### 1NC – DIB

#### The US commercial space industry is booming – private space companies are driving innovation

**Lindzon 2/23** [(Jared Lindzon, A FREELANCE JOURNALIST AND PUBLIC SPEAKER BORN, RAISED AND BASED IN TORONTO, CANADA. LINDZON'S WRITING FOCUSES ON THE FUTURE OF WORK AND TALENT AS IT RELATES TO TECHNOLOGICAL INNOVATION) "How Jeff Bezos and Elon Musk are ushering in a new era of space startups," Fast Company, 2/23/21, https://www.fastcompany.com/90606811/jeff-bezos-blue-origin-elon-musk-spaces-space] TDI

In early February, Jeff Bezos, the founder of Amazon and one of the planet’s wealthiest entrepreneurs, dropped the bombshell announcement that he would be stepping down as CEO to free up more time for his other passions. Though Bezos listed a few targets for his creativity and energy—The Washington Post and philanthropy through the Bezos Earth Fund and Bezos Day One Fund—one of the highest-potential areas is his renewed commitment and focus on his suborbital spaceflight project, Blue Origin.

Before space became a frontier for innovation and development for privately held companies, opportunities were limited to nation states and the private defense contractors who supported them. In recent years, however, billionaires such as Bezos, Elon Musk, and Richard Branson have lowered the barrier to entry. Since the launch of its first rocket, Falcon 1, in September of 2008, Musk’s commercial space transportation company SpaceX has gradually but significantly reduced the cost and complexity of innovation beyond the Earth’s atmosphere. With Bezos’s announcement, many in the space sector are excited by the prospect of those barriers being lowered even further, creating a new wave of innovation in its wake.

“What I want to achieve with Blue Origin is to build the heavy-lifting infrastructure that allows for the kind of dynamic, entrepreneurial explosion of thousands of companies in space that I have witnessed over the last 21 years on the internet,” Bezos said during the Vanity Fair New Establishment Summit in 2016.

During the event, Bezos explained how the creation of Amazon was only possible thanks to the billions of dollars spent on critical infrastructure—such as the postal service, electronic payment systems, and the internet itself—in the decades prior.

“On the internet today, two kids in their dorm room can reinvent an industry, because the heavy-lifting infrastructure is in place for that,” he continued. “Two kids in their dorm room can’t do anything interesting in space. . . . I’m using my Amazon winnings to do a new piece of heavy-lifting infrastructure, which is low-cost access to space.”

In the less than 20 years since the launch of SpaceX’s first rocket, space has gone from a domain reserved for nation states and the world’s wealthiest individuals to everyday innovators and entrepreneurs. Today, building a space startup isn’t rocket science.

THE NEXT FRONTIER FOR ENTREPRENEURSHIP

According to the latest Space Investment Quarterly report published by Space Capital, the fourth quarter of 2020 saw a record $5.7 billion invested into 80 space-related companies, bringing the year’s total capital investments in space innovation to more than $25 billion. Overall, more than $177 billion of equity investments have been made in 1,343 individual companies in the space economy over the past 10 years.

“It’s kind of crazy how quickly things have picked up; 10 years ago when SpaceX launched their first customer they removed the barriers to entry, and we’ve seen all this innovation and capital flood in,” says Chad Anderson, the managing partner of Space Capital. “We’re on an exponential curve here. Every week that goes by we’re picking up the pace.”

#### The plan creates a restriction that encourages companies to move their operations to states with lower standards

Albert 14 [(Caley Albert, J.D. Loyola Marymount University) “Liability in International Law and the Ramifications on Commercial Space Launches and Space Tourism,” Loyola of Los Angeles International and Comparative Law Review, 11/1/14, <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1708&context=ilr>] TDI

