# Case

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### T – CB

Mitchell N. **Reinis et al. 16**, Reinis is Attorney at Thompson Coburn LLP, California State Bar No. 36131; Santos is Attorney at Thompson Coburn LLP, California State Bar No. 210185; Higgins is Attorney at Thompson Coburn LLP, Pro Hac Vice; Kraft is Attorney at Thompson Coburn LLP, Pro Hac Vice, "California v. United States DOL," U.S. District Court for the Eastern District of California, Sacramento Division, 04/15/2016, Lexis

C. The Department's Other Arguments Conflate 13(c)(1) and 13(c)(2), Improperly Rely on NLRA Case Law, Employ an Inapplicable Preemption Doctrine, and Do Not Rationally Distinguish PEPRA From the Law Impacting MBTA.

The Department asserts that Plaintiffs can argue that 13(c)(2) protects the "collective bargaining" process only by ignoring 13(c)(2)'s use of "collective bargaining rights." The Department's suggestion that 13(c)(2) protects more than process, however, improperly conflates the distinct protections afforded by 13(c)(1) and (2) 8 and conflicts with 13(c)'s legislative history and Donovan. Congress intended for 13(c)(2) to protect "collective bargaining," a term that by definition means a "procedure looking toward the making of collective agreements." 9 And Donovan clearly described 13(c) as protecting the process of meaningful, good faith negotiations. 10 767 F.2d at 950-51; id. at 953 (13(c) "protects the process of collective bargaining"). The Department knows this; it has acknowledged 13(c)(2)'s protection of process in its decisions on remand (ECF No. 100 at 26, S.A.R. at 25), its pending motion (id. 99-1 at [\*10] 14: "collective bargaining rights … are … rights to a process"), and in prior certification decisions. 11

[\*11]

The Department attempts to salvage its overreliance on NLRA case law by arguing those cases determine what Congress intended the "generic" term "collective bargaining" in 13(c) to mean. (ECF No. 107 at 14-15.) True, Congress did not "employ a term of art devoid of all meaning," but the Department need look no further than Donovan to divine the meaning of "collective bargaining rights" Congress incorporated into 13(c). "Then as now, collective bargaining was universally understood to require, at a minimum, good faith negotiations, to a point of impasse, if necessary, over wages, hours and other terms and conditions [\*12] of employment." Donovan, 767 F.2d at 949; see id. at 950 (holding that "continuation of collective bargaining rights" requires that employees "be represented in meaningful, 'good faith' negotiations with their employer over wages, hours and other terms and conditions of employment").

## Adv CP

### Perms

### AT: Mandate Long-Termism CP---2AC

#### Gibberish. Any policy could be justified on short- or long-termist principles. No way to verify what an executive is actually thinking. They’d be encouraged to lie because their compensation structures are tied to short-term performance. That’s Martin and Rolf.

#### 2. Courts trying to enforce the requirement would just make a mess.

Mark J. Roe 22, David Berg Professor of Law at Harvard Law School, author of Strong Managers Weak Owners, author of Political Determinants of Corporate Governance, “Cures and their Limits: Insulating Executives from Financial Markets,” in Missing the Target, DOI: 10.1093/oso/9780197625620.001.0001, pp 115–128

Courts as makers of economic policy? But is judicial action on short-termism appropriate—either way? Some judges imply it is not: Justice Jacobs—long an influential and now retired Delaware judge—called short-termism “a national problem that needs to be fixed,”29 not a narrow corporate law problem.

Justice Jacobs’ surmise was correct. Courts are the wrong institution for such economic policymaking: they lack the staff and the range of policy tools—and perhaps for this reason it only sometimes figures explicitly in their on-the-bench statements. If the corporate planning horizon is indeed too short and leads to less investment, too little R&D, and cash drained in buybacks, policymakers should consider tax credits for investment, government spending on R&D, and tighter regulation of stock buybacks through securities law, not basic corporate law doctrines. Policymakers with a professional staff are better placed than judges to decide whether or not stock market short-termism is a major cause of these economic setbacks and, if it is, they are the right ones to consider whether transaction taxes and capital gains tax adjustments are the right remedies. The corporate law courts lack the power to use these policy tools.

Such economic policymaking also fits badly with core corporate law doctrines. Judges do not second-guess the corporation’s business decisions, because judges are poorly positioned to evaluate business decisions. They are lawyers in judicial robes, not business people. This so-called “business judgment rule” is central to corporate law. The corporate judiciary ought to be more reluctant to assess whether the corporate economy is too short-term, too long-term, or just right. Even a state legislature, with its parochial concerns— such as raising tax revenue or promoting the well-being of local businesses, employees, and executives—is ill-placed to make such judgments, except possibly for firms operating primarily within the state’s own borders. To allow short-termism issues into the courtroom is to facilitate business and economic engineering that the best business judges rightly decline to undertake even on the much-reduced scale of a single firm’s mistaken business decision.

### AT: corporate finance

### AT: Basic Income/Fiscal Policy – 2AC

#### Basic income – and other fiscal policies – are too costly, facilitate AI takeover, and replace democracy with modern feudalism.

David Madland 21 - Senior Fellow and Strategic Director of the American Worker Project at the Center for American Progress, PhD in government from Georgetown. “Answering Skeptics,” 2021, Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States, Chapter 5, ILR Press.

Another potential alternative to the labor movement—increasing taxes on the wealthiest Americans to ensure that they pay their fair share and using the additional revenue to provide additional benefits for lower- and middle-class Americans—is unlikely to deliver as much as a new labor system. The United States clearly needs to raise taxes on the wealthy and boost social spending. Taxes on the wealthy are well below the level they were during the mid-twentieth century, and increasing taxes on rich people can help significantly reduce economic inequality.97 The United States also provides much skimpier public benefits to its citizens than do most other advanced countries. Virtually all other countries provide universal health care and paid family leave, but the United States does not—and the list of the deficiencies of the US welfare state could go and on.

While higher taxes on the rich and improved government benefits are clearly necessary, they are likely to face significant difficulties in raising middle-class incomes, and they will not build a powerful citizens’ organization that can correct the problems with America’s democracy. They are part of the solution, but not the whole thing.

Even the most extreme version of this idea—a universal basic income providing a guaranteed level of income to all Americans, no matter their age, whether they are working or not—does not fully address the country’s wage and inequality challenges, let alone do much for democracy. Some version of a basic income may very well be a good policy. It may be an important complement to many government antipoverty programs and may help provide a modest improvement in the standard of living for poor people and potentially even the middle class. Indeed, the Alaska Permanent Fund’s annual payout (based on oil revenue) of a few hundred to a few thousand dollars to all residents seems to work quite well, though the results from Finland’s recent experiment may not be as positive.98 Still, relying on taxes and transfers to address wage stagnation and extreme inequality suffers from a number of problems.

First, the cost to significantly improve current living standards for most Americans without raising wages is quite large—perhaps impracticably so.99 Consider, for example, the cost to the government of raising middle-class incomes at the pace of productivity, without wage increases. It would require spending more than twice as much every year as is now spent on Social Security to boost household market incomes for the bottom 80 percent of Americans by income to where they would be had they kept pace with productivity growth over the past twenty-five years.100 Social Security is by far the largest existing social program; creating a new program roughly double its size may not be practical. While smaller programs may be more affordable, they would do far less to raise incomes—either maintaining income growth at levels well below productivity growth or only raising incomes for a smaller group, such as the extremely poor

There are questions about the desirability of creating such a big government program as guaranteed basic income and increasing taxes to the degree necessary to fund it. It would also likely create additional challenges that might not be recognized until the program is up and running. While the experience of Social Security indicates that it is possible for large social programs to work well in the United States, it took decades for Social Security to get to its currents size, and in its early years it provided very few benefits. Social Security did not instantly become the largest government social program but rather evolved over years and years.

Beyond such narrow practical concerns, receiving money or benefits from the government is not actually a wage. Some economists may argue that money is money, and thus a wage and a government benefit are functionally equivalent. At some level it is true that most income is dependent on the governmental structure that enables people to earn a living, and thus there may be less of a distinction than some people claim between a government handout and earned income. But people generally prefer to feel they have earned the money themselves. There is a dignity in earning a living wage that is hard to replace. Doing a job that is valued by society is not just a source of money but can also be a source of pride and placement in the community. A job with a decent wage is a tried and true way for people to feel they are included in society.

Further, the power for workers to earn a living wage creates a different kind of society than one where most people are dependent on government redistribution. It is hard to imagine that a society where some people are extremely wealthy and everyone else depends on a basic income from the government would be as democratic as America currently is, let alone have a true democracy. In this vein, some of the biggest proponents of universal basic income are the superrich of Silicon Valley, who presumably see giving people money less of a challenge to their power and wealth than actually ensuring that workers have adequate power to get paid fairly. Taken to the extreme, a universal basic income that replaces most wage income is akin to a modern version of a feudal society where the peasants depend on the whims of the rich and powerful lords who control government.

Still, for the sake of argument, let’s assume a large basic income program could be the product of a real democratic society and create a high standard of living for most people. In this case, basic income might help foster a more harmonious society and the development of worthwhile values. But it also might not. Mass affluence without work would be a big social experiment. Small-scale experiments with modest sums of money suggest that things might work out fine, but there are many reasons to worry that a large and robust basic income program might not work out—from the deep-rooted work ethic to the failures of many other grand social experiments. At a minimum, a massive basic income program would be a big social risk. In contrast, building worker power is reliable and has proven successful at scale.

In total, these concerns suggest that a basic income would be best suited to reducing poverty and modestly improving the living standards of the middle class but less suited to reversing the hollowing out of the middle class or reviving democracy.

To some basic income proponents, these theoretical and practical concerns can be dismissed because, they argue, jobs are disappearing. In the future, there may not be enough work for people, and thus a universal basic income is required, so the story goes. Technology and artificial intelligence will create huge disruptions in the labor market. Indeed, some estimates for the number of jobs that could be lost to technology are huge. Still, a fair amount of research indicates that the disruptions are likely to be significant but more modest—with, for example, the OECD predicting that 10 percent of US jobs are at risk of automation over the next several decades.101

The most pessimistic visions of the future are based on the idea that new kinds of jobs will not be created or will be created very slowly, which is at best a kind of guesswork. So far, the experience every time a disruptive technology comes along suggests that it is likely that new jobs will be created. So too does the potential for humans to create new jobs. As long as there are human wants and needs, it is likely there will be work. Humans can invent work at a staggering rate. Decades ago, few could have predicted that there would be industries based around personal trainers, dog walkers, tech support, bloggers, and data storage salespeople. Of course it is possible that this time will be different and that computers will be better able to do everything humans can do, but most likely there will be new kinds of jobs invented as others are destroyed. Even though technology places a number of current jobs at risk, it does not mean there won’t be any work in the future.102

Still, the basic income proponents are right that something is needed to minimize the human costs of rapid automation. Some relatively small version of a basic income may be an important part of this transition. But the need for additional policies to deal with disruptive technology is also clear. Workers will need protection from invasive technologies, and governments may need to make greater efforts to directly create jobs as well as to ensure that workers financially benefit from new technologies.

Though technological change creates opportunities to make work better, more productive, and higher-paying, technology also provides employers with significant new powers to monitor and control workers, deskill certain jobs, reduce pay, and generally make work worse. This dystopian situation may already exist for some workers. To take the example of just one company, a large retail firm patented in 2016 a cage to put warehouse employees in so they remain out of the way of robots, and the company patented augmented reality glasses in 2017 that can provide workers with real-time instructions on the lenses, as well as allow the company to “detect where a person is at all times and when they have stopped moving.”103 The firm’s warehouse workers reportedly have peed in bottles to save time and avoid the company noticing them taking long breaks.104 There are, of course, many other examples of companies using new technology to closely monitor their workers—for example, by using video cameras to surveil workers, software to monitor workers’ facial expressions and tone of voice, and even injecting microchips inside workers’ bodies.105 A basic income does nothing to address the potential for technology to dehumanize workers and make jobs worse. In contrast, a modernized labor system would enable workers to negotiate with employers and governments about the use and control of technology. Workers need some power to ensure that they actually realize the potential benefits of technology, not just a basic income.

### AT: Electoral Reform CP

#### Democracy reform fails.

Madland ‘21 [David Senior Fellow and Strategic Director of the American Worker Project at the Center for American Progress; “Answering Skeptics.” *Re-Union: How Bold Labor Reforms Can Repair, Revitalize, and Reunite the United States*, Chapter 5. 5-15-2021; ISBN: 9781501755378]

Put bluntly, alternative policies to raise wages for workers do not really obviate the need for labor unions. Rather, unions minimize the weaknesses of these alternatives and help them work better. Moreover, workers engaged in the collective bargaining process gain agency and organization that can provide the support necessary for these policies to be enacted. Indeed, strong labor unions providing political muscle and organizing public support are almost certainly necessary to sustain (over any length of time) policies promoting full employment, a higher minimum wage, robust training, and a more generous safety net. A sudden surge of political activity could compel politicians to enact some of these policies, but power of strong worker organizations is needed to ensure that a broad set of pro-worker policies are enacted, properly implemented, funded, and enforced.

Similarly, strengthening America’s democracy so that government takes more direction from the interests of regular citizens will also require a stronger labor movement. Labor is by no means the only pro-democracy policy necessary. Improvements in campaign finance and voting policies are clearly needed too. But these kinds of democratic reforms would be more likely to achieve their goals if they were complemented by stronger unions and a new labor system.

Healthy democracies generally do not give the wealthy so many ways to spend their money to influence politics, nor do they make voting as difficult or as biased against certain groups of people as the current US political system does. Clearly, reforms will need to reduce the influence of the wealthy—including increased disclosure of contributions, amplification of small contributions, and limits or outright bans on some contributions. Democratic reforms will also need to make it easier and fairer for citizens to participate in the political process by getting rid of restrictive voter identification laws that systematically discriminate against people of color and the young, by making voter registration easier or automatic, and by limiting gerrymandering. Other more dramatic changes may even be necessary, such as ending the Senate filibuster, fixing the unrepresentative electoral college, and even checking an increasingly partisan Supreme Court.

Changing the formal rules of the game would make US elections fairer and thus make it more likely that the government would respond in line with the views and wishes of its citizens. But these kinds of changes have clear limitations, since a fairer system does not automatically translate into the will of the people being carried out.

Campaign finance and voting reforms only address a small part of the process of converting the public’s will into policy. There are many elements of the election and governing process that would not be particularly affected by these kinds of changes. Among the many factors before an election even happens include who chooses to run for office, what issues they campaign on, what issues the media choose to focus on, and what issues people hear about and understand. Then there is the question of whether people are able to and chose to vote. The period after the election is just as important or even more so. There are many question to be answered during governing. What policies will elected officials choose to prioritize? Will they follow through on their promises? What vested interests will support or oppose their efforts? What issues will the media discuss? What issues will resonate with the public? Will the public take action to support or oppose a governmental policy? Will the policy be implemented, funded, and enforced?

In order to have a fair shot at influencing each of these stages, the public needs to be organized, engaged, and have an advocate on the inside working for their interests. The wealthy and the powerful certainly do.

At some level, democracy is a contest between people and money. And if the people are not organized, money will always win. This is true even if policies are enacted to limit the influence of money. If the rich cannot give directly to candidates, they will just do more indirect giving. They will increasingly coerce their workers’ political activities, spend even more on issue ads and lobbyists, buy more newspapers, TV stations and internet companies, buy additional centers at universities and think tanks, offer more jobs to their former regulators, pay for increasingly extravagant vacations for judges, and hire additional lawyers to contest every policy they do not like. They will use the political structures that are open to them, and they will try even more to frame and limit debates, not just engage in the day-today political battles.128

The wealthy can have some degree of influence on their own because they can pay legions to do their bidding. But the public needs to be organized to have an impact on who runs for office, what issues candidates focus on during the election and in office, and how the laws are actually implemented and enforced. Most people cannot become super-citizens tracking every governmental action, and they do not want to.129 Even if they did, they would not have much influence doing so on their own. Most people want and need an organization to help mobilize them at key times and to represent their interests in behind-the-scenes negotiations.

