

The Antitrust Policy of America's Next President: Clinton v. Trump

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With the US presidential elections fast approaching, competition scholars and practitioners naturally question how the outcome might affect the US antitrust landscape. This policy brief offers some insights by analyzing both Hillary Clinton and Donald Trump's campaign platforms. Because these broad policy outlines do not touch upon antitrust issues – or only do so in relatively vague terms – this brief goes one step further. It systematically looks at each candidate's background, public declarations, running-mate and campaign advisors, and potential picks for the vacant seat on the Supreme Court.

The brief shows that antitrust law is a relatively peripheral issue in both candidates' programs. At the same time, the evidence identified in this brief suggests that, if elected, Hillary Clinton would pursue a more expansive antitrust policy than Donald Trump.

These findings are in line with the idea that democrat leaders pursue a more interventionist agenda than their republican counterparts.¹ Whether the successful candidate will effectively deliver upon his or her policy positions is another matter.

Empirical evidence linking the party in power to antitrust outcomes has proved elusive.²

Hillary Clinton

In office

Hillary Clinton has vast political experience. She has occupied no less than three high-level political positions: First Lady, Senator and Secretary of State. For obvious reasons, her time serving as First Lady, and that as Secretary of State offer little insights as to her antitrust views. During her time on the Senate floor, Clinton was not very active on questions of economic policy. Only one out of the 417 bills she sponsored touched upon antitrust matters.³ The bill, which was never enacted into law, proposed to limit the award of government contracts to firms with poor records of integrity and business ethics, of which antitrust violations were a component.⁴

Public declarations

On the campaign trail, Clinton has offered a detailed roadmap of her economic policy, which includes the type of antitrust



enforcement she would push for.⁵ In many ways, the roadmap is close in spirit to the policy that is currently pursued in the European Union (“EU”). It is also reminiscent of the speech given by Elizabeth Warren earlier this year.⁶ Clinton’s plan places consumers and SMEs at the forefront of antitrust policy, and displays a certain suspicion of big business. Some of its provisions are particularly noteworthy.⁷

First and foremost, her policy tackles the in vogue issue of “excess concentration” in US industries.⁸ To address this, it envisages a stricter enforcement of merger provisions. It also contemplates retrospective reviews of consummated mergers.

A second, important measure is the promise to appoint “strong leadership” to head the antitrust agencies.

During the run-up to the campaign, Clinton praised Tom Wheeler, the chairman of the Federal Communications Commission (“FCC”), for his work on net neutrality.⁹ She even intimated that further legislation on the issue might be necessary. One can only assume that this is what she has in mind for the antitrust agencies: a leader in the Wheeler mold with a commitment to muscled intervention, even in controversial cases.

Finally, Clinton’s policy note takes a strong stance on so-called “unjustified” price increases in the pharmaceutical sector, citing the EpiPen price hike as an example.¹⁰ The roadmap suggests drastic solutions such as the reimportation of drugs sold abroad and fines. Such measures, if they ever became a reality, could significantly impact investments in healthcare innovations.

Running-mate and advisors

Both Clinton’s running-mate and her close circle share her view of a more expansive antitrust enforcement. Though Time Kaine has not pronounced himself on the topic of antitrust, his record suggests that his views are to the center of the democrat party.¹¹ A red-state democrat, Tim Kaine is broadly supportive of Free Trade.¹² However, his political areas of expertise suggest he would not take on a great role in US antitrust policy. An overview of the bills sponsored by Kaine shows he has little experience in matters of economic policy.¹³

One man who might be central to Clinton’s policy is Alec Ross.¹⁴ One of Clinton’s tech policy advisors, Ross is the author of “The Industries of the Future”, a best-selling book on the policy implications of present

and future technological advances.¹⁵ Though the book is light on actual policy recommendations, it paints Silicon Valley companies, and Google in particular, in a very positive light. This suggests a greater latitude than what the Clinton campaign’s platform might hint to at first sight.