A parallel can be drawn here between the commercial space industry and the maritime law concept of the Flag of Convenience. The term has evolved over time, but in this day and age, it is commonly used to mean the owner of a vessel does not want to create an obligation with a country with stricter standards for registry; hence, the owner will register strictly for economic reasons with a country that has a more convenient registry.133 By flying a Flag of Convenience, ship owners are able to avoid taxation on earnings of ships registered under these flags, and in some cases, they can also receive relief from stricter crew standards and corresponding operating costs.134 A Flag of Convenience is flown by a vessel that is registered in one state, which the vessel has little if any connection to, when in reality the vessel is owned and operated from another state.135 This way the vessel avoids any unfavorable economic requirements from its true home state.136 In this sense, “flag shopping” is similar to “launch forum shopping,” similar in that Flags of Convenience are utilized for economic reasons, such as to avoid high taxes and compliance with certain restrictive international conventions, commercial space companies will forum shop when choosing which country to launch from. As of today, there has yet to be a catastrophic commercial launch incident, so for now commercial space companies do not have an incentive to forum shop, but if there is, the indemnification policies described above may lead companies to seek out countries that provide more coverage so they pay less in the event something goes wrong. This comparison to Flags of Convenience brings up two separate yet equally important issues. First, launch companies may try to follow the Flags of Convenience model and soon catch on to the wisdom of their maritime predecessors by “registering” in countries with more favorable conditions. Of course, in this case the concern is not with registration so much as launching. If launch companies follow the Flags of Convenience model, they will seek out the most convenient state for launch, most likely the state that provides the most liability coverage and has the least safety precautions. Launching from states with low safety standards increases the potential for catastrophic launch events. This, in turn, will place states that are potentially incapable of paying for damages from launch disasters in a position they would not normally assume if these commercial companies had not been drawn to their shores with the promise of more favorable regulations. Second, launch customers may also seek out companies located in states with lower cost liability regimes (lower insurance policy limits) since those companies will presumably charge less to launch their payloads. In this scenario, instead of the launch companies seeking out states with lower liability caps and softer regulations, the launch customers themselves will seek companies located in states with lowcost liability regimes. Here, the effect will be the same as above. Under the Liability Convention, the launching state will be liable for any damage caused by a vehicle launched from within its borders; hence, if customers start engaging in “launch forum shopping,” states will be incentivized to put in place low-cost liability regimes, which in turn will increase the states’ potential payout in the event of a catastrophic launch incident. Looking at the indemnification program the United States has in place in comparison to other countries, it is possible to see how either launch companies or launch customers could engage in “launch forum shopping” when a catastrophic launch incident ever occur. It is also important to keep in mind that various factors go into where a company or customer decides to launch from. A state’s indemnification program is just one factor in this decision. With this in mind, it is clear that if a launch incident did occur in the United States, the commercial launch company would be liable for much more than it would in another country. For instance, why would a commercial space company launch in the United States, where it would be liable up to $500 million and the additional costs that the government would not cover? The argument can be made that a catastrophic space incident has yet to occur, and even if it did, it is unlikely to cost above the $2.7 billion covered by the United States government. Other states like Russia or France, which has the two-tier liability system, would simply cover all claims above the initial insurance, which is much lower than the $500 million mark required by the United States. In that case, the commercial company would never have to pay more than the initial liability insurance. If there ever is a catastrophic commercial space incident in the future, it is easy to see why commercial companies or launch customers might be drawn to “launch forum shop” outside the United States.

#### Maintaining US space dominance requires a homegrown commercial space industry – private companies offshoring gives China the advantage they need

* Asteroid mining aff restricts private companies’ asteroid which is a significant financial loss
* As a result of this, companies will move them to other countries
* SpaceX with lower tax, safety standards, liability

**Cahan and Sadat 1/6** [(Bruce Cahan, J.D) (Dr. Mir Sadat, ) "US Space Policies for the New Space Age: Competing on the Final Economic Frontier," based on Proceedings from State of the Space Industrial Base 2020 Sponsored by United States Space Force, Defense Innovation Unit, United States Air Force Research Laboratory, 1/6/21, https://www.politico.com/f/?id=00000177-9349-d713-a777-d7cfce4b0000] TDI

Today, China’s commercial space sector is in its infancy but is set to grow with continued national and provincial support, which have been rapidly increasing over the past three years.64 Since 2004, the United States and China accounted for 74% of the $135.2 billion venture capital (VC) invested in commercial space. 65 The early 2020s are pivotal, as it would be far cheaper for China and Chinese commercial space firms to acquire space technologies from the United States or allied nation companies seeking revenues or facing cashflow constraints, than to build the companies and their teams and technologies from scratch in China. The tight coupling of Chinese military goals and an economy organized to achieve those goals magnifies the economic threats and market disruptions that the United States must immediately address, in order for DoD and national security operations to rely on US commercial space capabilities.

3. ISSUES AND CHALLENGES

Peaceful Uses of Space and Space Exploration Space has been primarily a shared, not a warfighting, domain.67 With each passing second of Planck time,68 space enables a modern way of life, provides instantaneous global imagery, assures telecommunications, and captures humanity’s imagination for civil space exploration. As a result, space is a burgeoning marketplace and territory for commercial ventures and investors. Strengthening the US commercial space industrial base is vital to and beyond US national security. Civil space activities are a source of US “soft power” in global commerce, cooperation, and investment. 69 The civil space sector, led by NASA, is fundamental to America’s national security. 70 NASA is on an ambitious critical path to return to the Moon by 2024,71 along with developing the capabilities and infrastructure for a sustained lunar presence. NASA’s lunar plans provide a lunar staging area for missions to Mars and beyond. They offer a strategic and economic presence for the United States on the Moon. Congress, the White House, DoD, and NASA must recognize that economic and strategic dominance in service of national security requires catalyzing and accelerating growth of a vibrant, private US industrial and cultural expansion into the Solar System. Human visitation and eventual settlement beyond the Earth require sustaining visionary leaders, aided by, and aiding, US national security. A recurring theme in US policy is “maintaining and advancing United States dominance and strategic leadership in space” because US global competitors and adversaries are competent and capable of outpacing American space capabilities. 72 The stakes are high: At this historic moment, there is a real race for dominance over cislunar access and resources.   
Regulations Should Foster US Commercial Space as a National Asset   
Leveraging the reimagination and disruption of terrestrial industries, the US commercial space industry is pushing the frontiers of the United States and global space economics and capabilities. A pre-COVID19 assessment by the US Chamber of Commerce projected that the US space market will increase from approximately $385 billion in 2020, to at least $1.5 trillion by 2040. 73 This projection represents a seven percent (7%) annual compound average growth rate (CAGR), driven largely by expanded business opportunities in Low Earth Orbit (LEO). Total addressable market (TAM) for US commercial space companies could be far larger were they to have federal and financial support for initiating cislunar space operations and opportunities. Recent advancements in commercial space technologies and business models have driven down costs and unlocked new areas of economic growth and space capabilities that outpace and de-risk acquiring capabilities through traditional US government economic development, research and development (R&D), procurement and regulatory policies and processes. US regulations must ensure that US companies lead in commercial space. In specific, technological advances that lower access costs and expand space mission capabilities, content, continuity, and redundancies must be fully supported by or incorporated into US government programs, budgets, requirements, and acquisition processes. Until commercial space offerings are fully incorporated, and federal acquisition policies and personnel commit to innovation, US government fiscal buying power, intelligence and program support will lag and remain inadequate in comparison to US private sector companies and the nation’s global competitors and adversaries in space.