Put differently, democracy has an organization and representation problem. Democracy needs all interests to be effectively organized and represented, but without a strong labor movement, workers are likely to be severely under-organized and underrepresented. While it is theoretically possible that many kinds of groups could organize the public around a broad set of economic and democratic issues, experience has shown that labor is the only organization with the scale and the mission to do so. Labor cannot be the only group organizing and involving citizens in the democratic process and fighting for their interests behind the scenes—other organizations like the PTA, Shriners, Sierra Club, and American Legion matter too. But labor is by far the most important. A healthy civil society is necessary for democracy to work properly, and labor unions are a critical part of civil society. Not surprisingly, research shows that strong unions make government more transparent, effective, and responsive to citizens.130

There is also an even deeper problem limiting the effectiveness of democratic reforms: they do little to strengthen the middle class and reduce extreme economic inequality. To be truly effective, democratic reforms need to reduce extreme economic inequality. The more economically unequal a society is, the more the rich will have the ability and incentives to rig the system. Campaign finance and voting reforms can make the rules of the game fairer, but they have a hard time making the power of the players more equal.

At a more abstract level, labor is an essential part of the checks and balances that allow capitalistic democratic governments to function properly. Labor unions can limit the extremes of capitalism from pushing democratic capitalistic systems toward authoritarian rule. And they can limit governments from intruding so much in private business that the system becomes communistic or otherwise destroys the freedoms offered by capitalism. Labor has different interests and spheres of influence than does government or business and can prevent either one from gaining too much power.

## States

### AT: States CP – 2AC

#### 1. Unrepresentative. The top-down, regulatory structure replaces worker voice with appointees who can buy a seat at the table.

Jonathan Berry et al 24 – Managing Partner, Boyden Gray PLLC. Oren Cass - Executive Director, American Compass. Richard A. Epstein - Professor of Law and Director at Classical Liberal Institute, New York University School of Law. Alexander T. MacDonald - Co-Chair at the Workplace Policy Institute, Littler Mendelson. Roger King - Senior Labor and Employment Counsel, HR Policy Association. “Conservative Populism and the Future of the Right’s Relationship with Organized Labor,” 09/23/2024, The Federalist Society, https://fedsoc.org/events/conservative-populism-and-the-future-of-the-right-s-relationship-with-organized-labor

Alexander T. MacDonald: Life in 2024. No, thank you. And this is a really interesting debate, and it's fascinating to see some of the changes we're starting to see in some areas of the conservative community, but I think there are helpful and unhelpful ways to talk about and think about the phenomenon. You could think about it in terms of values, which I would describe as unhelpful. I mean, I think we share the values, right? Nobody's going to come on here and say, we don't want to do what's best for workers. We all want what's best for workers. The values are the same. It's more a question of policy, which is the more helpful way to frame this, what actually is best for workers? And that question itself breaks down into two buckets. The first bucket would be, well, is current policy working for workers? Is current policy doing what it's supposed to do? And the second question would be, if it's not, are the proposed replacements going to do any better?

To start with the first question, I think it's easy. More than a hundred or almost a hundred years on after the National Labor Relations Act was passed in 1935, our principal labor law, to forget that the original purpose of the NLRA was not to promote unionism for unionism's sake, it was to prevent labor strife. It was passed in an era where we had much more tumultuous labor relations. We were coming out of a time when you had massive strikes that disrupted large swaths of interstate commerce. You had things like the Pullman strike where federal troops were called out. There were 30 deaths, millions of dollars in property damage. And this was the idea behind labor law. The idea was to channel disputes between workers and employers into peaceful negotiation, a private negotiation that would help us regulate the workplace in a way that would prevent these spillovers.

And we can debate whether the original Wagner Act was successful in that. After it was passed, you actually saw an uptick in labor strife. You saw an uptick in major work stoppages. You saw an uptick in unionization at the same time. The correlation is pretty strong there. It may not be one-to-one, but you saw those numbers rise until about 1950. 1952 is when both union density and labor major work stoppages peaked. And then what we had was a major reform. We had the Taft Hartley Act, and shortly after that we had a law called the Landrum Griffin Act. And those acts did some very important things. They gave people the right not to engage in union activity. They allowed states to pass Right to Work statutes, which have already been mentioned here today. It banned certain secondary activities, secondary boycotts, which without going into that too much, it's essentially a way that unions can expand a labor dispute beyond the four walls of a dispute within an employer.

And after that, we saw a decline in, a steady decline in work stoppages across the second half of the 21st century. Coming to 2020, we went from 470 in 1950 to just eight. Now, it has ticked up a little bit since then. But what we're seeing today is a broadly peaceful labor market where things like the Pullman strike are distant memories. Most people don't remember that labor stoppages could disrupt major parts of the economy. And if we're just judging current policy by its own stated goals, it appears to have been a wild success. We have an extremely peaceful labor market. So the question becomes, if that's no longer our goal, if we're not after a peaceful labor market, if what we want to do is start rolling back some of the reforms that we had in the mid-century in the Taft-Hartley Act, for example, Right to Work laws.

What are we going to replace that with? And we're seeing on some of the replacements, the more popular replacements that have been bandied about in certain circles are things like labor standards boards or sectoral bargaining. A labor standards board for those who are not familiar, is essentially a what's called a tripartite group. We bring in people who ostensibly represent workers and people who ostensibly represent the industry, and then some representatives of the government. We all sit down and we hammer out standards that apply to a whole industry. That sounds a lot like collective bargaining, but in fact, it operates more like a regulation. It applies to everyone, not just people who had any say or participation in the process, but to anyone who's in the industry. And it's much less responsive to the workers themselves. The workers don't get to choose their representatives on a labor standards board.

These people are promoted, or excuse me, they're appointed by some government official. They're essentially representatives of the government. Everybody is. This is top down policymaking as opposed to bottom up. So to the extent we think workers' voices are important in this process and they ought to have a say in what their working standards and conditions look like, that's not the kind of policy that would align with that traditional view. And we can talk about sectoral bargaining too, which is another one that gets thrown out a lot. And the paradigm for sectorial bargaining usually from a policy standpoint is Germany. And I'm not going to represent to be an expert on German labor relations, but what I can tell you is there's been a lot of studies about this recently, and the German sectoral bargaining system is no panacea. Today, your average American worker is about $10,000 more productive than your average German worker.

And that gap has been growing for decades. Now, whether that's caused by sectoral bargaining, it's very difficult to disentangle one given policy from an entire economy wide symptom. But what we do know is that German firms in the last few decades are increasingly opting out of sectoral bargaining. In 1996, you had 70% of Western German firms who participated in some kind of sectoral bargaining, and by 2020, that fell to 45%. So you just saw a drop of 35% just over that period. And why are they leaving? They're leaving because when you have a sectoral bargaining system, a group of employers and association bargains with one union for one contract that covers everybody in the sector, that may be efficient from a bargaining standpoint, we're all using the same bargaining representatives, and so we can just bargain for one contract that's cheaper, but it's also much less flexible.

You're setting one set of standards for an entire industry. There's no differentiation for local conditions or workplace priorities. What you're getting is a one size fits all system. And German firms are increasingly saying, this doesn't work for us. We don't have enough flexibility. And that point in and of itself highlights a difference between the German system and what has been proposed in the United States because the German system, again, is voluntary. Firms can opt out when this gets proposed in the United States necessarily required of employers. And because today under current law, under the NLRA, if employers wanted to and a union agreed they could bargain at a sectoral level, multi-employer bargaining has been legal from the beginning. So we all benefit.

Roger King: You're right, Alex. I mean it's happening in certain geographic areas of the country today and has been. I want to get to Richard in just a minute, but give us some quick soundbites about the article that's coming out this week that you just authored on redistribution.

Alexander T. MacDonald: Oh yeah. And I want to thank FedSoc for partnering with me on this. We took a bit of a deeper dive into some of these proposed systems. There's a longer discussion for those of you who are interested in the labor standards boards. These things have been proposed. I mean, California is the most obvious and eye-catching example. They recently passed a law that created the Fast Food Council. This is one of these tripartite boards that gets together and bargains for wages and or benefits and sets it for the entire industry. And the way that board was structured sort of highlights the points we're talking about here. The SEIU essentially broke this bill and pushed for it and lobby for it and got it. Well, lo and behold, when the governor decided to appoint the people who represented workers to these boards, all of them were associated with the S e's Fast food union.

It is not an accident. The SEIU bought itself a seat at the table. It's an anti-democratic process. And we also talked a little bit about sectoral bargaining. There's actually, this election cycle there will be a proposal on the ballot in Massachusetts to create a sectoral bargaining system for rideshare drivers. This system operates in much the way I was describing. It is mandatory for every firm in the state. And if an agreement is reached, that agreement will bind every driver in the state, not just the ones who voted for the union, but everyone who decides to provide services on that kind of app-based platform.

#### 2. Preemption. States can’t touch bargaining.

Andrias ’24 [Kate, Patricia D. and R. Paul Yetter Professor of Law, Columbia Law School; "Constitutional and Administrative Innovation through State Labor Law"; Wisconsin Law Review 2024, no. 5 pg. 1467-1512; 2024; HeinOnline; https://doi.org/10.59015/wlr.QSAD4915//ekc]

II. STATE LABOR LAW INNOVATION UNDER THE SHADOW OF FEDERAL PREEMPTION

What, then, is the labor law reform occurring at the state and local level? States have wide latitude to enact employment legislation that protects workers as individuals, including by passing standards above federal minimums with respect to wages, overtime, family leave, health and safety, and antidiscrimination law. In contrast, federal law preempts most state and local legislation relating to union organizing and collective bargaining. Under what is known as Garmon preemption, states and localities are prohibited from regulating any activity that is protected or prohibited (or arguably protected or prohibited) by the NLRA. 60 Under Machinists preemption, they are also prohibited from regulating activity that Congress intentionally left unregulated. 61 As a result of these doctrines, states are largely unable to pass legislation that directly governs organizing and bargaining rights of most private sector employees.

#### 3. Perm do both. It’s seen as federal follow on.

#### 4. Nondelegation. Due process forbids competitors from regulating each other.

Alexander T. MacDonald 23, Co-Chair, Workplace Policy Institute (WPI); J.D., William & Mary Law School, 2012; Chair-Elect, Labor & Employment Executive Committee, Federalist Society; Former Director, Future of Work and Labor Law, Instacart; Former Labor and Employment Attorney, Constangy, “Burgers with a Side of Bias: Why a New Fast-Food Law in California Likely Violates the Private-Nondelegation Doctrine,” The Federalist Society, 09/21/2023, https://fedsoc.org/commentary/fedsoc-blog/burgers-with-a-side-of-bias-why-a-new-fast-food-law-in-california-likely-violates-the-private-nondelegation-doctrine //EP

Last week, California lawmakers announced a grand bargain between labor unions and the fast-food industry. The centerpiece of the deal was a new fast-food regulatory council, with representatives from labor, workers, and restaurants. Once formed, this council will have the power to regulate wages and working conditions for the whole industry. The deal was immediately hailed as a win for labor and a model of compromise—a way to head off a potentially costly fight at the ballot box this fall. But whatever its political merits, its legal ones are dubious. The deal gives regulatory power to private, financially interested parties. And that feature violates a long overlooked but still viable constitutional doctrine: the rule against private delegation.

The deal emerged out of years of bitter wrangling. Unions had long lobbied for some kind of “sectoral bargaining” scheme covering California’s fast-food workers. After coming up short several times, they finally broke through in 2022 with the FAST Recovery Act, a law creating a quasi-sectoral-bargaining council. Restaurants, however, didn’t think the council was a great idea, and they blocked it by filing a referendum. Incensed, unions and their allies retaliated with a bill making restaurant franchisors jointly liable with their franchisees. And the restaurants, fearing joint liability more than bargaining, relented. They struck a deal with labor, scrapping the referendum and joint liability but preserving the council.

Under the compromise, the new council will consist of nine members: two franchisors, two franchisees, two workers, two worker “advocates,” and one “neutral” chairperson. These members will regulate wages and working conditions across the industry. Wages will immediately rise to $20 an hour, after which the council can raise them even higher.

Technically, the council won’t directly regulate anything. Instead, it will propose standards to the state labor commissioner. The commissioner will then review these standards to make sure they meet certain statutory criteria. If they do, she will issue them as formal regulations. And those regulations will bind fast-food restaurants across the state.

The result will be an arrangement by which certain workers, unions, and businesses effectively regulate the whole industry. Whoever these representatives are, they will write the rules for themselves and for their competitors. That structure raises immediate questions about the council’s neutrality; given the incentives facing private competitors, abuses are easy to imagine. But maybe more important, the structure also implicates the private-nondelegation doctrine.

The private-nondelegation doctrine is actually two separate doctrines. The first stems from the “vesting” clauses in articles I, II, and III of the U.S. Constitution. Those clauses vest all federal government power in the three branches. And by implication, they also forbid those branches from delegating their power to private parties. The doctrine is important, but it applies only to the federal government. So it has little bearing on California’s new council.

The second doctrine, however, applies equally to the states. It relies not on government structure per se, but on background principles of due process. Due process has long been understood to forbid a person from being a judge in her own case. That rule stretches back to 17th-century English common law. One famous example comes from Dr. Bonham’s Case, where a court invalidated a royal charter authorizing a medical college to fine and imprison physicians who practiced without a license. The charter effectively gave the college the power to license, evaluate, and punish other practitioners. In the court’s view, that arrangement violated fundamental fairness: even the Crown couldn’t authorize a private party to sit as a judge of its economic competitors.

Extending that principle, modern courts have reasoned that it is likewise unfair to give self-interested parties regulatory power. Regulating, like judging, is a government function¾one we expect the government to perform disinterestedly. But we cannot expect disinterested regulation from someone with money at stake. So courts have invalidated delegations of regulatory power when the party wielding the delegated power (a) is a self-interested entity, and (b) has regulatory authority over its competitors.

Those criteria aptly describe the new council. The council consists of a limited selection of industry participants. Those participants set wages and working conditions for everyone, including their competitors. Yes, their standards are reviewed by the labor commissioner. But the commissioner’s review is limited. As long as the council acts within its delegated authority, the commissioner must approve its proposals. The commissioner cannot amend or reject the proposals just because they’re unfair. And that same basic problem has led courts to invalidate regulatory delegations more than once.

#### 6. State sectoral regimes are unenforceable and undemocratic---strands workers, only covers a narrow set of benefits, and can’t solve employer opposition or opt-out.

Sharon Block & Seema Nanda 9/1, Sharon Block: Professor of Practice, Harvard Law School; Executive Director, Center for Labor and a Just Economy, Seema Nanda: Former U.S. Solicitor of Labor; Fellow, Center for Labor and a Just Economy, Harvard Law School, “Labor Day 2.0: Reviving Worker Power through Sectoral Bargaining,” Onlabor, 09/01/2025, https://onlabor.org/labor-day-2-0-reviving-worker-power-through-sectoral-bargaining //EP

In the face of federal gridlock, states and local governments have been experimenting with sectoral bargaining-style initiatives. New York City’s fast food wage-setting board, California’s fast food council, Seattle’s domestic worker protections, and the Massachusetts rideshare initiative show how sector-wide standards in cities and states can lift conditions and expand bargaining power beyond what single-employer bargaining can achieve — especially for workers excluded from NLRA protections like domestic workers, farmworkers, and gig workers classified (often improperly) as independent contractors.=

But current federal labor law and judicial interpretations limit the ability of states and localities to fully realize sectoral bargaining. While the NLRA contains no explicit preemption provision, courts over decades have broadly interpreted the law to limit the power of states and localities to regulate collective bargaining or labor relations. This judicially-created preemption doctrine is expansive, often preventing state and local efforts to create sectoral bargaining frameworks or industry-wide standards for wages, benefits, or working conditions — even though states and cities generally retain authority to set baseline standards like minimum wages or paid leave laws. International experience shows that sectoral bargaining often strengthens union presence and influence, increasing collective power across entire industries, and can strengthen enterprise-level collective bargaining relationships.

