargain is a bad one and should be rejected entirely. Here the imperative is to accelerate the diffusion of vaccines and other treatments, not slow it down. Giving drug companies the power to hold things up by blocking competitors and raising prices pushes in the completely wrong direction.

What approach to encouraging innovation should we take instead? How do we incentivize drug makers to undertake the hefty R&D costs to develop new vaccines without giving them exclusive rights over their production and sale? The most effective approach during a public health crisis is direct government support: public funding of R&D, advance purchase commitments by the government to buy large numbers of doses at set prices, and other, related payouts. And when we pay drug makers, we should not hesitate to pay generously, even extravagantly: we want to offer drug companies big profits so that they prioritize this work above everything else, and so that they are ready and eager to come to the rescue again the next time there’s a crisis.

It was direct support via Operation Warp Speed that made possible the astonishingly rapid development of COVID-19 vaccines and then facilitated a relatively rapid rollout of vaccine distribution (relative, that is, to most of the rest of the world). And it’s worth noting that a major reason for the faster rollout here and in the United Kingdom compared to the European Union was the latter’s [misguided penny-pinching](https://www.nytimes.com/2021/05/17/opinion/europe-vaccines-commission.html?smid=tw-share). The EU bargained hard with firms to keep vaccine prices low, and as a result their citizens ended up in the back of the queue as various supply line kinks were being ironed out. This is particularly ironic since the Pfizer-BioNTech vaccine was developed in Germany. As this fact underscores, the chief advantage of direct support isn’t to “get tough” with drug firms and keep a lid on their profits. Instead, it is to accelerate the end of the public health emergency by making sure drug makers profit handsomely from doing the right thing.

Patent law and direct support should be seen not as either-or alternatives but as complements that apply different incentives to different circumstances and time horizons. Patent law provides a decentralized system for encouraging innovation. The government doesn’t presume to tell the industry which new drugs are needed; it simply incentivizes the development of whatever new drugs that pharmaceutical firms can come up with by offering them a temporary monopoly. It is important to note that patent law’s incentives offer no commercial guarantees. Yes, you can block other competitors for a number of years, but that still doesn’t ensure enough consumer demand for the new product to make it profitable. DIRECT SUPPORT MAKES PATENTS REDUNDANT The situation is different in a pandemic. Here the government knows exactly what it wants to incentivize: the creation of vaccines to prevent the spread of a specific virus and other drugs to treat that virus. Under these circumstances, the decentralized approach isn’t good enough. There is no time to sit back and let drug makers take the initiative on their own timeline. Instead, the government needs to be more involved to incentivize specific innovations now. As recompense for letting it call the shots (pardon the pun), the government sweetens the deal for drug companies by insulating them from commercial risk. If pharmaceutical firms develop effective vaccines and therapies, the government will buy large, predetermined quantities at prices set high enough to guarantee a healthy return.