Addressing COVID-19’s Impact on US Commercial Space The COVID-19 pandemic damaged and still challenges the US space industrial base. US domestic investors’ funding of space R&D remains inconsistent across the lifecycle of New Space companies and the spectrum of technologies necessary to grow the space economy. To date, public R&D, government procurements and visionary space entrepreneurs have played a major role in establishing and funding the New Space industrial base. In the last five years, $11 billion of private capital has been invested.74 Traditional private investors may become reluctant to fund space technologies due to perceptions of higher risk over longer time horizons before receiving profitable returns on their capital. Institutional and long-horizon investors who manage patient capital have an appetite for illiquid, but higher yielding, terrestrial alternative asset investments such as commodities, private equity limited partnerships and real estate.75 The COVID-19 pandemic has created economic uncertainties making the New Space’s funding model unreliable. COVID-19 significantly impacted venture capital (VC)-backed companies: the pace of VC space investments fell 85% between April - June, as compared to January – March, in 2020. 76 Pre-COVID-19, the New Space industrial base confronted multiple challenges in raising later stages of venture capital such as (1) the lag between having an early-stage startup with an idea and commercializing a viable revenue-generating product, (2) the lack of market liquidity for founder and private equity space investments to attract and retain talented teams, and (3) the lack of a market to re-sell contracts for space goods and services when customers buy more capacity than needed. Even prior to the COVID-19 pandemic, federal financing of US R&D was at a historically minor level, as compared to businesses and universities.77 US government support for basic research has steadily declined as a percent of GDP. The federal government will experience near- to medium-term budget constraints.78 The vibrant venture community in the United States has taken up a portion of this slack by increasing R&D investment in later-stage and applied research. However, founding teams and VC financing rely on government to fund earlier R&D for basic science and engineering. Therefore, government must resume the sustainable and impactful past levels of support for basic research, an essential role in the space economy’s public-private partnership that ensures US leadership in space.

Space as Existential Terrain for National Security  
  
In this Digital Era, space integrates and drives all elements of US national security. The Cold War may be over, but since the early 2010s, a renewed era of great power competition has emerged across terrestrial land, air, sea, and cyber domains. This competition extends into space, where a great game ensues.79 Space is no longer an uncontested or sanctuary domain. Competent and capable global competitors and peer adversaries are challenging US military, commercial, and civil space interests. The United States, along with its allies and partners, has had to accept and anticipate that space may be a warfighting domain, as suggested primarily by Russian and Chinese counter-space capabilities, military operations, and declarative statements. On December 20, 2019, the bipartisan National Defense Authorization Act (NDAA) for Fiscal Year 202080 authorized the creation of the US Space Force, under the Department of the Air Force, to secure US national interests in an increasingly contested domain.81 Back in October 1775, the Continental Congress established the US Navy to ensure that commercial and government fleets could freely navigate the Atlantic coastline - today, that includes the South China Sea. Likewise, the USSF’s mission is to ensure unfettered access to and the freedom to operate in space. The 2017 National Security Strategy considers space to be a “priority domain.”82 Freedom of navigation is a sovereign right that nations have fought to achieve and defend. 83 The USSF’s main role is to organize, train and equip, as well as to protecting US space interests and supporting terrestrial and joint warfighters (e.g., US Space Command). Thus, USSF must secure US national interests in space, whether military, commercial, scientific, civil, or enhancing US competitiveness for cislunar leadership.