Because of the limits of federal preemption, these models often rely on advisory boards or limited wage-setting powers rather than binding, multi-employer collective bargaining agreements that can be extended to additional workers. This means that states and localities often can’t test the full benefits of true sectoral bargaining, such as comprehensive, enforceable contracts covering terms like wages, benefits, scheduling, and grievance procedures across an industry or occupation. Sectoral bargaining, because it involves unions that must be democratic, is representative in ways that worker boards may not be. This makes it more effective at building lasting worker power and ensuring that workers themselves shape the rules that govern their jobs. By leveling the playing field, true sectoral bargaining also pushes employers to compete on the quality of their products and services and affirms that labor is not just an input to be minimized, but an essential output that should be valued and strengthened.

A simple tweak in the NLRA — allowing states and localities to pilot true sectoral bargaining — would empower communities to design fairer labor markets tailored to their needs and realities. Any such legislation should:

#### 7. Patchwork. State-level solutions are unequal and regionally imbalanced. State-by-state battles expend union resources and weaken the entire labor movement.

Alexis N. Walker 19 – Associate Professor in the Department of History and Political Science at Saint Martin's University. “Conclusion: The Consequences of Labor’s Enduring Divide,” 12/13/2019, Divided unions: The Wagner Act, federalism, and organized labor, Chapter 8, pg. 130-146.

In October 1953, the “Trade Union and Collective Bargaining Rights of Public Employees” conference was held in Munich, Germany. The conference brought together public sector labor leaders from Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Holland, Norway, Sweden, Switzerland, Tunisia, and the United States. In his opening remarks at the conference, General Secretary M. C. Bolle of the International Federation of Unions of Employees in Public and Civil Services commented on the state of trade union rights around the world. He noted that in his travels he had discovered that many countries in Asia and Latin America that were members of the International Labor Organization, which affirms collective bargaining rights for employees, continued to deny these basic rights to workers (IFUEPCS 1953, 6). But, he emphasized, disregarding the rights of workers happens “even in countries reckoned the most advanced” (6). As an example, he singled out the United States for the “inclination on the part of the authorities to withhold trade union and bargaining rights from public servants” (6).

At a conference bringing together public sector unionists from many advanced industrial countries, Bolle was right to note that the United States stands out for its approach to public sector employees’ collective bargaining rights. As Chapter 1 emphasized, among advanced industrialized countries, the United States continues to be distinctive for the way in which it has separated public sector labor law from private sector labor law and the limited, piecemeal rights that have been granted to government employees. In 1940, David Ziskind noted, “The law pertaining to government labor disputes has been especially inchoate. It cannot be found congealed in court decisions or flaunted in legislative enactments” (231). His assessment is equally appropriate today. The last seven chapters have traced chronologically the consequences of public sector employees’ exclusion from the Wagner Act. This chapter examines the consequences of this exclusion for today’s labor movement and then addresses the policy implications of these findings.

Consequences for the Modern Labor Movement

What does government employees’ exclusion and the separation of American labor law mean for the development, size, and strength of the U.S. labor movement today? The AFL-CIO’s Public Employee Department summed up one part of the answer nicely: “one country . . . two dif­ferent worlds” (Lucak 1987). Absent a national public sector labor law, government unionism was ultimately limited because state- and local-level innovations proved to be imperfect approximations of the Wagner Act. Federalism cannot explain every aspect of labor’s development over the last half century, but it is vital for understanding the brief rise and then plateauing of public sector union density at the same time that private sector union density was declining. More broadly, the damage to the public sector labor movement from exclusion has shaped the broader labor movement as well. The institutional split of public and private sector labor law has had important consequences for the movement’s size, strength, and effectiveness today.

Labor’s Size: The Geographic Concentration of Labor

The absence of an overarching federal law has contributed to the dramatic variation in and regional concentration of state-level public sector union density (see Figure 8).1 As discussed earlier, states with a strong, existing union movement and Democratic governors and legislatures were more likely to pass pro–public sector collective bargaining laws; the existing union movement and Democratic states were already regionally concentrated in the 1960s and 1970s. As a result, the regional nature of labor has continued unabated with the rise of public sector unionism. States in which more than 40 percent of the public sector workforce is unionized are limited to parts of the West, Midwest, and Northeast, whereas less than 30 percent of the public sector workforce is unionized in the South, Mountain-West, and Central-Midwest (Hirsch and Macpherson 2017). Labor’s geographical concentration, both public and private, is remarkable: “fully one-half of all union members lived in only six states by 2000” (McCartin 2008, 123). Thus, while labor represents over 14 million Americans, its electoral clout is limited by its geographical concentration. Continued geographical concentration is particularly problematic for organized labor because it suggests that the possibility of a filibuster-proof supermajority in the Senate to support federal labor law reform is increasingly remote.

If public sector employees had been included in the Wagner Act or had been able to pass their own national public sector law before the closing of the window of opportunity in 1976, public sector employees likely would have had greater success than their private sector counterparts organizing in antiunion states owing to the constraints public sector employers face that prevent serious resistance to unionization. The success public sector employees have had in organizing in anti-union states gives a sense of this possibility. The lowest public sector union density is still over 10 percent in states that have no public sector collective bargaining rights (Hirsch and Macpherson 2017). This union density is certainly due in part to federal employees, but it is also because government unions have successfully gained limited recognition from some school boards and municipalities despite the legal prohibitions in place (Freeman and Han 2012b). Today’s public sector union density levels in anti-union states illustrate what public sector unions have been able to achieve despite the lack of collective bargaining rights, which suggests great possibilities for growth if they were given a legal foundation to support their efforts. Instead, government unions have had to pursue collective bargaining rights on a state-by-state basis and have been prevented from making significant inroads in anti-union states, reinforcing the geographic concentration of labor.

Labor’s Strength: The Unequal, Vulnerable Rights of Public Sector Employees

Public sector unions found success and expanded their membership at the same time private sector unions were being frustrated at the national level, but the victories made at the state and local levels were not equivalent to what would have been possible had public sector unions been included in the Wagner Act. The multiple points of access at the state and local levels provide opportunities for reformers, but decentralization inevitably results in laws that lack the kind of national standards needed to promote equality (Mettler 1998, 13). Legislative reforms were hard-won and highly variable. In states strongly opposed to unionization, public sector unions had to navigate just as many veto points as private sector unions have faced at the national level. The result for public sector labor law is what AFSCME has declared “a patchwork quilt of conflicting, confusing and often inadequate legislation” (AFSCME 2002). This patchwork quilt includes an estimated “110 separate state statutes governing public sector labor relations, augmented by numerous local ordinances, executive orders, and other legal authority” (Slater 2004, 196). A third of states either explicitly outlaw collective bargaining for public sector employees or have no statute addressing the issue (Freeman and Han 2012b, 17). Other states vary tremendously in how pro-bargaining their collective bargaining laws are and in terms of which groups of public sector employees are included or excluded.

Collective bargaining provisions frequently apply differently for teachers, state employees, police, and other government workers. One of the areas of greatest variation is whether the state or locality permits government employees to strike, but states differ on even the most basic tenets of collective bargaining, including which groups of public sector workers are permitted to unionize and what issues they may bargain over. One consequence of this variation is that an estimated 33 percent of local and state employees (six million workers) did not have collective bargaining rights in 2002 (USGAO 2002, 14; U.S. Census Bureau 2003).2 Not only is federalism synonymous with variation, but, as Aaron Wildavsky (1984) identified over thirty years ago, “federalism means inequality.” Suzanne Mettler notes that “when social and labor policies have been left in the hands of states and localities, standards have been lowered or neglected in more areas than not” (1998, 13). Public sector bargaining law is certainly no exception. Leaving public sector labor law to the states not only lowered standards and created unequal treatment but also left labor law more vulnerable to the vagaries of the states.

The recent conservative turn in state legislatures across the country illustrates the precarious nature of public sector labor law and an important lesson about federalism: “for every liberal state policy ‘laboratory,’ there are at least as many—or more—conservative policy laboratories” (Robertson 2014). Lou Cannon notes that “as of mid-June [2011], 49 bills had been enacted in 23 states and Puerto Rico that included some form of restriction on collective bargaining in the 2011 session” (2011, 14). Using data from the National Conference of State Legislatures’ Collective Bargaining and Labor Union Database, Freeman and Han estimate that, from 2011 to 2012, there were: “733 bills in 42 states relating to public employee unions, 140 bills relating to union dues/agency fees, 55 bills on political activities and contributions, 171 bills for public safety employees, and additional bills in other categories making a total of 1,707 bills in 50 states. . . . The majority of these bills . . . were designed to weaken unions and their collective bargaining rights” (2012a, 393). While the scope of the attacks in 2011–2012 is large, the nature of the attacks is not unique.

Even before the most recent wave of attacks, changes in public sector bargaining laws have been frequent and often regressive (Wasserman 2006). The year 2011 may have seen the most active retrenchment of public sector labor law, but it had started long before. For instance, in 2005 Indiana governor Mitch Daniels rescinded the executive order permitting collective bargaining with state employees, and Missouri governor Matt Blunt also rescinded an executive order recognizing state employee collective bargaining. In 2011, the Indiana legislature passed a law barring future governors from regranting collective bargaining rights to state employees (Freeman and Han 2012a, 390). The attacks in Wisconsin, Ohio, Indiana, and elsewhere demonstrate the mixed blessing of federalism: excluding public sector workers from the Wagner Act allowed them to succeed at the state and local levels while private sector unions struggled to reform federal law, but the flexibility of federalism can go both ways and public sector collective bargaining rights have been retrenched as well.

The 2016 elections illustrate the continued vulnerability of public sector collective bargaining rights and the enduring importance of divided labor law for understanding organized labor today. The elections ushered in singleparty Republican rule at the national level and in twenty-five states. Several of these states have sought to remake their state’s government employee labor laws. For instance, in Iowa, lawmakers moved swiftly to pass a bill very similar to Act 10 in Wisconsin. The bill limits collective bargaining to wages, eliminates dues checkoff even though workers already opted into the system, and requires recertification elections with a majority of all workers in the bargaining unit—not just those voting—approving the union before negotiating every contract. Also taking a page from Wisconsin, the bill exempts public safety workers, in what opponents saw as a “divide and conquer” strategy (Noble and Pfannenstiel 2017; Rodriguez and Sanders 2017). Without a national public sector Wagner Act, actions like Iowa’s are to be expected as the states continue to address the issue of government employee collective bargaining in their own ways.

At the national level, the absence of a public employee Wagner Act has also made federal workers legally vulnerable. The election of Donald Trump to the presidency in 2016 raised the specter that he might take aim at federal employee unions. Harkening the “divide and conquer” strategy, Trump has actively met with and courted private sector unions, particularly construction, mining, and steelworkers unions (Scheiber 2017; Greenhouse 2017). At the same time, Trump has signaled much less sympathy for public sector unions. Governor Scott Walker made headlines when, after visiting the White House, he reported that he had talked with Vice President Mike Pence about “what we’ve done here in Wisconsin, how they may take bits and pieces of what we did with Act 10 and with civil service reform, and how they could apply that at the national level” (Spicuzza and Marley 2017).

President Trump cannot simply pass an Act 10 for federal employees because many federal workers’ rights are bound up in civil service law, but, absent a Wagner Act for federal employees, he can weaken these rights through executive order. In his 2018 State of the Union Address, Trump suggested that he was considering taking on federal collective bargaining rights, albeit through Congress rather than an executive order. He asked Congress “to empower every Cabinet Secretary with the authority to reward good workers and to remove federal employees who undermine the public trust or fail the American people” (Trump 2018). However, Trump ultimately chose to act unilaterally, signing three executive orders in May 2018. The first order “makes it easier to fire and discipline federal employees,” including weakening seniority rules and shortening the appeal period (Scheiber 2018). The second order “directs federal agencies to renegotiate contracts with unions representing government employees so as to reduce waste.” Finally, the third order limits the amount of “official time” federal employees with positions in the union can use during normal working hours to perform their union roles (Scheiber 2018). As part of the implementation of these executive orders, federal agencies have begun evicting unions from office space within the agencies, making it harder for unions to meet with and thus represent their members (Naylor 2018). The content of Trump’s executive orders is being challenged in the courts. To date, however, the Trump administration’s efforts have sought to weaken federal workers’ collective bargaining rights and make it harder for federal employee unions to do business with their members.

By paving the way for legislation like Act 10, its sister law passed in Iowa in 2017, and Trump’s executive orders, divided labor law thus continues to shape the fortunes of organized labor today. For public sector unions, the only legal development at the national level has been a dramatic step backward as a result of the recent Supreme Court decision Janus v. American Federation of State, County and Municipal Employees (2018). The case was in some ways the culmination of attacks on public sector unions at the state level begun in 2011. As anti-union opponents achieved legislative success in over a dozen states across the country in the 2010s, they expanded their efforts to the judiciary as well (Scheiber and Vogel 2018). One legal avenue these groups pursued was a “paycheck protection” movement that sought to challenge how and in what ways unions could collect dues. Prior to Janus, any government employee who did not join a union but was covered by that union had to pay an agency fee to the union, also known as a “fair share” fee. Labor unions argued that this fee, which is expressly not used for political activity, prevents workers from free riding by enjoying the benefits of the union without joining or paying for the union representation they are receiving. In contrast, opponents argued that all activity by public sector unions, including negotiating contracts, is inherently political and thus non-members should not be forced to subsidize activities that violate their free speech.

In 1977, the Supreme Court in Abood v. Detroit Board of Education made a distinction between agency fees that went toward collective bargaining and money that went toward political activities. The Court held that nonmembers’ dues being used for political activities was a violation of their First Amendment free speech but that agency fees were not a violation and helped prevent free riding. In Janus (2018), the Court reversed its decision, ruling that “in addition to affecting how public money is spent, union speech in collective bargaining addresses many other important matters” and thus merits First Amendment protection. The Janus decision essentially makes public sector employment equivalent to private sector employment in right-to-work states where non-members can opt out of supporting the union that is representing them in collective bargaining. It is unclear at this time how much money public sector unions will lose or how many members they will be expected to represent without financial support. Thus, rather than a floor of protection through a public sector Wagner Act, government employees have instead been dealt a crippling blow that serves as a ceiling, preventing states from passing more union-friendly legislation. National legislation like the Wagner Act that grants a floor of protection provides the most potent, durable, and meaningful rights, but, like Taft-Hartley, decisions at the national level that undermine rights can have the reverse effect, dampening rights across the country.

Labor’s Effectiveness: The Lack of a Nationally Cohesive, Geographically Diverse Movement

Whereas the Wagner Act gave private sector workers the fundamental right to unionize, as the preceding examples illustrate, the rights of public sector employees have proven more vulnerable. There is no firm commitment at the national level that government “employees shall have the right to selforganization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing” (NLRA 1935, Sec. 7). Instead, as the AFSCME president Jerry Wurf noted in testimony to Congress in 1974, “No one pattern prevails among the 50 states and 80,000 governmental units, save one: that public employees are no where near the equals of workers in the private industry” (Wurf 1974, 4). Federalism as a governing structure welcomes experimentation and innovation at the state and local levels. Experimentation in public sector labor law might sound appealing because it allows union-friendly states to pass very generous legislation. Indeed, in some states government employees possess greater rights than do their private sector counterparts, such as mandatory card-check certification, a much more manageable means of organizing a union than the traditional NLRB election procedure. But these gains come with serious costs; state- and local-level collective bargaining laws will never be on an equal footing with national-level rights because of the inherent differences between the two: national-level rights create a durable level of uniform protection that state-or local-level laws cannot provide.