Clinton has two main economic advisors: Michael Shapiro and Michael Schmidt.¹⁶ Having recently graduated from Yale law school, both are relative novices and, without any serious publications to their name, one can only guess what their perspective on economics might be. Clinton’s campaign has also been associated with a number of external advisers, some of which are better known to the antitrust community. The most famous name on the list is probably Joseph Stiglitz¹⁷. Though he received the Nobel Prize for his work on the economics of information – in particular information asymmetries – and worked on

Hillary Clinton:

- ✓ *Plans to reduce industry concentration*
- ✓ *Will appoint “strong leadership” to head the antitrust agencies*
- ✓ *Vows to fight “unjustified” price increases*



industrial organization issues¹⁸, Stiglitz is now widely associated with a movement against free markets and *laissez faire* capitalism. He is also critical of the US patent system.¹⁹ Another advisor is Alan Krueger. Krueger recently co-authored a paper on capacity utilization in the taxi sector – i.e. the amount of time during which a vehicle is carrying passengers rather than looking for them – showing that Uber achieves better outcomes than regular taxis.²⁰ This suggests that Krueger is sensitive to the efficiency gains brought about by Uber and the sharing economy as a whole. Clinton's other economic advisers²¹, notably Alan Blinder²², Simon Johnson²³ and Heather Boushey²⁴ are all on the left-side of the economics profession.

A final point of note are Hillary Clinton's alleged ties to seed giant Monsanto.²⁵ With a Bayer-Monsanto merger unlikely to be cleared before the end of the Obama administration²⁶, the next President might have some influence over the outcome of the case. Especially if the alleged ties are true, the merger will provide the ideal test for Clinton's commitment to fighting concentration in US industries.

Supreme Court picks

By filling the vacant seat on the Supreme Court, the next President could significantly influence US antitrust law. Merrick Garland's name has been put forward by the Obama administration. Garland has significant experience in the field of antitrust. He authored articles²⁷ on the subject, taught it at Harvard Law School, and decided a number of cases in this area.²⁸ Though his early scholarship seems to be relatively pro-government, his later decisions cast him in a much more moderate light.

As things stand, Garland's candidacy is akin to Schrodinger's cat. Clinton has neither backed him as her potential nominee, nor

has she mentioned any other potential candidates. That said, during her second debate with Donald Trump, Clinton detailed her vision on an ideal candidate.²⁹ The picture that she painted – someone with a diverse background and “real-life” experience – hardly matches Garland's profile.

Donald Trump

Business career

During his long and media-bathed business career, Donald Trump had three brushes with antitrust law.³⁰ In the first of these cases, Trump was charged with violating Hart-Scott-Rodino merger notification requirements. Trump failed to notify the acquisition of shares in two gaming companies, acquired in the name of his banker, Bear Stearns.³¹ Trump ultimately settled the case and agreed to pay a penalty of \$750,000.

The second case was brought by the USFL – a failed football league which was once a rival to the vastly more successful NFL – of which Donald Trump owned one of the teams. Allegedly trying to engineer a merger between the two leagues, the USFL and some of its teams with Trump as their figurehead brought a section 2 suit against the NFL.³² The suit notably argued that the NFL's contracts with three major TV networks constituted anticompetitive monopolization, and that the NFL was attempting to co-opt owners and players from its rival franchise. Though the jury ultimately found in favor of the USFL on the latter issues, it only awarded symbolic damages, judging that the USFL's failure was not a result of the NFL's actions.

Finally, Trump found himself on the other side of a monopolization suit when a rival, Sands Resorts, filed a complaint against one of Trump's casino/hotel resorts in Atlantic City.³³ Sands Resorts had initially struck a



deal to purchase development land next to one of Trump's resorts. Due to various setbacks the deal fell through and Trump was able to swoop in. Trump eventually prevailed in Court.³⁴

It is unclear how these antitrust experiences might shape a Trump presidency's antitrust policy. At the very least, these cases show that Trump has some familiarity with the subject. Having twice been on the receiving end of antitrust lawsuits, he might not favor a move towards stricter antitrust intervention.