#### US space dominance prevents global war

**Zubrin 15** [(Robert Zubrin, president of Pioneer Energy, a senior fellow with the Center for Security Policy) “US Space Supremacy is Now Critical,” Space News, 1/22/15, <https://spacenews.com/op-ed-u-s-space-supremacy-now-critical/>] TDI

The United States needs a new national security policy. For the first time in more than 60 years, we face the real possibility of a large-scale conventional war, and we are woefully unprepared. Eastern and Central Europe is now so weakly defended as to virtually invite invasion. The United States is not about to go to nuclear war to defend any foreign country. So deterrence is dead, and, with the German army cut from 12 divisions to three, the British gone from the continent, and American forces down to a 30,000-troop tankless remnant, the only serious and committed ground force that stands between Russia and the Rhine is the Polish army. It’s not enough. Meanwhile, in Asia, the powerful growth of the Chinese economy promises that nation eventual overwhelming numerical force superiority in the region. How can we restore the balance, creating a sufficiently powerful conventional force to deter aggression? It won’t be by matching potential adversaries tank for tank, division for division, replacement for replacement. Rather, the United States must seek to totally outgun them by obtaining a radical technological advantage. This can be done by achieving space supremacy.To grasp the importance of space power, some historical perspective is required. Wars are fought for control of territory. Yet for thousands of years, victory on land has frequently been determined by dominance at sea. In the 20th century, victory on both land and sea almost invariably went to the power that controlled the air. In the 21st century, victory on land, sea or in the air will go to the power that controls space. The critical military importance of space has been obscured by the fact that in the period since the United States has had space assets, all of our wars have been fought against minor powers that we could have defeated without them. Desert Storm has been called the first space war, because the allied forces made extensive use of GPS navigation satellites. However, if they had no such technology at their disposal, the end result would have been just the same. This has given some the impression that space forces are just a frill to real military power — a useful and convenient frill perhaps, but a frill nevertheless. But consider how history might have changed had the Axis of World War II possessed reconnaissance satellites — merely one of many of today’s space-based assets — without the Allies having a matching capability. In that case, the Battle of the Atlantic would have gone to the U-boats, as they would have had infallible intelligence on the location of every convoy. Cut off from oil and other supplies, Britain would have fallen. On the Eastern front, every Soviet tank concentration would have been spotted in advance and wiped out by German air power, as would any surviving British ships or tanks in the Mediterranean and North Africa. In the Pacific, the battle of Midway would have gone very much the other way, as the Japanese would not have wasted their first deadly airstrike on the unsinkable island, but sunk the American carriers instead. With these gone, the remaining cruisers and destroyers in Adm. Frank Jack Fletcher’s fleet would have lacked air cover, and every one of them would have been hunted down and sunk by unopposed and omniscient Japanese air power. With the same certain fate awaiting any American ships that dared venture forth from the West Coast, Hawaii, Australia and New Zealand would then have fallen, and eventually China and India as well. With a monopoly of just one element of space power, the Axis would have won the war. But modern space power involves far more than just reconnaissance satellites. The use of space-based GPS can endow munitions with 100 times greater accuracy, while space-based communications provide an unmatched capability of command and control of forces. Knock out the enemy’s reconnaissance satellites and he is effectively blind. Knock out his comsats and he is deaf. Knock out his navsats and he loses his aim. In any serious future conventional conflict, even between opponents as mismatched as Japan was against the United States — or Poland (with 1,000 tanks) is currently against Russia (with 12,000) — it is space power that will prove decisive. Not only Europe, but the defense of the entire free world hangs upon this matter. For the past 70 years, U.S. Navy carrier task forces have controlled the world’s oceans, first making and then keeping the Pax Americana, which has done so much to secure and advance the human condition over the postwar period. But should there ever be another major conflict, an adversary possessing the ability to locate and target those carriers from space would be able to wipe them out with the push of a button. For this reason, it is imperative that the United States possess space capabilities that are so robust as to not only assure our own ability to operate in and through space, but also be able to comprehensively deny it to others. Space superiority means having better space assets than an opponent. Space supremacy means being able to assert a complete monopoly of such capabilities. The latter is what we must have. If the United States can gain space supremacy, then the capability of any American ally can be multiplied by orders of magnitude, and with the support of the similarly multiplied striking power of our own land- and sea-based air and missile forces be made so formidable as to render any conventional attack unthinkable. On the other hand, should we fail to do so, we will remain so vulnerable as to increasingly invite aggression by ever-more-emboldened revanchist powers. This battle for space supremacy is one we can win. Neither Russia nor China, nor any other potential adversary, can match us in this area if we put our minds to it. We can and must develop ever-more-advanced satellite systems, anti-satellite systems and truly robust space launch and logistics capabilities. Then the next time an aggressor commits an act of war against the United States or a country we are pledged to defend, instead of impotently threatening to limit his tourist visas, we can respond by taking out his satellites, effectively informing him in advance the certainty of defeat should he persist. If we desire peace on Earth, we need to prepare for war in space.