In thinking through the consequences of divided labor law, it is helpful to consider the alternative. What if public sector employees had been included in the Wagner Act or received their own national-level law? Public sector unions might have had more success than private sector unions in hostile states if given the chance through a national-level law that protected their collective bargaining rights because of the constraints on public sector employer resistance. Private sector unions have struggled to organize new members as a result of the outdated legal framework that fails to constrain employers’ union-avoidance strategies; hostile employer resistance—and the legal framework that permits it—is a significant barrier to union organizing at the federal level. As discussed earlier, public sector employers face pressures that discourage such vehement resistance and lack many of the tools, like employment-at-will, that private sector employers use to resist union organizing. If given national collective bargaining rights, and with a more amicable organizing environment, public sector unions would be able to make inroads into anti-union states. Instead, government unions are limited in their growth by lack of collective bargaining rights in anti-union states and renewed attacks in previously safe states; their geographic concentration and vulnerability mean the entire labor movement is smaller and less secure than it could be and unlikely to change without labor law reform. Thus, while the public sector union density spike in the 1960s–1970s slowed the decline of overall union density, this trend is unlikely to continue because government unions have reached the limits of state-level innovation.

What about private sector unions? Would they benefit from private sector labor law devolving to the state and local levels in order to end the national stalemate, as Richard Freeman (2006) and other have suggested? In the short run, private sector union density might increase as employees’ collective bargaining rights would be strengthened in union-friendly states. Ulti- mately, however, this would leave private sector employees just as vulnerable as their public sector counterparts to retrenchment of their fundamental collective bargaining rights. The example of the one aspect of private sector labor law that has been left up to the states, Section 14(b) of Taft-Hartley, is a sobering reminder. Although Taft-Hartley is a national-level law, Section 14(b) does not mandate or outlaw right-to-work but instead gives states the option to become right-to-work states. In other words, 14(b) is a federalism provision within a national law. Leaving the decision of right-to-work up to the states has resulted in the same variability as seen in public sector labor laws at the state level: Michigan passed a right-to-work law in 2011, Wisconsin in 2015, West Virginia in 2016, and Missouri in 2017 (Missouri voters overturned the law in July 2018). All of this suggests that a national law protecting both public and private sector collective bargaining rights would offer the most protection for American labor unions and the best possibility for expansion.

Organized labor’s political success depends on geographically diverse union density. A high-density labor movement translates into economic and political leverage, and if labor is geographically diverse, this leverage can reach a filibuster-proof level in the Senate. While union-friendly states with generous laws have provided a safe haven for union strength, they are not sufficient to create a large, geographically diverse union movement. The extension of collective bargaining rights has been crucial to the growth of union density, both private and public. However, most public sector unions continue to be concentrated in union-friendly states that have passed collective bargaining statutes. These unions have, in turn, responded by focusing a disproportionate share of their political resources at the state and local levels. Until a floor of protection exists for all public sector employees, we are unlikely to see dramatic growth in union density akin to what we saw in the 1930s and 1940s for the private sector and the 1960s and 1970s for the public sector. Thus, the experimentation within federalism does not benefit the labor movement despite the generous public sector provisions in some states, because these union-friendly states do not make up for the states where public sector employees lack few or any collective bargaining rights, nor do they promote a geographically diverse, nationally focused, strong, unified labor movement.

Divided Unions

This project set out to understand organized labor’s current political weakness and the seemingly divergent paths of private and public sector unions over time. In doing so, this work has focused on explaining why public sector union density rose dramatically in the 1960s and 1970s and then plateaued at the very time private sector union density began declining precipitously, as well as on the consequences of these separate development paths and the resulting public sector union ascendency for organized labor’s political activities. The separate density patterns displayed in Figure 1 are neither natural nor inevitable. Instead, this project has focused our attention on the timing and sequencing of when public and private sector employees gained collective bargaining rights and where they obtained these rights. The United States stands apart for the divided nature of its labor law with private sector labor law firmly entrenched at the national level and public sector labor law relegated to the states and localities. Divided labor law is a crucial link in explaining the weakness of organized labor in American politics today.

The passage of the Wagner Act in 1935 consolidated private sector labor law at the national level, whereas public sector labor law remained unconsolidated, leaving the institutional environment of the public sector unstable. Federalized labor law is problematic because public sector collective bargaining rights remained unresolved and the state and local levels do not offer rights equivalent to those at the national level; public sector unions could never achieve the same rights and results at the state and local levels that they could if they had applied equal organizing effort under a national law.

In the long run, federalism has not done organized labor any favors. Federalism enabled public sector innovation at the state and local levels, but this innovation is also a vulnerability because federalism, as a governing concept, allows and even encourages experimentation at lower levels of government. Absent a floor of protection and pressure for uniform treatment across jurisdictions, public sector collective bargaining rights have been unequal and under continual change, including retrenchment, at the state and local levels. Government unions’ legislative successes ultimately have been limited. They have been limited to union-friendly states, reinforcing the geographic concentration of labor. As Jerry Wurf explained, AFSCME preferred “a federal law governing state and local government labor-management relations, than to dribble out our lives trying to convince 50 state legislatures, 5,000 city councils, 10,000 school boards and who knows how many other public bodies to devise an impartial mechanism at the lower level” (quoted in Flynn 1975, 83). Absent a national law, “dribbling out” their time pursuing stateand local-level collective bargaining rights was the only option for public sec- tor employees and unions, and they were doing just that in the 1940s and 1950s at the very moment the private sector labor movement reached its peak of power and influence.

The separation of public sector labor law from private sector labor law prevented a large unified union movement in the aftermath of the Wagner Act that could have pressed for more generous New Deal policies. The exclusion of government employees from the Wagner Act and the lack of their own national statute meant public sector union growth was delayed, fundamentally altering the labor movement as public and private sector unions’ development was thrown out of alignment. In other words, the timing and sequencing of when public and private sector employees gained collective bargaining rights discouraged cooperation and a strong, unified labor movement. Private sector unions thrived in the 1940s and 1950s, while public sector unions were only managing handshake agreements with some employers, devoting significant time and resources to fights in every state and locality for basic recognition.

It wasn’t until the 1960s that government unions found legislative success at the state level and grew precipitously. Public sector unions’ legislative success was limited, however, because economic crises and conservative backlash at the end of the 1970s closed the window of opportunity for public sector union rights legislation at the national level. The brief moment when high private sector union density overlapped with a strong public sector— the 1970s—was one of missed opportunities as the public sector unions, delayed in their growth because of divided labor law, encountered an already entrenched private sector labor leadership rather than an ally. The cultural, economic, and political crises of the decade magnified labor’s differences, making a strong public-private labor movement in the 1970s difficult.

Tracing the separate development trajectories of public and private sector unions leaves us with one fundamental question: “What would have happened if the most political unions [the public sector unions] had been larger and more influential in the labor movement’s formative years, or when labor was larger and more influential within society as a whole?” (Slater 2004, 200). The conclusions reached in this project emphasize the overwhelmingly negative effects of divided labor law. Public sector union growth came after the peak of private sector union strength, too late to have a significant effect on New Deal politics, assist in the opposition to Taft-Hartley in 1947, or help exert pressure for national labor law overhaul before the window of opportunity closed at the end of the 1970s. Further, public sector unions were forced to fight their way into an already established labor movement, meaning their politicized, social justice outlook was derided instead of welcomed, and labor eschewed rather than joined forces with the New Politics movements that the public sector unions were associated with. The labor movement that emerged at the end of the 1970s was divided, overly complacent, and ill prepared to deal with the challenges of deindustrialization and the growing hostility of employers and the state to unionization. Now that government unions have become such a dominant force in the labor movement, their legal vulnerability has made them ready targets for anti-union forces.

The timing and sequencing of when public sector employees gained their collective bargaining rights compared to their private sector counterparts is also crucial because labor unions’ power and influence comes not just from the sum of the individual unions but also through their organization into a larger federation, the AFL-CIO. The timing of public sector union growth meant private sector unions peaked when almost all public sector employees still lacked collective bargaining rights. The delayed growth of public sector unions meant the AFL-CIO was never comprised of a unified union movement representing private and public sector unions, both at their peak of power and membership.

Looking toward the future, the volatility surrounding public sector collective bargaining rights will persist as long as states and localities remain sites where the basic tenets of public sector unionism can be contested. Without major partisan shifts in the United States, government unions are unlikely to dramatically increase their density. In states where public sector unions have had success, their enduring high density has made them glaring targets as private sector union density continues to drop. Absent something drastic that enables an overhaul of private sector labor law or a federal guarantee for public sector collective bargaining rights, the American labor movement must confront an uphill battle to retain existing membership levels and political relevance. Organized labor faces an uncertain future in part because of the constraints placed on it by public policies, which have molded and patterned the labor movement’s development. Divided labor law shaped the development trajectory of public sector unions—including their more unequal and vulnerable collective bargaining rights—as well as contributed to today’s declining, geographically concentrated labor movement. Ultimately, divided labor law has weakened organized labor as a force in American poli- tics with potentially important ramifications for the representation of the working class in our democracy.

Policy Consequences

This project is a powerful illustration of the potent role public policies—in this case divided labor law—can play in shaping the internal dynamics and external fortunes of a seemingly private organization: organized labor. Policies may play a significant role in shaping other private organizations, including corporations, nonprofits, and PACs. Thus policymakers should be fully aware of the impact policies can have on organizations and the environment they operate within, two things that are often thought of as external to politics. Further, the conclusions drawn in this project about federalism should apply to other cases as well. Rights and privileges relegated to the state and local levels, absent a floor of protection, should display the same vulnerability to retrenchment as have public sector collective bargaining rights. Right-to-work laws, consumer protection laws, and election laws (e.g., voter ID laws and primary election rules) should all exhibit this feature of federalism. Lawmakers’ decision to devolve to the state and local levels should not be made without an appreciation of the vulnerability such federalized arrangements entail. The conclusions reached in this project address a larger universe of cases but also contain important lessons for thinking about organized labor’s central and threatened place in American politics today.

During an interview I conducted with a local labor leader in Wisconsin in 2012, he was visibly upset and distracted, having just met with a police officer before our meeting. At the end of our conversation, he revealed that he had arrived at the office that morning to find their American flag had been stolen from the flagpole outside. The police officer had told him it was likely just some local vandals, but the labor leader couldn’t help but think that it was something more, that it was someone making a statement about unions, and people like him, being unpatriotic (Interview #25). Today’s attacks and rhetoric against organized labor should not make this leader or the public doubt the important role labor plays in American politics. Union forces, whether it was the CIO in the 1930s or the public sector unions in the 1960s, have been at the forefront of American progressivism, helping mobilize broad swaths of Americans to become involved in politics and in protecting the interests of working Americans.

In the future, public sector unions, weakened due to their legal vulnerability and the attacks this has allowed, appear unlikely to continue to stave off private sector union decline. Labor’s decline poses a significant threat to the representation of working Americans’ interests in our political system and the rise of economic inequality and insecurity.3 As McCartin notes, “With less than 7 percent of nongovernmental workers unionized, private sector unions no longer have the leverage to improve wages and benefits for those beyond their ranks. Thus, by default, public sector unions have become the single most effective social force capable of speaking out for a just economy that lifts the standards of all workers, public and private” (2011a, 50). Thus, the institutional forces that have contributed to private sector union decline and the unequal and vulnerable collective bargaining rights of public sector workers should be of concern to all Americans.

As a consequence, the importance of national labor law reform, which includes both private and public sector union members, should be recognized as crucially important to ensuring representation of working Americans’ interests in our political system. National-level rights create a floor of protection that is not present in state- and local-level provisions, and this is fundamental to fostering a vibrant, cohesive labor movement. National-level laws also may institute a ceiling, restricting the bounds of rights provision. Labor scholars have rightly pointed out that the Wagner and Taft-Hartley acts, by creating a ceiling, have limited some of the more radical tools in private sector unions’ repertoire like boycotts and wildcat strikes (Tomlins 1985). However, unlike a floor, a rights ceiling is not an inevitable feature of national-level laws and, when we compare national-level rights to state- and local-level rights, national-level rights provide more uniform, stable, durable protections. With decentralized rights, very generous laws in some states are insufficient to make up for the states with no rights provisions.

The content of public sector collective bargaining rights certainly has important ramifications for contract negotiations and other aspects of labor union success, and ceiling provisions can be major stumbling blocks, but the fundamental right to organize must take precedence over the generosity of that right; one must get a foot in the door before negotiations can even begin. After all, once one has a foot in the door with the right to collectively bargain, higher levels of union density foster greater economic and political influence, which public and private sector unions can leverage to lobby for more generous collective bargaining rights. As the “Officers’ Report” of the 1950 United Public Workers of America convention put it at the time: “Civil rights are not academic. They are the means by which all other rights are to be obtained. For years we have pointed out that the rights of public workers and their unions must be protected, or the rights of all workers and their unions would be destroyed” (UPWA 1950, 34). A nationally protected right to form and join unions and collectively bargain was as fundamental in 1950 as it is now for creating the foundation of robust union organizing. Absent that protection, this weakness has been exploited as anti-union opponents have targeted public sector union rights as a first step in taking on the entire labor movement.

What could a national Wagner Act for public sector employees look like? In the 1970s, legislation was proposed that would simply delete the section defining “employer” in the Wagner Act as not including federal, state, or municipal governments (Brown 1974). Such a law would then place public sector workers within the framework of the Wagner Act and under the auspices of the NLRB. In the 1930s, this would have been the obvious choice and dramatically altered the course of labor’s development. However, now that public sector labor relations are established, state laws exist across the country, and there remain key differences between the public and private sector, this straightforward solution may lead to a great deal of conflict and uncertainty over issues like strikes by public safety workers and what happens in states with more generous collective bargaining rights for government employees than the Wagner Act. The more mainstream legislation in the 1970s, the National Public Employees Relations Act, instead proposed a separate law, analogous to the Wagner Act, but with key differences to conform to the unique nature of public sector labor relations. The bill permitted strikes but only after other mediation procedures had been exhausted and included the exception of “clear and present danger to the public health or safety” (Brown 1974, 715). The bill contained more generous collective bargaining rights than the Wagner Act, including not permitting right-to-work, whereby nonmembers can freeride by not paying dues, and allowing supervisors to organize. The bill would preempt weaker state laws, all but guaranteeing that every state collective bargaining law would be replaced by the more generous national law (714–715).

The reality today is that Supreme Court decisions, beginning with National League of Cities in 1976, have made it less clear that the Court would uphold the constitutionality of a single national law that wipes out existing state laws like those introduced in the 1970s. Thus, new legislation introduced in Congress the day after the Supreme Court’s Janus decision in 2018 offers more of a hybrid approach. The bill, known as the Public Service Freedom of Negotiation Act (PSFNA), would guarantee “the rights of public employees to form or join unions, act concertedly for the purpose of collective bargaining or other mutual aid or protection, and bargain collectively with their employers” (PSFNA 2018, Section 2(b)). The bill would create a federal authority that would establish what these basic collective bargaining rights entail and would then assess whether each state meets these minimum standards. States that meet these standards would keep their own laws and procedures. States that do not meet these standards would fall under the authority’s regulations and oversight with the authority acting in much the same way as the NLRB in the private sector (Sections 4 and 5). The bill expressly prohibits strikes by public safety workers (Section 6(a)). While still allowing some state autonomy, this new legislation mandates the floor of protection for public sector employees that has been lacking and so consequential for government unions and organized labor since the Wagner Act in 1935. Given the current partisan makeup, this bill will be dead on arrival in the 116th Congress. However, it does offer a concrete policy option for addressing divided labor law and working to revitalize the labor movement in the future.