Public declarations

With only a couple of weeks left until the election, it may come as a surprise that the Trump campaign still hasn't provided any overview of the antitrust policy it would pursue, if elected to office.

The campaign's website offers some insights into Trump's potential economic policy, but none of them refers to antitrust. Trump's economic policy has three main components: tax cuts, deregulation and a pull-back from international trade.³⁵ On the question of deregulation, the Trump campaign cites only one example: the Environmental Protection Agency's clean power plan. These policies tend to cut against the idea that Trump would be an active antitrust enforcer.

Outside of this general policy, Trump has made a number of declarations that are tangentially linked to his potential stance on antitrust issues. In November 2014, Trump voiced his opposition the idea of net neutrality, tweeting that: "*Obama's attack on the internet is another top down power grab. Net neutrality is the Fairness Doctrine. Will target conservative media*".³⁶

There is nothing to suggest that his position has changed since then. A trump victory might thus make Tom Wheeler's current position as chairman of the FCC untenable. Another point of note is Trump's opposition to Obamacare which, unsurprisingly, he proposes to repeal. In its place, Trump proposes to eliminate regulations which might hinder the provision of private medical insurance across state lines.³⁷ This displays some faith in market-driven solutions to policy issues. Finally, back in May 2016, Trump asserted that Amazon was facing "*huge*" antitrust problems and seemed to suggest that he would go after the company if elected.³⁸

In fairness to Donald Trump, who has flip-flopped on many other issues³⁹, his stance on the economy is relatively straightforward: less regulation and more protection from foreign

competition. Though his actual campaign memos are extremely nebulous, it is a safe bet that he would be averse to strong antitrust enforcement initiatives.

Running-mate and advisors

Although Mike Pence has never sponsored a bill on antitrust matters, he has been a long-standing opponent of network neutrality. In 2011, he sponsored a bill seeking to prevent the FCC from adopting net neutrality rules.⁴⁰ The bill never made it to a vote. Moreover, back in 2006, Pence was instrumental in overturning a proposed amendment which would have imposed net neutrality provisions on all broadband networks.⁴¹ In addition, Pence is a right-wing conservative who shares traditional republican views on family values, gun control and, more to the point, the role of the State in the economy.⁴² In short, both his stance on net neutrality and his strong conservative views suggest

Donald Trump:

- ✓ *Antitrust experience during his business career*
- ✓ *Opposes most forms of government intervention*
- ✓ *Pence is a strong opponent of net neutrality*

that Pence would not support a policy of heavy antitrust enforcement.

Trump's main campaign advisors are also likely to favor a small-antitrust agenda. One of Trump's main economic advisers is Larry Kudlow. Kudlow is a senior contributor to CNBC and owns his own economic consultancy firm.⁴³ His views are perfectly summarized by his often repeated motto: "*We believe that free market capitalism is the best path to prosperity!*"⁴⁴ During his show, Kudlow repeatedly voiced his staunch opposition to any form of antitrust enforcement, and once referred to an "*antitrust jihad against business*".⁴⁵ This leaves little doubt about the advice he may give to Donald Trump on the matter. The Trump camp has also been receiving the advice of Stephen Moore.⁴⁶ Moore is the chief economist of the Heritage Foundation, a conservative think tank.⁴⁷ Moore was a vocal critic of antitrust intervention against Microsoft and Intel.⁴⁸ More recently, he has condemned the EU's antitrust investigations into Google's conduct.⁴⁹ He holds strong views against antitrust enforcement as a whole, as well as most forms of government interference with the economy. A last notable advisor is Peter Navarro.⁵⁰ Navarro is a professor of economics and public policy at UC Irvine⁵¹ and has published extensively on topics such as deregulation, the alleged harms of big government and Washington bureaucracy⁵², and the threat posed by China⁵³. This may play out in the emerging demands for a stricter control of mergers involving the acquisition of US assets by foreign firms.⁵⁴ As with Trump's other advisors, there is little question where Navarro stands as far antitrust enforcement is concerned.