### 1NC – DA space exploration

#### Barrett court is resisting climate action at every turn – Biden overcomes its limited influence now, but a more powerful judiciary directly trades off with green policies

Worland 20 Justin Worland, 9-28-2020, "How Amy Coney Barrett Could Alter the Future of the U.S.'s Climate Change Policy," Time, <https://time.com/5893929/amy-coney-barrett-climate-change-supreme-court/> mvp

The future of the Court will also shape the future of U.S. climate policy. A Supreme Court remade in the vision of the right could take aim at existing climate change measures—and the legal justifications underpinning them—while also impeding the ability of federal government agencies to implement new ones. At the heart of the issue is the role of federal agencies and their ability to regulate, an area known as administrative law. In the U.S. at least, it’s hard to conceive of a comprehensive climate-fighting regime that doesn’t rely on agencies to play a role regulating emissions. Conservative jurists are generally skeptical of these powers, and it’s likely a more conservative Supreme Court would seek to limit them.

That wouldn’t necessarily doom future presidential or legislative attempts at creating new and more stringent climate rules, but it’d make it all a lot harder. “It’s not a death knell,” says Michael Gerrard, director of the Sabin Center for Climate Change Law at Columbia University. “But it’s going to require great care by Congress and the [next presidential] administration to avoid these problems.”

How agencies became so important

For the uninitiated, administrative law can sound esoteric, but it has played a central role in creating our current climate protections. Some issues are too complicated to be solved by Congress alone, so Congress has in many cases passed laws that create a broad framework but leave the implementation up to federal agencies. In the environmental space, that history dates back to the 1970s: Congress passed the Clean Air Act and the Clean Water Act to address rampant pollution in the U.S, and the Environmental Protection Agency administered the laws.

Climate change wasn’t included in the original mandate of the EPA, and Congress has never explicitly told the agency to regulate greenhouse gas emissions, but as global warming science grew increasingly alarming, the agency was forced to incorporate reducing greenhouse emissions into its mandate. Troubled by the federal government’s inaction, a group of states led by Massachusetts sued the EPA in 2006 to demand the agency act to reduce emissions. The following year, the Supreme Court ruled in a 5-4 decision known as Massachusetts vs. EPA that the agency needed to regulate greenhouse gas emissions if EPA scientists found they endangered human health. The Court’s decision meant that combating climate change was, effectively, a responsibility of the executive branch.

Thanks to that ruling, the EPA became the primary regulator of greenhouse gas emissions in the U.S. When President Barack Obama failed to pass climate legislation through Congress in 2009, he turned to the agency and others to create new rules using the Clean Air Act and other existing law. Almost all of the significant climate measures enacted under President Obama—think the Clean Power Plan, vehicle emissions standards and methane rules—came via one of the federal agencies

Trump came to office keen to undo these regulations, and his Administration has spent the last four years using its authority to push agencies to move climate policy in reverse. In total, Trump has sought to roll back some 100 environmental rules, according to a [New York Times count](https://click.newsletters.time.com/?qs=c80eadda31f94ed8eae67e8dde9d33e3637f7698d7ed3e50f320a561735d0598378e04377af5f34e60d268f27472a4e19bee49b3ab0f06ee) last updated on July 15. “There has been nothing like this administration on the environment in the last 50 years,” says William Reilly, who headed the EPA under George H.W. Bush, referring to what he called Trump’s “general dereliction” of duty to protect the environment.

But while Trump has sought to tear up the country’s climate regulation, his efforts have been met with major challenges. Because Massachusetts vs EPA still stands, the administration is still technically responsible for fighting climate change, and his rollbacks need to show sound legal and scientific reasoning—which can be hard to come by given Trump’s primary motivation has little to do with science or law. This reality has tied up many of his deregulatory moves in the courts. The administration has only succeeded in 15 of the 87 attempted rollbacks that have been litigated, according to [data from the Institute for Policy Integrity](https://click.newsletters.time.com/?qs=e367a9e36ea6d05ef2fe48377cb0bd2c0051a2873f0ee22716d5a37ad54af491cf62681af67de0b6061ca0d5688d8b4a244b063f5fb2cb02).

If a more conservative Supreme Court decides to revisit Massachusetts vs EPA, the result could make it significantly easier for Trump or a future president to eliminate these rules—and hinder the ability for a new administration to make new rules. There are multiple scenarios that could play out over the coming years.

What comes next

Biden has telegraphed repeatedly that he plans to make fighting climate change a top priority if he defeats Trump in November: he has called for the U.S. to hit net zero emissions by 2050 and eliminate the carbon footprint of the power sector by 2035. What kinds of measures he could actually enact to reach those goals will depend significantly on the composition of the Supreme Court.

If Biden wins without a Congressional majority, he would likely struggle to pass legislation through a divided Congress and, like Obama, would need to turn to agencies to make rules in the absence of a new law. A Biden EPA would likely try to implement all sorts of emissions-reduction measures, using the Clean Air Act as its justification.