Absent national labor law reform, private sector union density is unlikely to bounce back without updates to existing law that rein in hostile employer resistance. Likewise, the instability of public sector collective bargaining rights and the large portion of government employees lacking any rights are likely to continue until government unions receive a national-level law of their own. Jerry Wurf’s declaration at AFSCME’s 1972 convention still holds true today: “The needs of our membership in the fifty states for the rights and protections such as those extended to other workers cannot be met by a law here and a law there” (quoted in Hower 2013, 301). Public sector collective bargaining rights will remain vulnerable; public sector union success will remain limited; and labor will continue to punch below its political weight until a national statute protects public sector employees’ collective bargaining rights.

Ultimately, organized labor wants their members to believe that “what separates us is so little compared to what we share,” but divided labor law has served as a countervailing force sowing division and discord within labor’s ranks (WI AFL-CIO Convention, October 2, 2012). Examining the development of public and private sector unions over the last half century reveals that public policies have influenced the course of organized labor’s development. Divided labor law is not an inconsequential division but rather has acted as solidarity’s wedge, limiting the cohesion, the effectiveness, and ultimately the strength of organized labor in American politics.

### AT: UCF – 2AC

#### Perm do both. Inclusion of the threat solves the internal net benefit.

Albert Lin 20, Professor of Law at University of California, Davis, School of Law, "Uncooperative Environmental Federalism: State Suits Against the Federal Government in an Age of Political Polarization," 07/01/2020, https://escholarship.org/content/qt64j5g27g/qt64j5g27g.pdf

Successful state lawsuits can check abuses of power by the federal government and serve as deliberately chosen mechanisms for making policy.328 Even if state challenges to federal policy ultimately fail, the litigation process itself can still promote deliberation and democratic values. State public-law litigation can provide a forum for direct public opposition between states and the federal government, offer a channel for states to express independent views, and force states and the federal government to provide a public accounting of their policies and underlying policy justifications.329 Consistent with dynamic federalism’s appreciation of the virtues of interactive state and federal involvement, state lawsuits against the federal government can enrich the dialogue on national policy.

#### Causes perpetual uncertainty.

Gil Seinfeld 19, Professor, Law, University of Michigan Law School, "Neglecting Nationalism," University of Pennsylvania Journal of Constitutional Law, Vol. 21, No. 3, pg. 701-702, 2019, HeinOnline. [italics in original]

But even if Gerken were right, and the national majority could typically "rein in federalism's worst excesses" by enacting whatever measures are necessary to bring a defiant state to heel, it is far from clear that it should have to. It is far from clear, that is, that we should prefer a world in which states intermittently flout federal law or disrupt national policy, and the national majority responds by expending the resources necessary to bring them in line, to one in which states are zealous in their efforts to advance federal law and policy (or at least scrupulous in their efforts not to undermine it). Most of the exercises in dissent and defiance that the new nationalists celebrate take place against the backdrop of identifiable federal law and policy (else the behavior would not qualify as "dissent");1 66 and it is difficult to see why the price of state respect for such law and policy should be federal officials' expenditure of political capital above and beyond what was necessary to bring that policy to life in the first place. It is true, as Gerken notes, that state-based dissent can "provid[e] 'the democratic churn necessary for an ossified national system to move forward," 6 7 but she fails to address the risk that such dissent will chum our democratic system to a pulp by exposing settled national norms to perpetual challenge.

#### Preempted by Congress.

Robert A. Mikos 17, LaRoche Family Chair in Law at Vanderbilt University, J.D. summa cum laude from University of Michigan Law School, articles editor on Michigan Law Review, Henry M. Bates Memorial Scholarship, "Making Preemption less Palatable: State Poison Pill Legislation," George Washington Law Review, vol. 85, no. 1, 2017, pp. 1

Congressional preemption constitutes perhaps the single greatest threat to state power and to the values served thereby.1 Preemption blocks state law, leaving it without effect. It helps determine whether and to what extent the states can exert their influence over policy domains in which Congress has legislated. As Professor Ernie Young has surmised: "Preemption doctrine . . . goes to whether state governments actually have the opportunity to provide beneficial regulation for their citizens; there can be no experimentation or policy diversity, and little point to citizen participation, if such opportunities are supplanted by federal policy."'2 Indeed, given the judiciary's reluctance to impose constraints on Congress's enumerated powers,3 it is difficult to overstate the importance of preemption. Today, there may be few, if any, state laws that are truly immune from congressional override.

Even though the states have much to lose from preemption, their interests in preserving their lawmaking authority are largely ignored in preemption decisions.4 The Constitution, of course, grants Congress the power to decide whether or not to preempt state law. 5 In making its preemption decisions, Congress has every reason to look out for its own interests. 6 But it has little reason, and certainly no obligation, to subjugate its interests to the interests of the states whenever the two conflict. 7 Congress can thus be expected to displace state laws that impair Congress's objectives, regardless of whether Congress's gain from so doing is greater than the cost to the states.

The states, of course, can lobby Congress to preserve their regulatory prerogatives.8 But no one has yet explained why the congressional majority would listen to their entreaties, especially when it would require the congressional majority to sacrifice its own policy objectives.9 After all, as Professor Rick Hills has previously noted, "[flew with influence in the political process care about promoting state power as an end in itself."10

The courts, for their part, generally seek only to enforce Congress's preemption decisions, not second guess them. In other words, the courts do not attempt to weigh Congress's interests against those of the states. Indeed, the courts do not attempt to gauge state interests at all when applying extant preemption doctrine.11 Instead, they consistently maintain that state law simply must give way whenever it impedes Congress's objectives. 12 As the Supreme Court bluntly acknowledged in Free v. Bland,13 "[t]he relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail. '14

#### AND the fed pulls funding.

Sasha Abramsky 24, lecturer at The University of California Davis, Senior Fellow at Demos, "Blue States Will Not Be Safe in Our Corrupt, Clownish, Authoritarian Future," The Nation, 12/03/2024, https://www.thenation.com/article/politics/trump-crony-capitalism-musk-corruption/

No part of the country will be immune from the destructive impact of these policies. While it’s tempting, living in California, to look at this train wreck and assume that the worst impacts won’t be felt deep in blue country, I’m not so sure that’s the case. Yes, California’s social safety net is strong, its environmental policies are second to none, its expanded healthcare system is approaching universal coverage, its public health investments, while still too little, are better than those of many states, and its well-resourced Department of Justice is willing to go toe to toe with the feds over the coming years. But the state is also in Trump’s sights. He wants to bring California’s independent politics to heel. He is determined to eviscerate the state’s waivers that allow it to craft its own environmental standards. And he is set on using the federal government’s fiscal levers to punish California and its cities if and when they don’t cooperate with his extreme agenda, especially around mass immigration sweeps and deportations.

As if this weren’t already clear enough, late last month Marjorie Taylor Greene—who come January will, gulp, be in charge of the House Oversight Committee for the Department of Government Efficiency—went on Fox News and said that she wants to use congressional powers to bottle up federal money owed to states and cities that embrace sanctuary policies.

However strong California’s safety net is, it still needs federal dollars. If the Trump administration tries to, for example, withhold Medicaid dollars from California, the state would, of course, sue, and would almost certainly win in the courts. But in the meantime, tremendous damage would be inflicted on programs that rely on the certainty that dollars will continue to flow from DC to the states.

And, even if Trump doesn’t specifically target California in this way, if the Project 2025 goal of massively cutting Medicaid by turning it into a block-grant program becomes reality, California might find itself in the unenviable situation of either letting millions of its residents fall off of the Medi-Cal rolls or having to raise huge amounts in additional state tax revenues to make up for the federal shortfall. Currently, 70 percent of California’s Medi-Cal budget comes from the feds. Those tens of billions of dollars would be almost impossible to recover simply through tweaks to the state’s tax code or budgeting process.

The same goes for the large-scale cuts to SNAP that Project 2025 and the incoming administration envisions. With or without California’s being specifically targeted and penalized by the Trump administration, across-the-board cuts to a program that currently serves more than 5 million Californians would devastate low-income families in this high-cost-of-living state.

All by way of saying that no matter which part of the country you reside in, this is going to be a rough ride. The country is heading into a period of gangster governance; it will be part corrupt, part clownish, and part authoritarian, and states that try to push back are likely to have a fire hose of punitive, or simply financially and economically destructive, policies directed their way.

#### No spillover. States can’t coordinate without fiat.

Aziz Huq 17, Frank and Bernice J. Greenberg Professor of Law, University of Chicago Law School, "Preemption Deals," George Washington Law Review, vol. 85, 2017, p. 226

In summary, when one attends to the precise ways in which a PPP might be leveraged in a court or in Congress (or, indeed, in the agency context that Mikos does not examine), a number of complications arise. To my mind, these complications raise considerable doubts about the practicality of reliance upon a PPP to rectify perceived nationalist biases in the preemption context. One way of sharpening these concerns would be to ask why, if PPPs were as effective as Mikos suggests, we do not see them in operation? Perhaps it is because no one has yet had Mikos's insight. But perhaps it is because the epistemic and transaction costs of PPPs are, in practice, too great to make the tactic effective. 112 At the very least, I think that Mikos's innovative proposal requires more elaboration, and perhaps supplementary mechanisms, in order to be effectual on the ground.

#### Squo solves the internal.

David Presslein 24, Research Assistant at the Max Planck Institute for Social Law and Social Policy in Munich, LL.M. from Yale Law School and is currently pursuing his PhD at the Ludwig Maximilian University of Munich, 11/15/2024, “Political Resistance and Two Dirty Words: Reframing Federalism and State Sovereignty in the Face of the Second Trump Term,”

Progressive Federalism and Sovereignty against the Trump Administration

Despite these concerns, robust understandings of federalism and sovereignty can prove useful in blocking Trump’s authoritarian plans – fully in line with their virtue of protecting against federal tyranny and their vice of inefficiency. I will focus on two routes Democrats can take to harness the progressive potential of the f- and s-words.

Political Routes and The Dirty F-Word: As to political resistance, the work of the Nationalist School of Federalism deserves a particular shoutout. Led by Dean Gerken of Yale Law School, its members seek to promote new ways in which States can implement their own policies and strengthen the rights of minorities.

Although the States and the federal government formally act separately, in practice they often cooperate to administer joint programs in what can be called “Intrastatutory Federalism”. The States (and localities) have thus considerable influence on the actual implementation of federal measures and can (re-)shape or block harmful programs, engaging in Uncooperative Federalism. Through disaggregation of political bodies and diffusion of power, national minorities can become local majorities and shape policy themselves, thereby dissenting by deciding. Furthermore, local communities offer the opportunity to establish their own programs at a local level and strengthen their case in opposition to federal policies – it is easier to argue if you can point to concrete, well-functioning practical examples. That way, they can also work to protect individual rights – federalism and rights work as “interlocking gears”. Such a comprehensive account of federalism can help Democrats understand its progressive potential and adapt accordingly. As Gerken argues, this proves more useful against the Trump Administration than arguments relying on sovereignty (see here, here, or here).

Doctrinal Routes and The Dirty S-Word: Nevertheless, sovereignty has merits for progressive purposes as well (for somewhat similar arguments during the first Trump administration c.f., here, here, or here). More specifically, it is time to turn the Supreme Court’s recent doctrinal innovations during its “Federalism Revolution” against their conservative creators. Three examples illustrate my point:

First in line is the Anti-Commandeering Doctrine. The U.S. Constitution formally envisions a dual system in which the federal and state levels administer their own laws independently. The Court built on this by prohibiting the federal government from directing the States’ legislative and executive branches to implement federal programs (New York v. United States; Printz v. United States). While the Anti-Commandeering Doctrine has often hampered progressive policies like gun control, it can now foreclose attempts by the Trump administration to force the States to enact its policies.

The Anti-Coercion Doctrine heads in a similar direction. Since the federal government has limited or no competence in several policy areas like healthcare, it can only use its spending powers to financially induce the States to enact desired policies. However, the Supreme Court has set certain limits. In particular, Congress cannot coerce States into enacting these policies via large financial offers and/or sanctions (South Dakota v. Dole; NFIB v. Sebelius). The Anti-Coercion Doctrine can therefore block coercive Republican efforts (for a first, albeit unsuccessful attempt, see State of New York v. Yellen and here).

A third candidate is the Equal Sovereignty Doctrine, established in Shelby County v. Holder. Here, the Supreme Court declared Section 4(b) of the Voting Rights Act of 1965 unconstitutional. The law had established a formula under which States with a historical track record of voting rights discrimination were subject to an oversight procedure. It therefore only targeted some States and severely restricted their capacity to regulate elections as part of their right to self-government. The Court therefore demanded that such unequal treatment among the States be sufficiently justified. Considering the progress in the fight against voting discriminations, the Court deemed the differentiation no longer justified and declared § 4(b) VRA unconstitutional. As expected, however, this lead to a resurgence of voting discriminations which have also impacted the current presidential election. The ruling is one of many in which the Supreme Court has undermined minority voting rights and faced heavy criticism, also with regards to the previously unknown Equal Sovereignty Doctrine (see the dissent by “The Notorious RBG”). It is viewed as emblematic of the Roberts Court’s blind spot for racism and its elevation of States’ rights over individual rights (see, here, here, or here). But that need not be the case going forward: like the general principle of equality, the Equal Sovereignty Doctrine is value-neutral and can be used for progressive purposes. Recently, Hayes proposed using it as a basis to include territories like Puerto Rico. Should the Trump administration target Democrat States, the Equal Sovereignty Doctrine is the way to go. A first glimpse of this defense was on display in the plaintiff’s motion in State of New York v. Wolf, where the first Trump administration tried to force only New York to change its immigration laws by making interstate travels more difficult for New York citizens. The issue was resolved on other grounds, but the Equal Sovereignty Doctrine supported New York’s cause just as well (see also here).

These examples are merely the tip of the iceberg. There are more ways to defy an excessive federal government and more doctrines that await a progressive reframing. In fact, we are already witnessing first steps in this direction: California Governor Gavin Newsom has declared that his administration will enhance its efforts to protect reproductive rights and the environment, among others. It intends to improve and solidify current legislation and to redirect budgets to facilitate bringing claims against federal actions. This embraces both the federalism and the sovereignty strategies outlined here. Indeed, Newsom emphasized the importance of federalism for preserving the Constitution – causing another Trump tirade.

## CIL

### L – Uncertainty – Rulemaking Procedure – 2AC

#### The CP politicizes the NLRB. Only notice and comment is stable enough to prevent volatility.

Mira L.Radu 25– JD candidate at University of Mississippi School of Law. “Whose Right Is It Anyway: Toward A Balanced Standard Of Scrutinizing Workplace Rules,” 02/24/2025, SSRN, https://dx.doi.org/10.2139/ssrn.5130306

A. Balancing the rights of employees and employers - imposed by the Supreme Court of the United States, yet ignored by the NLRB

Fundamentally, the NLRB has a **duty of impartiality**, emphasized by Board members and the Unites States Supreme Court alike.137 As this comment has illustrated, this duty to be a **neutral arbiter** in the labor and employment law arena has amounted more to an ideal than a serious responsibility, as the Board has been engaged in **overtly tipping the scales** in favor of either the employer or the unions, depending on the sitting administration’s political convictions.138 Studies have shown that “the political affiliation of the President appointing a Board member has a strong impact on that Board member’s decisions.”139 While this comment acknowledges that “the wide range of work rules, the varying language they use, and the many different employment contexts in which they arise”140 poses unique challenges for legislators and regulators trying to formulate a generally applicable framework for scrutinizing these rules, it theorizes that a **middle-of-the-road** **solution** could be achieved.

Currently, the legal standard governing the legality of workplace rules is strict scrutiny.141 Strict scrutiny, as a general doctrine, is the highest standard of review that courts can apply in determining the legality of an action and is used in cases involving fundamental rights of a suspect classification, as defined by law.142 A party that is subject to strict scrutiny must show that its actions were “narrowly tailored” to accomplish a “compelling interest”, and that they were “the least restrictive means” to further that interest.143 A strict scrutiny approach, by definition, cannot achieve the “delicate task” of striking an appropriate balance between employee rights and legitimate employer interests.”144 The Supreme Court of the United States recognizes a distinction between the terms “narrowly tailored” and “least restrictive means” in many cases, even in the First Amendment context.145 The Court in this way makes the distinction between content-based restrictions and content-neutral regulations. Therefore, since the workplace rules that are susceptible to Stericycle analysis are facially neutral rules, the “least restrictive means” - which is the most restrictive standard - should not apply in assessing their legality.