Supreme Court picks

To date, the Trump campaign has proposed all of 21 potential nominees for the vacant seat on the Supreme Court.⁵⁵ Given this vast pool of candidates, there is little point in

analyzing individual backgrounds of each of these candidates – they are all broadly in-line with traditional Republican views. But the context in which these names has been put forward is enlightening. The move was widely seen as an attempt to reassure the GOP that, if elected, Trump would appoint a Supreme Court justice that would uphold their views. During his second debate with Hillary Clinton, Trump suggested that he would appoint a judge "in the mold of Scalia". Readers of this brief are probably well-aware of the late Justice's significant contribution to US antitrust law. Scalia notably delivered the majority opinion in *Trinko*⁵⁶, noting that "*the opportunity to charge monopoly prices—at least for a short period—is what attracts "business acumen" in the first place; it induces risk taking that produces innovation and economic growth*". Appointing a Supreme Court Justice in the Scalia mold would contribute to an antitrust law in the Robert Bork tradition⁵⁷, as opposed to the more interventionist approach championed by Trump's opponents.

Conclusion

With only a couple of weeks until the elections and Trump's prospects seemingly waning⁵⁸, America looks set for an antitrust revival. Smoke signals from the Clinton camp suggest that it views current antitrust enforcement as inefficient to deal with the challenges of a 21st century economy. Potential changes could take on many forms: appointing strong leaders to steer the US antitrust agencies, introducing legal measures which correct perceived flaws in the current antitrust toolbox, and picking a Supreme Court justice committed to reinvigorating the antitrust laws. In contrast, antitrust enforcement levels would probably be lower under a Trump presidency.

At any rate, this brief suggests that antitrust law remains a relatively low profile topic in



US politics. Neither of the candidates has made antitrust issues a central part of their campaign. Though Clinton has pushed for some changes to the current rules, the subject remains a peripheral consideration. Trump has not even touched upon the subject. Given this, conjectures that

President Clinton would make American antitrust great again should be taken with a grain of salt. When elected, the successful candidate will probably have more pressing matters to address than antitrust and it is possible that little will change in this area.

¹ See Dan Fuller & Doris Geide-Stevenson, *Consensus on economic issues: a survey of Republicans, Democrats and economists*, 33 EASTERN ECONOMIC JOURNAL, 81-94 (2007).

² See, e.g., Richard A Posner, *A statistical study of antitrust enforcement*, 13 THE JOURNAL OF LAW & ECONOMICS, 411 (1970). (Posner shows that there is little correlation between the party in power and the number and quality of antitrust cases brought by the DOJ). See also, B Dan Wood & James E Anderson, *The politics of US antitrust regulation*, AMERICAN JOURNAL OF POLITICAL SCIENCE, 17 (1993). (The authors notably identify a link between the party in power and various proxies for antitrust intervention, such as the budget allotted to the DOJ's antitrust division). See also, Sally S Simpson, *Cycles of Illegality: Antitrust Violations in Corporate America*, SOCIAL FORCES, 956 (1987). (Simpson shows that Republican administrations produce more antitrust prosecution activities, but argues that this may be a result of underlying economic conditions, which influence both antitrust policy and the party in power).

³ In contrast, Clinton was particularly active in the areas of healthcare and family issues. Of the 417 bills sponsored by Clinton, 192 are more or less related to health issues. See Govtrack.us, Hillary Clinton page, Section listing the bills sponsored Clinton, [https:// www.govtrack.us/congress/bills/browse?sponsor=300022&subject=6096#text=health&terms= ALL](https://www.govtrack.us/congress/bills/browse?sponsor=300022&subject=6096#text=health&terms=ALL).