But conservative jurists have already indicated how they would fight that. In 1984, the Supreme Court created a precedent known as “Chevron deference,” which gave agencies leeway to interpret laws passed by Congress if they deal directly with the agency’s work. So, in this case, the EPA is given significant deference to interpret the Clean Air Act. Conservatives have criticized that practice since the beginning, and Justice Brett Kavanaugh, who could be the new swing vote on the Court, has criticized it. The doctrine “can be antithetical to the neutral, impartial rule of law,” Kavanaugh [wrote in 2016](https://click.newsletters.time.com/?qs=e367a9e36ea6d05ee96c80f0a8f032f61084ba91277e299480de57d47f9a8a8990a9f82bba2f426335874460aa90fc6d6109bc31e5bfce94). Moreover, the Supreme Court could overturn or significantly weaken Massachusetts vs EPA, and the practice of using agencies to address climate change would be vulnerable to legal challenge or foreclosed entirely.

In theory, a Democratic majority in both houses of Congress would fix this problem. Congress could pass a law that requires the EPA to regulate emissions, effectively bypassing Massachusetts vs EPA. Or Congress could create a different regulatory framework entirely.

But conservative jurists are one step ahead of such measures. For decades, conservatives have touted a principle known as the “nondelegation doctrine,” which rejects Congress’s ability to give too much power to agencies. Conservatives have had limited success using that argument in court thus far, but that could easily change if the Supreme Court shifts ideologically. And it could effectively prevent new climate laws that require an agency like the EPA for implementation.

“The reshaping of the judiciary under the Trump Administration toward a right-leaning judiciary that is not only willing but eager to shrink the administrative state is simply not compatible with strong regulation of anything,” says Cara Horowitz, executive director of the Emmett Institute on Climate Change and the Environment at UCLA School of Law.

Finally, there’s a very real chance that Trump ends up in office for a second term. In that case, it’s safe to assume that the federal judiciary and the Supreme Court would continue its conservative bent, chipping away at the power of agencies to address climate change. That would aid in Trump’s ongoing rollbacks and grind even the currently insufficient climate policies to a halt.

Fighting back

A hard right turn by the Supreme Court—not to mention the impact of the hundreds of federal judges Trump has appointed to lower federal courts—would clearly pose deep challenges for a Biden Administration, but that doesn’t mean it couldn’t fight back.

#### The plan applies Charming Betsy to private sector space laws that unambiguously contravene the OST – that expands the scope of the doctrine and creates judicial overreach – courts can abrogate participation in any international agreement

Bean 15 Andrew H. Bean, Constraining Charming Betsy: Textual Ambiguity as a Predicate to Applying the Charming Betsy Doctrine, 2015 BYU L. Rev. 1801 (2016). Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2015/iss6/13> mvp

Applying the Charming Betsy canon of construction should be predicated on textual ambiguity as the modern precedent applying Charming Betsy suggests. When courts apply Charming Betsy to textually unambiguous statutes—whether the statute is expressly recognized by the court as textually unambiguous or not—three major concerns arise. The first concern is that applying Charming Betsy to a textually unambiguous statute upsets the precedential baseline upon which Congress legislated. If courts wish to change course and require a clear statement rule from Congress despite textual unambiguity, they should do so only prospectively after they have provided the legislature with appropriate notice that there is a change in direction going forward. Such notice will give Congress the opportunity to take the necessary measures going forward to avoid confusion with the courts. The second concern that arises from applying Charming Betsy to a textually unambiguous statute is that doing so denies ordinary citizens fair notice of the law by depriving them of the ability to determine a statute’s meaning and to know how the statute applies to them. Because of this, courts should limit their use of canons of construction generally, and Charming Betsy specifically, to situations in which the statute’s text is ambiguous. Fostering fair notice among citizens increases citizens’ confidence in the judiciary, which in turn promotes individual decisions that benefit society. Finally, separation-of-powers concerns arise when Congress is required by the courts to include a clear statement in addition to a textually unambiguous statute to abrogate an international agreement. The choice of whether to abrogate an international agreement is a choice best left to the political branches of government—not the judiciary. Although courts must sometimes fill a quasi-legislative role when the text of a statute is ambiguous, fulfilling this role is wholly inappropriate when Congress has expressed its will through unambiguous statutory text. In sum, to determine whether a statute abrogates a conflicting treaty or executive agreement, courts should first look to the statutory text. If the text provided by the legislature is unambiguous, the judiciary’s role is finished, and it should ignore any conflicting international agreements or treaties that might exist. If the text is ambiguous, only then should the deciding court apply the Charming Betsy canon and interpret the statute in a way that is consistent with the existing treaties or agreements.