B. A potentially balanced approach

First, the NLRB must acknowledge that the current standard is deficient in that, by employing a strict scrutiny approach, it is drastically skewed toward protecting the employee to the detriment of the employer. In crafting a new standard, the Board should not lose sight of the fact that “a balancing standard necessarily entails the possibility that in a particular case, a challenged rule may be lawful to maintain even though it limits the exercise of Section 7 rights to some extent because the legitimate employer interests it advances outweigh that limitation.” (emphasis in original).146 One important aspect of establishing the interpretative principles of this standard is the definition of the “employee” from whose perspective a rule would be viewed. As it stands today, the definition of this employee includes the fact that he or she is “economically dependent on the employer” and “contemplates engaging in protected concerted activity”.147 This comment argues that a return to the “reasonable employee” perspective is advisable. History has shown that in more than 85 years there was never the need for such radical shift to a view point of an employee intending to engage in Section 7 activity148, nor is this categorizations very intuitive (what would the definition of this hypothetical “predisposed employee” be?). The ripple effect of the confusion and ambiguity would start here. Carefully articulating the initial burden that the general counsel must carry is essential to achieving a balanced standard and the foundation of this inquiry is clearly defining the perspective from which a rule is interpreted. For 85 years, that perspective was that of a “reasonable employee”149 . In clarifying the standard formulated in Boeing, the Board in LA Specialty Produce held that “it is the General Counsel’s initial burden in all cases to prove that a facially neutral rule would in context be interpreted by a reasonable employee ... to potentially interfere with the exercise of Section 7 rights.”150 This comment embraces this approach to articulating the burden of proof that the general counsel initially has to meet.

Furthermore, facially neutral rules should retain the presumption of lawfulness. Facial neutrality should signal that exact thing to a reasonable person - neutrality - and by definition, a neutral rule does not prohibit protected activity or have a coercive meaning. If the general counsel can show that, given the context of the case at issue, such a rule would be interpreted by a reasonable employee to potentially interfere with his or her statutorily protected rights, that presumption can be invalidated if the specific facts of the case establish that the employer’s interest for maintaining the rule does not justify its potential negative impact on the exercise of Section 7 rights by the employees subjected to it

Even though the Board in LA Specialty Produce attempted to explain away the categorical approach it set forth in Boeing, by describing the tree categories of rules as a sort of natural consequence of applying the standard that Boeing instituted151 , the mere existence of such categories in conjunction with a legal standard invites the potential abuse of the standard by employers who could hide behind the subject matter of a rule in order to justify it. Subject-matter classification inhibits a scrutiny of the language used in the rule, which is what really produces the potential chilling effect on employees who are subjected to it. For example, while it does sound like common sense for an employer to formulate and impose rules “requiring employees to abide by basic standards of civility”, deeming a rule lawful just because it has a similar title or is placed by an employer in such a category does not properly address Section 8(a)(1) concerns. Thus, a standard that places adequate weight on ensuring that employees’ exercise of their protected rights is not inhibited by the language of a workplace rule should not mention subjectmatter categories for pre-determining the lawfulness of rules and policies maintained by employers.

In his dissent in in William Beaumont Hospital, Member Miscimarra (363 N.L.R.B. No. 1543 (2016) advocated for an approach in which the Board would determine “the potential adverse impact of the rule on NLRA-protected activity” and balance it with “the legitimate justifications an employer may have for maintaining the rule” (cite to Id. at 1551) He suggested that after balancing the competing interests of employee and employer, a rule should be deemed unlawful “only if the justifications are outweighed by the adverse impact on Section 7 activity.” (Id.) In addition to the other suggestions contained in this section, this comment embraces Member Miscimarra’s simple and balanced approach and suggests that cases should be analyzed under this framework.

Taking into consideration the NLRB’s propensity for using its adjudication powers to advance the law and its reluctance to issue new regulation, a potential solution to the current approach that heavily favors the employee side in the detriment of employers 152, can come as a combination of the Board’s statutorily conferred powers. Consistent with Member McFerran’s proposals in her dissent to the Board’s majority opinion in Boeing, Co., 153 I suggest that the NLRB take a two-pronged approach to stabilizing the law around workplace rules: (1) recognizing the extreme nature of a strict scrutiny approach; and (2) adopting a more balanced standard of assessment in a future decision and instituting the practice of using rulemaking for the purposes of reversing prior policy.

C. Available regulatory instruments for implementation and their feasibility

It is well within the scope of the powers that Congress has bestowed on the NLRB to **eliminate**, or at least minimize **the confusion** around the standard under which workplace rules should be scrutinized in order to properly apply the NLRA and respect the rights of both employers and employees alike. The NLRB has both decision-making powers and rule-making powers.154 Nonetheless, “traditionally, the NLRB has utilized case adjudication, rather than rulemaking, to make law and policy changes.”155 The Administrative Procedure Act (“APA”)156 governs the process of rulemaking and adjudication by federal agencies. The main role of the APA is to establish how federal administrative agencies make rules and how they adjudicate litigation using formal and informal procedures, as outlines in the procedural requirements of the Act.157 In the context of the NLRB and this comment, the term decision-making is used to refer to the process of adjudication of administrative litigation.

1. Decision-making

The APA defines adjudication as “agency process for the formulation of an order”158, an order meaning “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking.”159 In NLRB v. Bell Aerospace160, the Supreme Court emphasized that the NLRB “possesses the discretion to choose whether to exercise its rulemaking authority or to rely exclusively on adjudication.”161 But, historically, the NLRB has made the majority of its law through individual case adjudications.162 Although periodical efforts to persuade the Board to utilize its rulemaking powers have been supported by Bar committees, scholars, congressional panels, and even Board members, many scholars have opined that its decision-making power should remain the preferred labor policy instrument.163

In Boeing, Co., the majority opinion explained that the Board has “the authority and the obligation to apply the law as we believe it should be, regardless of whether any party has directly challenged [precedent]”164 Moreover, “’[n]either the Act, the Board’s Rules, nor the Administrative Procedures Act requires the Board to invite amicus briefing before reconsidering precedent’.”165 This broad authority of the NLRB that underlines its decision-making powers could be one of the main reasons causing the instability that has been characterizing the entire NLRB legal environment, but history and scholarship indicate that the agency will continue to use decision-making as the primary instrument for shaping labor and employment law.166

With the second Trump administration will come a predictable obvious change in the leadership of many federal agencies, including the NLRB. Experts predict a very quick “flip” of the Board, with the potential appointment of current Member Kaplan as Chair.167 Thus, given the fact that Stericycle has dismantled a standard that employers had more or less relied on for several decades, causing understandable angst among employers (and potentially even among Unions, who were forced into expensive litigation), a proper case that can be used as a vehicle for issuing a decision that will overturn Stericycle, Inc. would likely to come up sooner rather than later.168 Nonetheless, there is also the possibility that, given the fact that Unions are the party initiating these cases, they technically have control over which cases reach the Board and might decide to “deprive the Board of its decisional oxygen”169 . If a future Board does end up deciding a case that calls for a Stericycle analysis, that would constitute the best opportunity for modifying the current extreme standard and, hopefully, taking a more balance approach.

2. Rule-making

Under the ADA, there are two types of rulemaking: formal and informal. Formal rulemaking is akin to adjudication, as it is mandated when “rules are required by statute to be made on the record after opportunity for an agency hearing.”170 The more common type of rulemaking, and the type that the NLRB uses, is the notice-and-comment rulemaking, or informal rulemaking.171 For the purposes of this comment, the term rulemaking will be used to refer to the notice-and-comment, or informal, type of rulemaking. Section 553 of the ADA governs informal rulemaking and describes the required steps that agencies must follow, starting with publishing a notice of the proposed rule in the Federal Register, which gives interested persons the opportunity to participate in the rulemaking process by submitting comments that are then taken into consideration by the agency, and ending in the decision whether to publish the final rule. 172

Although the NLRB has the statutory authority173 to make binding rules that govern certain areas of labor law, history has shown that the likelihood of the Board entertaining the idea of solidifying a standard of scrutiny for workplace rules via the notice and comment process is slim to none. In 2010, professor Lubbers noted a remarkable fact: the “there seems to be more Labor Law notice-and-comment rulemaking in the People’s Republic of China than there is in the National Labor Relations Board.”174 Since then, the Board engaged in rulemaking a handful of occasions.175 A type of legal “**Catch-22**” situation might make the issuance of a rule regarding a certain legal standard or the Board’s ability to overrule its own precedent highly improbable: a promulgated rule cannot be changed in a future case adjudication; it must be changed via **another rulemaking proceeding**.176 Like Claire Tuck notes, “the NLRB must **weigh the advantages** and disadvantages associated with the rulemaking process when deciding whether or not to **exercise its rulemaking authority**.”177 Additionally, the Board’s long-standing practice of changing past adjudicating precedents would be put in jeopardy and the Board’s majority would not be able to impose their agenda according to their political loyalties anymore, therefore this implementation vehicle is not a feasible for promulgating a balanced standard in the area of workplace rules scrutiny.

Nonetheless, scholars argue that **notice-and-comment** rulemaking is the most appropriate, even **exclusive**, vehicle by which the Board should **reverse a prior rule**. 178 Issuing a final rule would ensure, by the very process of notice-and-comment through which it must go before it becomes law, the **natural balance** that **public participation** brings about. Arguably, using notice-and-comment rulemaking would ensure a more gradual and therefore better reasoned evolution of policy at the NLRB.179 The **more permanent nature** inherent in policymaking through notice-and-comment rules can have the effect of making the Board **more “cautious** about overturning past decisions and creating a mishmash of inconsistent law.”180 Thus, this comment agrees with these experts181 and modestly suggests that the Board considers implementing rulemaking for the purpose of policy reversals, while acknowledging the fact that the Board might be reluctant to use its rulemaking powers.18

3. Non-legislative rules

Issuing **policy statements** and **interpretative rules** is another avenue by which the NLRA can create policy, but these instruments are **not binding** upon parties and do not provide the **policy stability** that a notice and comment rule does.183 Nonetheless, when a new Board takes the reins, a non-legislative rule must be taken into consideration before being overturned.184 A benefit that non-legislative rules can confer in the area of workplace rules is the immediate delivery of guidance regarding certain rules in order to offer some clarity on structuring future action and avoid some litigation.185 These general statements of policy issued via guidance documents, circulars, advice letters, memoranda, or other staff-centered policymaking vehicles, are **closely scrutinized** by courts because they could **pose a threat** to legislative rules promulgated through notice-and-comment procedures due to their similarity. 186 While guidance about the application of a certain legal standard or test, included in policy statements, offers temporary clarity and has the potential to decrease litigation that might otherwise develop from lack of understanding, its **non-binding nature** makes this vehicle **volatile** and not an ideal instrument from bringing about **stability in the law**.187

### ! – Uncertainty – Unions – 2AC

#### Any politicization or confusion makes compliance impossible and crushes unions.

Mira L. Radu 25 – JD candidate at University of Mississippi School of Law. “Whose Right Is It Anyway: Toward A Balanced Standard Of Scrutinizing Workplace Rules,” 02/24/2025, SSRN, https://dx.doi.org/10.2139/ssrn.5130306

Commenting on the doctrine of stare decisis as it applies to the NLRB, the labor law experts at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. remind us about Justice Brandeis’s famous quote: “Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.” 69 They further argue that “the NLRB has consistently demonstrated little regard for the principle of stare decisis, or precedent, or the stability and predictability for which it is designed to ensure.”70 On the other hand, some scholars criticize the view that stare decisis, which carries with it a heavy presumption against change, is a doctrine that the NLRB should follow, like the other courts do.71 Although policy reversal may not be an unlawful practice, policy reversal becoming the rule rather than the exception is sure to have negative consequences on all parties involved. 72

1. The politicization of the NLRB as the main reason for the policy rollercoaster.

A plausible general reason for instability in this area of the law is the fact that, as Craig Becker noted in a 2016 article advocating for labor and employment law reform, “our labor and employment laws are voluminous and uncoordinated” and therefore “their interrelationship is a source of considerable uncertainty, conflict, and litigation”.73 Even the NLRA itself has been described as “not a single statute, but an amalgamation of several different laws with conflicting objectives.”74

But a more realistic and tangible reason is the fact that “[t]he NLRB has always been highly politicized”.75 The appointment mechanism set forth in the NLRA creates an inevitable alignment of the Board’s decisions with the policy of the appointing President, therefore “virtually guarantee[ing] that the NLRB will reflect majoritarian politics.76 According to section 153 of the NLRA, the Board’s Members are appointed by the President, with the approval of the Senate, to serve for a term of five years, and they can be removed by the President only for neglect of duty or malfeasance in office.77 Similarly, the General Counsel is also appointed by the President, with the advice and consent of the Senate, for a term of four years.78 The Board’s reputation for partisanship has been drawing criticism for decades.79 While external attacks from either side of the bargaining table directed at the Board are a natural product of socio-political dimension of human behavior, even more problematic is the internal criticism among the Board members that was prevalent at least in the 1980s.80 The interpretative rollercoaster on which the Board has been embarked for the past few decades is illustrative of this practice of political loyalty.81 Partly due to the lack of statutory guidance on the issue, scrutinizing the legality of workplace rules under Section 8(a)(1) of the NLRA is one of the areas of labor law that has been exhibiting these interpretative oscillations. 82

As early as 2005, scholars started to point out that the Board’s politicization has become “sufficiently striking to warrant further exploration”.83 The practice has been eloquently described as “the ideological blood sport of crushing the opposition”84. As Gregory, Hayes, and Jaret emphasized in their 2013 essay reflecting on the leadership of NLRB Chairwoman Wilma Liebman, the cycles of politicization in the NLRB’s decision-making had been starting to gain more and more potency.85 The trend has continued and the Board has been increasingly bold in the past few years in their quest for steering the labor and employment law ship in the direction dictated by the current political administration by openly declaring in Memorandums their goals to correct policies promulgated under a different administration. 86 Addressing specifically the issue of scrutinizing employer handbook rules, NLRB’s General Counsel Jennifer Abruzzo foreshadowed the overturning of the Boeing, Inc. standard in her August 12, 2021 Memorandum87 by mentioning doctrinal shifts as a vehicle for providing the public with “the highest quality service”.88

2. The negative effects of inconsistency in interpreting the NLRA.

Criticizing the manner in which the Board shapes the labor and employment legal environment, Samuel Estreicher notes that the “Board is simply in too great of a state of flux to justify anyone’s reliance on it, or, more importantly, to shape the behavior of actors on the labor relations scene.”89 This general “state of flux”, and therefore its consequences, has been affecting the standard of scrutiny of handbook provisions legality, along with many other specific aspects of labor and employment law.90

The most obvious negative effect of this legal standard that keeps turning onto its own head is the widespread confusion about the law that is experienced by both sides of the bargaining table. To say that “employees and employers covered by the NLRA are left unsure of how to comply with its provisions”91 is probably an understatement. Experts at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. argue that an agency’s stakeholders are most frustrated when faced with instability in the rules by which they have to play and are rightly confused when the Board repeatedly revisits and overrules settled doctrine.92

The hesitation to comply with the current status of the law as promulgated by the NLRB is another obvious consequence of constant overturning of precedent. As previously mentioned, the complexity of labor and employment law presents an inherent challenge in itself.93 When there is no certainty about the legality of certain workplace rules, or any other issue at the intersection of Section 7 and Section 8(a)(1) of the NLRA, there is little incentive to invest in compliance and, consequently, litigation ensues in hopes of achieving a favorable tilt in the law.94 Abundant litigation is already the norm in the area of labor relations, because, as oxymoronic as it may sound, non-compliance with the law is in many situations a more desirable option due to the historical instability of the law. The Board’s reversal of precedent, while it does not account for a numerically significant portion of its decisional output, creates the perception that litigation has a great potential of being rewarded with a change in the law.95 Statistics show that an astonishing 57% of companies with $1 billion or more in revenue plan to increase their litigation budgets by double digits in 2025, citing employment as one of the main areas of expected litigation.96

A perfect example of uncertainty and confusion caused by such oscillations in the area of workplace rules is the case of West Shore Home, LLC97, which is currently still open. The complaint, alleging that the company’s social media guidelines policy was unlawful, was filed in February of 2021 and was subsequently dismissed five months later by the administrative law judge (“ALJ”) under the then-current Boeing, Inc. framework, finding no violation of the NLRA.98 In August 2021, the Board ordered the matter to be transferred to and continued before the Board.99 For the next 25 months, after the Board granted several extensions of time to file, exceptions to the ALJ decision and a brief in response to the exceptions were filed. 100 The Board’s ruling came in September of 2023, one short month after deciding Stericycle, Inc., remanding the matter to the administrative law judge who was now charged with analyzing the case again, under the drastically different standard set forth in Stericycle, Inc.101 Applying the newly promulgated standard in Stericycle, Judge Locke issued his second decision in this matter and concluded that the social media policy in question did violate Section 8(a)(1) of the Act, but he also acknowledged the fact that “the retroactive application of the Stericycle standard [...] would deny the Respondent due process of law” and recommended that the case be dismissed.102 The issue of an almost guaranteed futility of the remand process, due to the strict scrutiny now imposed on assessing the rule in question, is raised by Member Kaplan in his dissent to the order remanding the matter back to the ALJ.103 But the pendulum has not come to a halt just yet; the case is going through the same cycle of proceedings as it went before after the decision that found the policy lawful, having had its latest filing - an Answering Brief to Exceptions - on August 2nd, 2024.104 After all, the Respondent in this case might find itself in the clear again if the Board quickly seizes the opportunity to overrule Stericycle, Inc. and decides to revisit the analysis once again.