⁴ See 110th US Congress, 2nd Session, S.3139, "Oversight of the Performance and Effectiveness of National Contracting Act of 2008", available at <https://www.govtrack.us/congress/bills/110/s3139/text>.

⁵ See Hillary Clinton campaign website, "The Briefing: Hillary Clinton's Vision for an Economy Where our Businesses, our Workers, and Our Consumers Grow and Prosper Together", available at <https://www.hillaryclinton.com/briefing/factsheets/2016/10/03/hillary-clintons-vision-for-an-economy-where-our-businesses-our-workers-and-our-consumers-grow-and-prosper-together/>.

⁶ See Matthew Yglesias, "Elizabeth Warren wants the government to crack down on technology giants", VOX, July 4, 2016, <http://www.vox.com/2016/7/4/12077568/elizabeth-warren-antitrust>.

⁷ In a recent speech, Hillary Clinton sounded even more European, stressing the importance of consumer choice. A principle that is relatively germane to US antitrust enforcement and much more common in the European competition sphere. See Hillary Clinton, "Being pro-business doesn't mean hanging consumers out to dry", QUARTZ, October 20, 2015, <http://qz.com/529303/hillary-clinton-being-pro-business-doesnt-mean-hanging-consumers-out-to-dry/>.

⁸ See Neil Irwin, "Liberal Economists Think Big Companies Are Too Powerful. Hillary Clinton Agrees.", THE UPSHOT, October 4, 2016, <http://www.nytimes.com/2016/10/05/upshot/liberal-economists-think-big-companies-are-too-powerful-hillary-clinton-agrees.html>. See also, Business in America, "Too much of a good thing: Profits are too high. America needs a giant dose of competition", THE ECONOMIST, March 26th, 2016, <http://www.economist.com/news/briefing/21695385-profits-are-too-high-america-needs-giant-dose-competition-too-much-good-thing>

⁹ See Hillary Clinton Interviewed by Kara Swisher at 2015 Lead On Conference for Women, available at <https://youtu.be/Ite7mDrnbYU?t=18m42s>.

¹⁰ Mylan pharmaceuticals allegedly increased the price of its drug delivery device – called the EpiPen – by 400% when its only competitor was forced to leave the market for safety reasons. This sparked vivid criticism in many political spheres. For a summary of these developments, see Emily Willingham, "Why Did Mylan Hike EpiPen Prices 400%? Because They Could", FORBES, August 21,



2016, <http://www.forbes.com/sites/emilywillingham/2016/08/21/why-did-mylan-hike-epipen-prices-400-because-they-could/>.

¹¹ See Tim Kaine page on the OnTheIssues website, http://www.ontheissues.org/Senate/Tim_Kaine.htm.

¹² See Seung Min Kim & Burgess Everett, "Kaine praised TPP as recently as Thursday", POLITICO, July 22, 2016, <http://www.politico.com/story/2016/07/tim-kaine-trade-tpp-226054>.

¹³ See Govtrack.us, Tim Kaine page, https://www.govtrack.us/congress/members/timothy_kaine/412582.

¹⁴ See Tony Romm, "Inside Clinton's tech policy circle", POLITICO, June 7, 2016, <http://www.politico.com/story/2016/06/inside-clintons-tech-policy-circle-223992>.

¹⁵ See A. ROSS, *THE INDUSTRIES OF THE FUTURE* (Simon & Schuster. 2016).

¹⁶ See Luciana Lopez, "Economikes: the gatekeepers of Clinton's economic policy", REUTERS, June 21, 2016, <http://www.reuters.com/article/us-usa-election-clinton-economikes-idUSKCN0Z712S>.

¹⁷ See Isaac Chotiner, "Is Hillary Clinton More Liberal Than Barack Obama?", SLATE, September 1, 2016, http://www.slate.com/articles/news_and_politics/interrogation/2016/09/joseph_stiglitz_on_hillary_clinton_the_euro_crisis_and_tech_monopolies.html

¹⁸ The Nobel Prize website has a useful biographical section on Joseph Stiglitz which is available at http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2001/stiglitz-bio.html.