#### A robust web of international commitments and treaties with US participation is necessary for global climate action – abrogation would be devastating

Newburger 20 Emma Newburger, 11-19-2020, “Biden will rejoin the Paris Climate Accord. Here’s what happens next ,” CNBC, https://www.cnbc.com/2020/11/20/biden-to-rejoin-paris-climate-accord-heres-what-happens-next-.html

Warming at 2 degrees Celsius [could trigger an international food crisis](https://www.cnbc.com/2019/08/07/un-climate-panel-urges-land-use-changes-to-avert-food-crisis.html) in coming years, [according to a 2019 report](https://www.cnbc.com/2019/08/07/un-climate-panel-urges-land-use-changes-to-avert-food-crisis.html) from the U.N.’s scientific panel on climate change. The general consensus among scientists is that the climate targets that countries are attempting to meet under the Paris accord are not sufficient. The next round of U.N. climate talks is set to take place in Glasgow, Scotland, in November 2021, when countries are expected to submit new, more ambitious 2030 targets — and all eyes will be on the U.S. How the U.S. will rejoin Biden [will not need Senate support](https://www.cnbc.com/2020/11/12/joe-bidens-climate-change-plans-face-uncertain-future-in-the-senate.html) to rejoin, because the accord was set up as an executive agreement. Biden’s administration will just have to send a letter to the United Nations stating the intention to rejoin, and the official return would take effect in 30 days. Once the U.S. officially returns, the agreement requires countries to set voluntary targets to reduce domestic emissions and create stricter goals in coming years. The accord has also implemented a binding requirement that countries accurately report their progress. During [Barack Obama’s](https://www.cnbc.com/barack-obama/) presidency, the U.S. vowed to curb emissions between 26% and 28% below 2005 levels by 2025. The country has not come anywhere near meeting that goal, and progress essentially halted during the Trump administration, which [dismantled more than 70 major environmental regulations](https://eelp.law.harvard.edu/regulatory-rollback-tracker/) in four years. Rebuilding trust with nations The U.S. is the world’s second-largest emitter of greenhouse gases behind China and is seen as key in the global effort to reduce the effects of climate change. “U.S. leadership and the U.S.-China bilateral agreement to cut CO2 emissions were key to getting the Paris agreement on track,” said Mahowald. “Continued U.S. involvement and leadership is key to any effort to stop climate change.” Upon rejoining, the U.S. will likely be expected to provide a climate target that is updated from the Obama administration’s goal and a concrete plan to reduce domestic emissions from the power and energy sector. More broadly, the U.S. will have to rebuild trust with other nations in the agreement, especially after Trump’s legacy of climate change denial and his official withdrawal from the accord. Trump’s rollbacks of a slew of environmental regulations and exit from the agreement shocked international allies and scientists. It also prompted some U.S. states, cities and corporations to part ways with the administration and move forward with their own climate plans. For instance, 75 CEOs last year [urged Trump to stay in the accord](https://www.reutersevents.com/sustainability/75-ceos-call-us-stay-paris-agreement-emissions-continue-rise). Major corporations including [Apple](https://www.cnbc.com/quotes/?symbol=AAPL), [Google](https://www.cnbc.com/quotes/?symbol=GOOGL), [Goldman Sachs](https://www.cnbc.com/quotes/?symbol=GS) and [Royal Dutch Shell](https://www.cnbc.com/quotes/?symbol=RDSA-GB) signed a statement that argued it would strengthen their competitiveness in global markets and allow the U.S. to be a leader in developing technology that curbs carbon emissions. Globally, the U.S. will have a great deal of work to do to catch up with other nations that have already unveiled bold climate initiatives. China, the world’s biggest carbon emitter, has pledged to become carbon neutral by 2060, and the E.U. has vowed to go carbon neutral by 2050. Biden has said that the U.S. will recommit to its emissions reduction goals under the accord and lead the effort to get other countries to improve their climate goals. The former vice president has [plans that extend beyond Paris](https://www.cnbc.com/2020/11/12/joe-bidens-climate-change-plans-face-uncertain-future-in-the-senate.html), including a $2 trillion economic plan to invest in a transition from fossil fuels to clean energy, cut carbon emissions from electric power to zero by 2035 and reach net-zero emissions by 2050. “My hope — and expectation — is that President Biden will indeed reenter the Paris Agreement quickly, spearhead a re-energized and much more ambitious U.S. commitment and take an intelligent and responsible role in the global effort,” said Appalachian State University environmental sciences professor Gregg Marland, who tracks global carbon emissions.

#### Warming causes extinction

Klein 14[(Naomi Klein, award-winning journalist, syndicated columnist, former Miliband Fellow at the London School of Economics, member of the board of directors of 350.org), *This Changes Everything: Capitalism vs. the Climate*, pp. 12-14]