Naturally, the result of such practices is a great amount of resources expended by employers, unions, and the Board itself on litigating volatile issues that are not firmly grounded in precedent.105 Unfortunately, the labor unions are the side that is impacted the most because they do not have the resources to afford the litigation nearly as much as their employers counterparts are.106 Consequently, an alarming increase in the number of cases, that are accumulating much faster than agents can process them, is plaguing the agency, whose dwindling rosters are now overwhelmed, resulting in unprecedented delays in case resolution that hurts both employers and unions.107

The endless vicious circle of decision reversals also undercuts the NLRB’s credibility and the overall confidence in its ability to justly apply the NLRA, putting in question the agency’s position as a neutral arbiter.108 The NLRB has been acquiring a negative reputation as an unstable agency, promulgating an unstable body of law, and scholars had been warning about the diminishing relevance of the NLRA and the Board itself as a potential consequence of such reputation since the 1980s.109

## Rates

### AT: Interest Rates DA – T/L – 2AC

#### Short-termism makes the business cycle terminally unsustainable. Long-termism solves via balanced contracts. That’s Butler.

#### Coordinated wages make unions price in monetary policy. Firm-level bargaining causes wage inflation via free riding.

José Luis da Costa Oreiro & Flávio Augusto Corrêa Basílio 22 - Associate Professor of Economics at University of Brasília& PhD in economics from University of Brasília. “Monetary policy rules and wage bargaining structure in a New-Keynesian general equilibrium model with strategic interaction between unions and monetary authority,” May/August 2022, PAP, Santa Maria 6(2), pg. 91-129.

When J is high, each union realizes that the impact over the economy of a decision to raise the nominal wage paid to its sector has a negligible effect on the aggregate wage of the economy (free riding effect). In this way, as unions understand that their wage position will not affect the aggregate wage and therefore the overall level of prices, then they know that Central Bank will not choose a (strong) restrictive contractionary monetary policy. This phenomenon, in turn, increases the wage-premium of each union of the economy and originates from the individual strategy of the union. In turn, when the wage determination regime is centralized, there is a greater market power on the part of the unions and, therefore, a greater capacity in determining the level of real wage. However, the greater is the level of centralization, the more noticeable will be the effects of rising wages on the overall level of prices, so that nominal wage increases will be less successful in raising the real wage. Thus, the “export effect of prices” is internalized in the objective function of labour unions, but contrary to what occurs at the level of intermediate wage determination, the rise in wages has a strong and noticeable effect on the overall price level, so that threats of retaliation from Central Bank are now credible and therefore lower will be the free riding effect.

[FIGURE 1 OMITTED]

In this case, the relationship in U-inverted shape (the hump-shape hypothesis) between the decentralization of the wage determination process and the level of employment of the economy is verified, as established by Calmfors and Driffill (1988). It should be noted that the wage-premium will always be positive even when J→ ∞ and θ → ∞. This occurs because unions will always have (even if it is small) market power due to their ability to restrict the supply of labour, since firms can only hire, by chance, workers affiliated with their own union, or in other terms, due to negative externality derived from the imperfections in the labour and goods market. This relationship van be visualized in figure 1 bellow.

3.1.3 Trade-off between Conservatism of the Central Bank and Centralization of wage setting

From discussion above we kwon that:

[EQUATION 40 OMITTED]

[EQUATION 43 OMITTED]

Equations (40) and (43) shows that unemployment rate is a direct function of the level of conservatism of the Central Bank and of the level of decentralization of wage setting. This means that a permanent reduction of unemployment rate can be done by means of an increase in H or by a decrease in j. Since unemployment rate is influenced by the monetary policy rule, then monetary policy rules are non-neutral over real variables.

We also know that:

[EQUATION 41 OMITTED]

[EQUATION 44 OMITTED]

Equation (41) and (44) shoes that inflation is an inverse function of the level of conservatism of the Central Bank and a direct function of the level of decentralization of wage setting.. This means that a permanent reduction of inflation can be achieved either by an increase in H or by a decrease in j.

These results shows that an increase in the centralization of the wage bargaining process can allow a reduction in the level of conservatism of monetary policy with negligible or zero effects over the levels of inflation and unemployment. So, the model proposed here shows that income policies can be, in principle, such effective as monetary policy as a device for improve macroeconomic performance of capitalist economies.

4 FINAL REMARKS

Throughout this article, it was presented a new-Keynesian general equilibrium model with both imperfections in the markets of goods and labour, where the institutions of the labour market, together with the monetary policy rule adopted by the Central Bank, play a relevant role in determining the performance of the economy. Indeed, labour unions and monetary authority interact strategically in a Stackelberg-like non-cooperative game, which allowed us to reach three important results: (i) monetary policy rule is not neutral; (ii) decentralized and centralized wage determination regimes promote better economic results than intermediate regimes, corroborating the thesis of Calmfors and Driffill (1988); and (iii) nominal variables provide the platform for strategic interaction between monetary authority and trade unions. This last result means that real variables cannot be determined independently of nominal variables, invalidating the so-called classical dichotomy.

Thus, by modelling the supply side of the economy by labour union institutions, it is demonstrated that even though the level of money stock is neutral, the monetary policy rule affects real variables of the economy, since nominal variables provides the platform for strategic interaction between price/wage setters and monetary authority. Moreover, the model developed shows that nominal variables are relevant from the point of view of strategic interaction, since the decision variable for labour unions is the nominal wage. To achieve this objective, the institutional dimension of the economy was added in macroeconomic policy, considering both the supply and demand side of the economy, having as its starting point the seminal article of Soskice and Iversen (2000).

The main theoretical result obtained from the model presented here is that there is a trade-off between centralization of wage bargaining and a tighter monetary policy rule: the more centralized is the wage bargaining structure lower can be the weight of inflation in the monetary policy rule that allowed Central Bank could be to achieve some target level of inflation and unemployment. So, the model proposed here shows that income policies can be, in principle, such effective as monetary policy as a device for improve macroeconomic performance of capitalist economies.

#### Slow growth causes demand-side inflationary shocks. Wage-led productivity is key. That’s Domash & Cicero.

#### That causes inevitable Fed overreaction.

Steven Fazzari 24 - Professor of Economics and Associate Director of the Weidenbaum Center on the Economy, Government and Public Policy at Washington University, St Louis. “Supermultiplier Models, Demand Stagnation, and Monetary Policy: Inevitable March to the Lower Bound for Interest Rates?,” 2024, Review of Political Economy 36(5), pg. 1801-1826.

8. Monetary Policy, Demand-Led Growth, and Recent US Macro History

This section briefly explores how one can interpret recent monetary policy and macro outcomes using the very simple model developed in this paper. Again, the model is much too stylized for a detailed quantitative analysis, but even in this simple form, it provides useful insights.

Figure 7 presents the US effective federal funds interest rate since 1978 (solid line, left scale). This rate is the key policy variable assumed by mainstream models to keep the economy on an entirely supply determined, full employment path in the long run, at least in the absence of a binding lower bound on the policy rate. The figure also shows an index of US real GDP divided by the working-age population (aged 15–64, dotted line, right scale). The GDP index is scaled to equal 100 in both 1990 and 2007 (dashed line) and can be interpreted as GDP per potential worker relative to the 1990–2007 trend.

[FIGURE 7 OMITTED]

Two major features are evident in the figure. First, as implied by the mechanical Taylor rule, interest rates are cut aggressively in recessions, at least beginning in the early 1990s.Footnote19 Second, the Federal Funds rate has been on a long-run downward trend, at least until the pandemic (discussed below).

One can argue that the mainstream approach to understanding short-run monetary policy worked reasonably well in the 1990s. The early 1990s recession was shallow. By the late 1990s, the US economy was booming, perhaps the only true ‘boom’ since the 1960s. It would be reasonable to claim that the US operated close to full employment by 1999. But a good case can also be made that this outcome was not much due to monetary policy. Instead, the strength of the late 1990s US economy can be attributed to the enormous business investment boom associated with what came to be known as the technology bubble, which would be interpreted in the model presented here as a positive shock to autonomous demand. While lower interest rates may have helped pull the economy out of the early 1990s slump, interest rates rose in the middle 1990s, well prior to the emergence of the late-decade boom.

Following the recession caused by bursting of the tech bubble, monetary policy was again aggressive in an attempt to restore trend growth and low unemployment. But output and employment under-performed during a period often labeled a ‘jobless recovery.’ Even with the policy rate pushed down to an unprecedented low by postwar standards of one percentage point, recovery was sluggish. Although the unemployment rate was reasonably low by 2006, this was not a booming economy. The low interest rates helped fuel a housing bubble that surely strengthened the economy through early 2006, but Fed policy did not seem particularly effective. And the low interest rates contributed to the financial fragility that would soon bring the economy to its knees. Through the lens of the demand-led growth model presented here, even the aggressive monetary policy response to the tech collapse of the early 2000s was not strong enough to restore the booming economy of the late 1990s.

The experience of monetary policy in the Great Recession and its aftermath corresponds most closely with the theoretical perspective presented here. Early in the recession, policymakers believed they could keep the downturn modest with monetary policy.Footnote20 By late 2008, it became clear this was not the case as the policy rate collapsed to zero and the US economy contracted at an alarming rate (−8.5 per cent in the fourth quarter of 2008 and −4.6 per cent in the first quarter of 2009, annualized rates). However, several quarters of zero interest rates do not necessarily contradict the mainstream perspective. A very large demand shock might cause the lower bound on interest rates to bind even though the economy will return to a supply determined growth path, independent of the path of demand, in the long run. Figure 7 shows the policy rate remained at zero for seven years (December 2008 through December 2015). In addition, even though the Fed began to raise its rate target in early 2016, Figure 7 also shows that the economy had not recovered anything close to its pre-2007 trend by that time. Consistent with responses to a permanent negative demand shock discussed above, it seems as if the Fed decided that since interest rates had been so low for so long, the economy must have been close to full employment in 2016 and some (unknown) supply shock had pushed the ‘natural’ trend of the economy well below its path prior to the Great Recession. Annualized labor productivity growth fell from 2.6 per cent (fourth quarter of 2000 to fourth quarter of 2007) to 1.4 per cent (fourth quarter of 2007 to fourth quarter of 2019).

The interpretation of this history is very different using the simple demand-led growth model presented here. The financial crisis that caused the Great Recession led to a permanent negative shock to demand. Figure 8 shows the dramatic drop in a broad measure of real autonomous demand relative to its trend prior to the Great Recession (from Fazzari and González Citation2023; also see a related autonomous demand definition in Summa, Petrini, and Teixeira Citation2023). The growth rate of this measure of autonomous demand from 2000 to 2007 was 3.7 per cent at an annual rate; from 2007 to 2019 it was just 2.0 per cent. A narrow definition of autonomous demand growth that includes just real government spending (including government-financed medical care) fell from 4.3 to 1.7 per cent over the same periods. With such a massive decline in autonomous demand growth, the simple model predicts monetary policy will push the policy rate to the zero lower bound and keep it there, which happened from 2009 to 2016. There was no need to begin raising interest rates in 2016; there was certainly no sign of accelerating inflation. It seems the Fed simply decided the economy must be at full employment even though GDP was well below the pre-2008 trend.Footnote21

[FIGURE 8 OMITTED]

Finally, briefly consider the monetary policy response to the dramatic economic disruption caused by the COVID-19 pandemic. The early stages of the pandemic surely caused enormous contractions in both demand and effective supply. A few months before the pandemic hit, the Fed had already backed off the tentative interest rate increases that started in late 2016. It seems there was a recognition that demand was weak even before the pandemic. When the pandemic hit, monetary policy responds quickly. By late spring of 2020, the federal funds rate was again effectively zero where it would remain for almost two years. While this policy likely was implemented with an eye toward stabilizing demand, perhaps the greater motivation, especially in 2020, was to contain financial instability and prop up asset prices. Clearly, unprecedented fiscal stimulus played a much bigger role in containing a demand collapse due to the pandemic, putting the economy on a surprisingly quick path to recovery (although still not to anything approaching the pre-Great Recession trend). In 2022, monetary policy turned aggressively contractionary because of accelerating inflation. That such an aggressive policy has, as of this writing in mid-2023, not caused much of an economic slowdown raises questions about the effectiveness of monetary policy to affect the demand path, an important issue that lies outside the scope of this article but merits further attention in research.

Although the pandemic macro shocks are complicated, these events bear some resemblance to the negative supply shock analysis in the previous section. If one discounts the severe, but very brief, lockdown contraction in the late spring of 2020, the demand path seems largely maintained, no doubt due to massive fiscal stimulus to counteract what otherwise likely would have been a catastrophic reduction in demand. Therefore, output growth relative to trend remains approximately constant over several years. Labor productivity swung wildly early in the pandemic, but since the third quarter of 2020, labor productivity has fallen. The supply shock model predicts a fall in the unemployment rate, other things equal. The headline unemployment rate is about the same as prior to the pandemic. A broader measure of unemployment (U-6) is a bit lower than pre-pandemic. The model here provides reasonable support for the view that the Fed’s aggressive interest rate policy since the spring of 2022 is unnecessarily fighting the effects of a supply shock.

The more relevant question is how monetary policy will evolve going forward as the unusually disruptive pandemic and Ukraine war effects fade. The mediocre growth trend from the economic peak in 2007 to the pre-pandemic peak, seems likely to return since there is no clear reason to expect a long-run change in autonomous demand generation. Considering the recent inflation experience, the monetary policy stance in the face of what could still be a ‘secular stagnation’ economy (Summers Citation2015) is likely to be interest rates above the zero lower bound. But, as the analysis here shows, this outcome does not mean the economy is fully utilizing its potential. Furthermore, if demand falters, a march back toward the zero lower bound is likely.