¹⁹ Stiglitz's views are notably outlined in one of his recent books. See JOSEPH E STIGLITZ, *REWRITING THE RULES OF THE AMERICAN ECONOMY: AN AGENDA FOR GROWTH AND SHARED PROSPERITY* (WW Norton & Company. 2015).

²⁰ Judd Cramer & Alan B Krueger, *Disruptive change in the taxi business: The case of Uber*, 106 *THE AMERICAN ECONOMIC REVIEW*, 177-182 (2016).

²¹ See Jennifer Epstein, "Hillarynomics: Boosting Middle Class, Disciplining Wall Street", BLOOMBERG, July 11, 2015, <http://www.bloomberg.com/politics/articles/2015-07-11/hillary-clinton-campaign-previews-economic-policy-proposals>. See also, Lopez, *supra* note 16.

²² See Alan Blinder's biography on Princeton University's website, <https://www.princeton.edu/~blinder/>.

²³ See Simon Johnson's biography on the MIT Sloan website, <http://mitsloan.mit.edu/faculty-and-research/faculty-directory/detail/?id=41226>.

²⁴ See Heather Boushey's biography on The Washington center for Economic Growth website, <http://equitablegrowth.org/person/heather-boushey/>.

²⁵ Clinton is said to have received campaign donations from one of Monsanto's lobbyists. See Ben Brody, "Lobbyists for Monsanto, ExxonMobil Raise Money for Hillary Clinton", BLOOMBERG, July 17, 2015, <http://www.bloomberg.com/politics/articles/2015-07-17/lobbyists-for-monsanto-exxon-mobile-raise-money-for-hillary-clinton>.

²⁶ See Diane Bartz & Greg Roumeliotis, "Bayer's Monsanto acquisition to face politically charged scrutiny", REUTERS, September 15, 2016, <http://www.reuters.com/article/us-monsanto-m-a-bayer-antitrust-idUSKCN11K2LG>.

²⁷ See Merrick B Garland, *Antitrust and State Action: Economic Efficiency and the Political Process*, 96 *THE YALE LAW JOURNAL*, 486-519 (1987). See also, Merrick B Garland, *Antitrust and Federalism: A Response to Professor Wiley*, 96 *THE YALE LAW JOURNAL*, 1291-1295 (1987). See also, Burton D Garland Jr & Reuven R Levary, *Role of American Antitrust Laws in Today's Competitive Global Marketplace, The*, 6 *U. MAIMI BUS. LJ*, 43-57 (1995).

²⁸ See Katharine O'Connor, "Bayer's Monsanto acquisition to face politically charged scrutiny", Judge Merrick Garland's Antitrust Past: A Brief Summary", *THE NATIONAL LAW REVIEW*, March 23, 2016, <http://www.natlawreview.com/article/judge-merrick-garland-s-antitrust-past-brief-summary>.

²⁹ See Cristian Farias, "Hillary Clinton Has A Vision For The Supreme Court, And It Looks Like Sonia Sotomayor", *THE HUFFINGTON POST*, October 10, 2016, http://www.huffingtonpost.com/entry/hillary-clinton-supreme-court-sotomayor_us_57fafd7de4b0b6a4303369c4