In a 2012 report, the World Bank laid out the gamble implied by that target. “As global warming approaches and exceeds 2-degrees Celsius, there is a risk of triggering nonlinear tipping elements. Examples include the disintegration of the West Antarctic ice sheet leading to more rapid sea-level rise, or large-scale Amazon dieback drastically affecting ecosystems, rivers, agriculture, energy production, and livelihoods. This would further add to 21st-century global warming and impact entire continents.” In other words, once we allow temperatures to climb past a certain point, where the mercury stops is not in our control.¶ But the bigger problem—and the reason Copenhagen caused such great despair—is that because governments did not agree to binding targets, they are free to pretty much ignore their commitments. Which is precisely what is happening. Indeed, emissions are rising so rapidly that unless something radical changes within our economic structure, 2 degrees now looks like a utopian dream. And it’s not just environmentalists who are raising the alarm. The World Bank also warned when it released its report that “we’re on track to a 4-C warmer world [by century’s end] marked by extreme heat waves, declining global food stocks, loss of ecosystems and biodiversity, and life-threatening sea level rise.” And the report cautioned that, “there is also no certainty that adaptation to a 4-C world is possible.” Kevin Anderson, former director (now deputy director) of the Tyndall Centre for Climate Change, which has quickly established itself as one of the U.K’s premier climate research institutions, is even blunter; he says 4 degrees Celsius warming—7.2 degrees Fahrenheit—is “incompatible with an organized, equitable, and civilized global community.”¶ We don’t know exactly what a 4 degree Celsius world would look like, but even the best-case scenario is likely to be calamitous. Four degrees of warming could raise global sea levels by 1 or possibly even 2 meters by 2100 (and would lock in at least a few additional meters over future centuries). This would drown some island nations such as the Maldives and Tuvalu, and inundate many coastal areas from Ecuador and Brazil to the Netherlands to much of California and the northeastern United States as well as huge swaths of South and Southeast Asia. Major cities likely in jeopardy include Boston, New York, greater Los Angeles, Vancouver, London, Mumbai, Hong Kong, and Shanghai.¶ Meanwhile, brutal heat waves that can kill tens of thousands of people, even in wealthy countries, would become entirely unremarkable summer events on every continent but Antarctica. The heat would also cause staple crops to suffer dramatic yield losses across the globe (it is possible that Indian wheat and U.S. could plummet by as much as 60 percent), this at a time when demand will be surging due to population growth and a growing demand for meat. And since crops will be facing not just heat stress but also extreme events such as wide-ranging droughts, flooding, or pest outbreaks, the losses could easily turn out to be more severe than the models have predicted. When you add ruinous hurricanes, raging wildfires, fisheries collapses, widespread disruptions to water supplies, extinctions, and globe-trotting diseases to the mix, it indeed becomes difficult to imagine that a peaceful, ordered society could be sustained (that is, where such a thing exists in the first place).¶ And keep in mind that these are the optimistic scenarios in which warming is more or less stabilized at 4 degrees Celsius and does not trigger tipping points beyond which runaway warming would occur. Based on the latest modeling, it is becoming safer to assume that 4 degrees could bring about a number of extremely dangerous feedback loops—an Arctic that is regularly ice-free in September, for instance, or, according to one recent study, global vegetation that is too saturated to act as a reliable “sink”, leading to more carbon being emitted rather than stored. Once this happens, any hope of predicting impacts pretty much goes out the window. And this process may be starting sooner than anyone predicted. In May 2014, NASA and the University of California, Irvine scientists revealed that glacier melt in a section of West Antarctica roughly the size of France now “appears unstoppable.” This likely spells down for the entire West Antarctic ice sheet, which according to lead study author Eric Rignot “comes with a sea level rise between three and five metres. Such an event will displace millions of people worldwide.” The disintegration, however, could unfold over centuries and there is still time for emission reductions to slow down the process and prevent the worst. ¶ Much more frightening than any of this is the fact that plenty of mainstream analysts think that on our current emissions trajectory, we are headed for even more than 4 degrees of warming. In 2011, the usually staid International Energy Agency (IEA) issued a report predicting that we are actually on track for 6 degrees Celsius—10.8 degrees Fahrenheit—of warming. And as the IEA’s chief economist put it: “Everybody, even the school children, knows that this will have catastrophic implications for all of us.” (The evidence indicates that 6 degrees of warming is likely to set in motion several major tipping points—not only slower ones such as the aforementioned breakdown of the West Antarctic ice sheet, but possibly more abrupt ones, like massive releases of methane from Arctic permafrost.) The accounting giant PricewaterhouseCoopers as also published a report warning businesses that we are headed for “4-C , or even 6-C” of warming.¶ These various projections are the equivalent of every alarm in your house going off simultaneously. And then every alarm on your street going off as well, one by one by one. They mean, quite simply, that climate change has become an existential crisis for the human species. The only historical precedent for a crisis of this depth and scale was the Cold War fear that we were headed toward nuclear holocaust, which would have made much of the planet uninhabitable. But that was (and remains) a threat; a slim possibility, should geopolitics spiral out of control. The vast majority of nuclear scientists never told us that we were almost certainly going to put our civilization in peril if we kept going about our daily lives as usual, doing exactly what we were already going, which is what climate scientists have been telling us for years. ¶ As the Ohio State University climatologist Lonnie G. Thompson, a world-renowned specialist on glacier melt, explained in 2010, “Climatologists, like other scientists, tend to be a stolid group. We are not given to theatrical rantings about falling skies. Most of us are far more comfortable in our laboratories or gathering data in the field than we are giving interviews to journalists or speaking before Congressional committees. When then are climatologists speaking out about the dangers of global warming? The answer is that virtually all of us are now convinced that global warming poses a clear and present danger to civilization.”