- ³⁰ See Robert Skitol, *Donald Trump's Major Antitrust Encounters*, 15 THE ANTITRUST SOURCE (2016).
- ³¹ See *United States v. Donald J. Trump*, 1988-1 Trade Cas. (CCH) 67,698 (D.D.C. 1988).
- ³² See *U.S. Football League v. Nat'l Football League*, 842 F.2d 1335, 1341-42 (2d Cir. 1988).
- ³³ See *Boardwalk Props, Inc. v. BPHC Acquisition, Inc. v. Donald J. Trump*, Docket No. ATL-C-000051-89E, Opinion at 64-65 (N.J. Super. Ct. Ch. Div., Atlantic City., Mar. 25, 1993).
- ³⁴ See Pam Belluck, "Tortuous Legal Fight Over Boardwalk Site Comes To An End The Sands Lost Big In Its Costly Battle With Donald Trump And Penthouse Publisher Bob Guccione", PHILLY.COM, March 26, 1993, [http:// articles.philly.com/1993-03-26/news/25950418_1_bob-guccione-penthouse-donald-trump](http://articles.philly.com/1993-03-26/news/25950418_1_bob-guccione-penthouse-donald-trump).
- ³⁵ See Donald Trump campaign website, "FACT SHEET: DONALD J. TRUMP'S PRO-GROWTH ECONOMIC POLICY WILL CREATE 25 MILLION JOBS", available at [https:// www.donaldjtrump.com/press-releases/fact-sheet-donald-j.-trumps-pro-growth-economic-policy-will-create-25-milli](https://www.donaldjtrump.com/press-releases/fact-sheet-donald-j.-trumps-pro-growth-economic-policy-will-create-25-milli).
- ³⁶ See Donald Trump Twitter feed, November 12, 2014, available at https://twitter.com/realDonaldTrump/status/532608358508167168?ref_src=twsrc%5Etfw.
- ³⁷ See Donald Trump campaign website, "HEALTHCARE REFORM TO MAKE AMERICA GREAT AGAIN", <https://www.donaldjtrump.com/positions/healthcare-reform>.
- ³⁸ See Fox News, "Trump: Amazon CEO using Washington Post for political power", available at [https:// www.youtube.com/watch?v=HD22O0y5VV0](https://www.youtube.com/watch?v=HD22O0y5VV0). See also, Callum Borchers, "Donald Trump's antitrust attack on Jeff Bezos doesn't make much sense", THE WASHINGTON POST, May 13, 2016, <https://www.washingtonpost.com/news/the-fix/wp/2016/05/13/donald-trumps-antitrust-attack-on-jeff-bezos-doesnt-make-much-sense/>.
- ³⁹ See, e.g., Donald Trump section, ONTHEISSUES.COM, http://www.ontheissues.org/Donald_Trump.htm. See also, Jane C. Timm, "A Full List of Donald Trump's Rapidly Changing Policy Positions", NBC NEWS, <http://www.nbcnews.com/politics/2016-election/full-list-donald-trump-s-rapidly-changing-policy-positions-n547801>.
- ⁴⁰ See 112th US Congress, 1st Session, H. R. 642, "Broadcaster Freedom Act of 2011", available at [https:// www.govtrack.us/congress/bills/112/hr642](https://www.govtrack.us/congress/bills/112/hr642).
- ⁴¹ See 109th US Congress, 2nd Session, "HR Amendment 987 Communications, Opportunity, Promotion, and Enhancement Act of 2006", available at http://www.ontheissues.org/HouseVote/Party_2006-239.htm.
- ⁴² See Mike Pence section, ONTHEISSUES.COM, http://www.ontheissues.org/Mike_Pence.htm.
- ⁴³ The firm's website is available at the following address, <http://www.kudlow.com/about.php>.
- ⁴⁴ See en.wikipedia.org, "The Kudlow Report", last visited October 19, 2016, https://en.wikipedia.org/wiki/The_Kudlow_Report.
- ⁴⁵ See youcallthisculture.blogspot, "Larry Kudlow: CNBC Jerk of the Day 7/7/09", July 7, 2009, <http://youcallthisculture.blogspot.be/2009/07/larry-kudlow-cnbc-jerk-of-day-7709.html>. See also, kudlowsmoneypolitics.blogspot, "Tonight on the Kudlow Report", July 7, 2009, [http:// kudlowsmoneypolitics.blogspot.be/2009/07/tonight-on-kudlow-report_07.html](http://kudlowsmoneypolitics.blogspot.be/2009/07/tonight-on-kudlow-report_07.html).
- ⁴⁶ See Rich Miller, "Trump Names Economy Team of Rich Men Who Look a Lot Like Him", Bloomberg, August 5, 2016, <http://www.bloomberg.com/politics/articles/2016-08-05/trump-forms-economy-team-of-rich-men-who-look-a-lot-like-him>.
- ⁴⁷ See Stephen Moore's biography on the The Heritage Foundation's website, <http://www.heritage.org/about/staff/m/stephen-moore>.
- ⁴⁸ See Gerald F. Seib, "Libertarians Choose Sides As Antitrust Case Expands", THE WALL STREET JOURNAL, June 9, 1998, <http://www.wsj.com/articles/SB897278617778543000>.
- ⁴⁹ See Stephen Moore, "EU, U.S. Gang Up On Google", INVESTOR'S BUSINESS DAILY, March 26, 2016, <http://www.investors.com/politics/viewpoint/stephen-moore-eu-us-gang-up-on-google/>.
- ⁵⁰ See Tyler Cowen, "Here's the Economist Whose Ideas Guide Trump", BLOOMBERG, August 1, 2016, <https://www.bloomberg.com/view/articles/2016-08-01/peter-navarro-is-the-economist-whose-ideas-guide-trump>. See also, Tim Worstall, "Donald Trump's Economic Adviser, Peter Navarro, Is



Simply Wrong About Trade - Wholly And Entirely”, FORBES, August 6, 2016, <http://www.forbes.com/sites/timworstall/2016/08/06/donald-trumps-economic-adviser-peter-navarro-is-simply-wrong-about-trade-wholly-and-entirely/#6dd710cc4f26>.

⁵¹ See Peter Navarro’s biography on the UC Irvine website, <http://merage.uci.edu/Faculty/FacultyDirectory/FacultyProfiles.aspx?FacultyID=1589&Page=2>.

⁵² See R.G. HUBBARD & P. NAVARRO, SEEDS OF DESTRUCTION: WHY THE PATH TO ECONOMIC RUIN RUNS THROUGH WASHINGTON, AND HOW TO RECLAIM AMERICAN PROSPERITY (FT Press. 2010).

⁵³ See P. NAVARRO & G. AUTRY, DEATH BY CHINA: CONFRONTING THE DRAGON - A GLOBAL CALL TO ACTION (Pearson Education. 2011).

⁵⁴ See, e.g., Nicolas Petit, *Chinese State Capitalism and Western Antitrust Policy*, AVAILABLE AT SSRN 2798162 (2016).

⁵⁵ See J. Diamond, A. de Vogue & A. Killough, “Trump floats more potential Supreme Court picks — including Sen. Mike Lee”, CNN, September 23, 2016, <http://edition.cnn.com/2016/09/23/politics/donald-trump-judicial-nominations/>. See also, Jeremy Diamond, “Trump unveils his potential Supreme Court nominees”, CNN, May 19, 2016, <http://edition.cnn.com/2016/05/18/politics/donald-trump-supreme-court-nominees/>.

⁵⁶ See *Verizon Communications Inc. v. Trinko*, 540 U.S. 398 (2004).

⁵⁷ Bork was one of the most famous scholars of the so-called Chicago school. See, e.g., R.H. BORK, ANTITRUST PARADOX (Simon & Schuster. 1993).

⁵⁸ At the time of writing, FiveThirtyEight’s polls-only forecast gives Clinton an 87% chance of winning, and PredictWise gives her a 90% chance. See “2016 Election Forecast”, FIVETHIRTYEIGHT, last visited October 19, 2016, http://projects.fivethirtyeight.com/2016-election-forecast/?ex_cid=rrpromo. See also, “2016 President – Winner”, PREDICTWISE, last visited October 19, 2016, <http://predictwise.com/politics/2016-president-winner>.