#### Thumpers. Tariffs, H-1B, oil price shocks.

#### Internal link is empirically denied. 2022 rate hikes were massive.

#### Productivity solves. Ensures ouput rises alongside wages. That’s Grimshaw.

#### Warming makes economic collapse inevitable – the value of ecosystem services dwarfs global GDP.

Irene Lauro 21. Environmental economist, Schroders; PhD student 2012-2015, Economics, London School of Economics; Masters, Economics, Luiss Guido Carli University. “Beyond GDP growth: why natural capital matters.” Schroders. Oct 12 2021. https://www.schroders.com/en/insights/economics/beyond-gdp-why-natural-capital-matters/

As the climate crisis accelerates, financial markets are paying more attention to risks and opportunities stemming from the energy transition, taking into consideration the risks related to fossil fuel production and consumption.

While decarbonising the production mix and promoting energy efficiency is essential to fight climate change, we think that markets are underestimating the fundamental role that the preservation of nature plays in the race to net zero.

Natural capital is a vital asset for the global economy. According to the World Economic Forum, more than half of global GDP depends on natural resources.

Nature plays an important role in enhancing human prosperity, as healthy ecosystems and biodiversity provide us with several fundamental benefits such as:

provisioning services including food, water and timber

regulating services that affect climate, floods, soil, disease, wastes, and water quality

cultural services that provide recreational, aesthetic, and spiritual benefits.

A recent study estimates that total global ecosystem services provided benefits of US$125 trillion in 2011, that is more than one and a half times the size of global GDP (US$75tr).

Our economies are embedded within nature and the sustainability of economic development is strictly dependent on protecting natural ecosystems. But until now, economists, policy makers and financial markets have only focused on measures of economic performance, underestimating the costs of production at the expense of the environment.

The concept of natural capital has not, over centuries of commercial activity, been systematically included in decision-making or in economic indicators like GDP.

Countries have grown and developed over the centuries while eroding natural capital, but this has not been taken into account in any metric of economic performance.

GDP ignores natural capital and does not include the harm done to the environment through activity. But to achieve a more sustainable future, economic growth should increase without harming the environment.

The financial sector, as an intersection for capital allocation, should play a key role in supporting sustainability. Financial institutions could help build environmental resilience by decarbonising their portfolios and redirecting investments in solutions to tackle climate change and should therefore include the economics of biodiversity into transactions, as highlighted in the Dasgupta Review (2021).

This means that it will be important to judge economic performance through the lens of natural capital, as moving beyond GDP growth is essential to ensure a more sustainable development given the strong link between climate change and the environment. In this paper we take a step in this direction, focusing on forests’ ecosystems, the largest terrestrial carbon sink, and a major nature-based solution to the climate emergency.

### AT: Biotech

#### No internal link. Today’s rates have no impact on long-term innovation potential.

#### Biotech is resilient to interest rates and alt causes to lagging innovation.

Gabrielle Masson 24. “Biopharma funding levels at 'new normal' until federal interest rates change: PitchBook,” 06/06/24, Fierce Biotech, https://www.fiercebiotech.com/biotech/biopharma-funding-levels-new-normal-until-federal-interest-rates-change-pitchbook

Biopharma investment trends continue to shift, with venture funding jumping to $7.4 billion across 188 deals for the first quarter of the year. This compares to $6.3 billion across 248 deals the previous quarter and demonstrates an increase in deal value despite declining deal count, according to PitchBook.

Despite investment trends changing, funding levels quarter over quarter have stayed relatively stable over the past two years, defining a new normal for the sector until federal interest rates change, according to PitchBook’s quarterly biopharma report. The cautiously optimistic climate remains focused on advanced clinical assets, with platform bets mostly out of the picture.

Sector exits, including IPOs and M&A, totaled $6.9 billion across 23 deals in the first quarter, compared with $5.4 billion across 26 deals in 2023’s final quarter. The IPO string that followed the J.P. Morgan Healthcare Conference in January, such as CG Oncology’s $380 million debut or Kyverna Therapeutics’ $319 million offering, has been trailed by a slump at the end of the quarter.

A dearth of quality companies may be contributing to the decline in IPO momentum rather than of a lack of funding to enter the public markets.

“The outlook for 2024 is accepting a new normal, with companies adopting an asset-focused strategy to navigate the current high interest rate environment,” the PitchBook analysis found.

Over the previous year, many companies doing midstage testing were funded. Those companies still need time to progress their clinical data, giving possibility to another IPO window opening before the end of 2024.

Radiopharma and antibody-drug conjugate M&A has slowed as well, with pharma’s pipelines restocked for the time being.

Meanwhile, obesity drug development remains a hot area, with Novo Nordisk’s $1.1 billion buyout of Cardior Pharma, Fractyl Health’s $110 million IPO and Metsera’s $350 million fundraise all occurring this quarter. However, more approaches outside of the GLP-1 paradigm are needed, with lead companies in the space going after similar mechanisms.

Interest in early-stage firms integrating artificial intelligence has also slowed due to the realization of long timelines. A long-term investment vision is needed, as seen with Xaira’s eye-popping $1 billion round. The impact of newly launched generative AI bets may not be apparent until 2030.

Another area in which investment has slowed is the cell and gene therapy space as leading biotechs’ assets require more time to advance.

#### Biotech innovation not key. Their impact ev says CRISPR, which doesn’t solve disease, and research into emerging pathogens which is different than biotech labs and governments do it inevitably.

#### Trump makes volatility and disruption in the sector inevitable. They’ll survive.

Eleanor Malone 1/20, survey of Biopharma CEOs, "Scrip Asks… What Does 2025 Hold For Biopharma? Part 3: Impacts Of Political Change In US And Beyond," Scrip, 01/20/2025, https://insights.citeline.com/scrip/scrip-asks/scrip-asks-what-does-2025-hold-for-biopharma-part-3-impacts-of-political-change-in-us-and-beyond-CKTDR3BC2JBU5O6MUHDAKXGXHU/

Uncertainty

Perhaps the most closely watched election for the pharma industry was that of the US, its most lucrative market, and this was reflected in the predictions shared by pharma leaders.

“The next four years should be very dynamic for biopharma. Inevitable changes within the Department of Health and Human Services (HHS) could bring both opportunities and challenges for different sectors,” commented Dan Yerace, director and vice president of operations at cell and gene therapy company Coeptis Therapeutics.

One distinguishing feature of Trump’s previous administration was his unpredictability, which is likely to add to the potential for upheaval that could be expected with any political switch.

This was flagged up by London-based partner of global law firm Cooley Frances Stocks Allen: “Looking ahead it is hard to predict the overall impact of the incoming Trump administration and what Robert F. Kennedy Jr.’s appointment will mean for FDA and the global biotech and pharma markets. Having had a quick and conclusive election result, and an appointment of any kind, reduces uncertainty but, given the administration’s emphasis on disruption, it is hard not to expect movements which will both create opportunity and change,” she said. “As ever in a paradigm of uncertainty, those companies best able to be nimble and respond quickly to opportunity are the most likely to take advantage of those developments.”

Bill Coyle, principal (global head of biopharma) at consultancy ZS, also emphasized the need for companies to react effectively to change. “Against the backdrop of biopharma innovation this year, uncertainty will be high in 2025 with the incoming Trump administration set to potentially disrupt pharma and healthcare more generally. Government savings targets combined with anti-pharma rhetoric are sure to result in the need for biopharma companies to quickly understand and evaluate the impact of policy ideas that appear with little notice and could have significant implications.

Optimism

“We live in politically turbulent and uncertain times: in the past few weeks, I have read in reliable newspapers that the new Trump presidency will either be very good or very bad for pharma (a view that depends very largely on whether you supported him or not during the Presidential election),” commented Simon Kerry, CEO of UK drug discovery company Curve Therapeutics and newly elected director to the board of the UK BioIndustry Association (BIA). “I predict, however, that the world will not end in the next four or five years: there will be decisions made by politicians that may affect our sector for good or bad, but the fundamentals of the biotech industry remain strong and, I believe, the sector will remain resilient in the face of any occasional headwinds.”

He added that following the election of UK Prime Minister Keir Starmer in July 2024, “here in the UK, the BIA is working hard to make sure that we are front and centre of the new government’s mind and has already been successful in retaining the R&D tax credit at its current levels.”

Gene Mack, CEO of Gain Therapeutics, shared Kerry’s general optimism about the sector despite political changes.

“While investors have expressed concerns about President-elect Trump’s appointment of Robert F. Kennedy Jr. as HHS Secretary and RFK’s stated intentions to address pharmaceutical industry practices, I remain optimistic about the CNS [central nervous system] space in the coming year,” Mack said. “The development of life-changing medicines continues to receive broad support across government and public and private sectors.”

#### Biotech fails: too slow, low trust and rollout barriers.

Jennifer Kuzma 20, Goodnight-NCGSK Foundation Distinguished Professor in the School of Public and International Affairs at NC State University, PhD in Biochemistry from the University of Colorado, "COVID-19—Biotechnology Is Never Enough," Genetic Engineering and Society Center, 04/03/2020, https://ges.research.ncsu.edu/2020/04/covid-19-biotech-is-never-enough/

Imagine the year is 2025… and as a society, we have:

a COVID-19 vaccine that is safe (e.g. less than 0.0001% for adverse incidents) and effective for all variants of the virus and its relatives,

a rapid COVID-19 test that has high specificity and sensitivity and gives results within hours, and

low-cost treatment for COVID-19, ensuring the survival of most everyone who gets infected.

But these will likely not be enough to stop a future pandemic. The currently-unfolding COVID-19 case boldly underscores the reality that science and technology are never enough to solve global health problems alone. Rather, we need a strategic and systematic integration of social sciences, risk sciences, and communication along with science, technology, and innovation to adequately meet the challenges of emerging global risks, such as COVID-19. Simply put, complex global issues require integrated and insightful solutions.

As of early April, we have failed to coordinate simple actions to save thousands of lives. We cannot procure masks, gloves, and ventilators and distribute them to areas of need, largely due to political and market-based factors that require deeper understanding and correction. We cannot get people to trust scientific experts and their pleas to socially distance, largely due to cognitive biases and the psychosocial dimensions of risk management that we do not fully grasp. Due to such systemic failings, the latest projections from the White House’s coronavirus task force anticipate that between 100,000 and 240,000 people will die during this pandemic in the U.S. alone and Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci states, “We’re going to have millions of cases”[1]. As we collectively watch the pandemic and response unfold, it has become clear that the most important preventative actions that can be taken today starkly illustrate the importance of the social sciences in making such actions as effective (and as cost-effective) as possible. It is therefore puzzling to receive calls from agencies and foundations for “rapid-response” COVID bioscience research ideas that they can immediately fund. The problems of COVID-19 and priorities of these funders seem misaligned and poorly timed.

In addition to these short-term asymmetries, the COVID case underscores the need to revamp the longer-term U.S. federal R&D portfolio, especially as they apply to emerging global health risks and risk prevention. It is increasingly difficult to reconcile the most pressing challenges we face with the COVID outbreak with U.S. research portfolios. For example, consider the budget of the Department of Health and Human Services (DHHS) that is directed towards academic R&D—out of a budget of $23 Billion, only $0.35 B was devoted to social sciences.[2] DHHS is the biggest funder of academic social science R&D, yet only 1.5% of its budget went to it. Funding for COVID vaccine, test, and treatment development is indeed vital, but it will not suffice for the next pandemic. Vaccines, treatments, and tests must be deployed in complex socioeconomic and political systems. People must have access to them and confidence in their safety and effectiveness. Health officials and providers need to be trusted for good information.

No amount of biotechnology advancement can overcome the psychosocial, socio-economic, and political barriers causing inaction and distribution inefficiencies. We also need research that takes into account these challenges.

#### No disease impact.

David Thorstad 23, Assistant Professor of Philosophy at Vanderbilt University, was a research fellow at the Global Priorities Institute and Kellogg College, Oxford, did a PhD in philosophy at Harvard and BA in philosophy and mathematics at Haverford College, “Exaggerating the risks (Part 9: Biorisk – Grounds for doubt),” Reflective Altruism, 7/8/23, https://reflectivealtruism.com/2023/07/08/exaggerating-the-risks-part-9-biorisk-grounds-for-doubt/

2. Existential biorisk

We began this series with a distinction between two types of risks.

Effective altruists care deeply about catastrophic risks, risks “with the potential to wreak death and destruction on a global scale”. So do I. Catastrophes are not hard to find. The world is emerging from a global pandemic. There are ongoing genocides throughout the world. And nuclear saber-rattling is on its way to becoming a new international sport. Identifying and stopping potential catastrophes is an effort worth our while.

But effective altruists are also deeply concerned about existential risks, risks of existential catastrophes involving “the premature extinction of Earth-originating intelligent life or the permanent and drastic destruction of its potential for desirable future development”. Most catastrophic risks are not existential risks. A hundred million deaths would not pose an existential risk. Nor, in many scenarios, would a billion deaths. Existential risks are literal risks of human extinction, or the permanent destruction of our ability to develop as a species.

There should be little doubt that biological hazards (`biorisks’) pose a significant catastrophic risk to humanity in this century. The world just experienced a global catastrophe in the form of the COVID-19 pandemic and we are ill-prepared to prevent or respond to another. Catastrophic biorisks are important and neglected, and effective altruists are right to worry about that.

However, many effective altruists hold that there is a significant chance of existential catastrophe from biological causes.

In The Precipice, Toby Ord estimates the chance of irreversible existential catastrophe by 2100 due to engineered pandemics alone at 1 in 30, second only to risks posed by artificial intelligence.

Participants at the 2008 Oxford Global Catastrophic Risks Conference estimated a median 2% chance of extinction by 2100 from engineered pandemics.

In What we owe the future, Will MacAskill writes that “Typical estimates from experts I know put the probability of an extinction-level engineered pandemic this century at around 1%”.

These are very high numbers. These numbers need to be supported by a good deal of solid evidence. Later in this sub-series, I will review leading arguments for the view that biorisks pose a significant existential threat in this century. I will show that these arguments fall considerably short of grounding anything like the above estimates. Crucially, we will also see that expert consensus is far more skeptical than MacAskill suggests: MacAskill’s claim could only be justified on a view which treats effective altruists as the lone experts on existential biorisk, and dismisses leading scientists, policymakers, and biosecurity professionals as non-experts.

In the meantime, I want to give some initial reasons for skepticism about existential biorisk. That is not to say that the bulk of the case against existential biorisk rests on these reasons for skepticism – it rests, instead, on the inability of effective altruists to provide plausible arguments in support of their risk estimates. But it does seem appropriate to begin by saying why many are skeptical of existential biorisk claims.

3. The difficulty of the problem

The main reason why scientists and policymakers are skeptical of existential biorisk is that it is terribly hard to engineer a pandemic that kills everyone.

First, you would need to reach everyone. The virus would have to be transmitted to the most rural and isolated corners of the earth; to antarctic research stations; to ships at sea, including nuclear submarines on uncharted, long-term and isolated paths; to doomsday preppers in their bunkers; to hermits and uncontacted tribes; to astronauts in space; to each new child born every second; to island nations; and so on. And you would need a transmission mechanism that could spread the virus this far without being detected: otherwise, those with the means would be whisked away to safety and might well survive.

Second, you would need a virus that was virtually undetectable until all, or nearly all humans had been infected. That conflicts in a stark way with the goal of producing a virus that is 100% lethal, since lethal viruses tend to leave a trace as they spread through a population.

Third, you would need a virus that is unprecedentedly infectious. The virus would need to be capable of being transmitted, without fail, to every human being on the planet, in sufficient quantities to actually make them sick. It would need to avoid respirators and other forms of protective equipment. And it would have to maintain its transmissibility throughout many generations of mutation.

Fourth, you would need a virus that is unprecedentedly lethal, killing not 90%, 99%, or 99.999% but effectively all of those infected by it, no matter their age, health, or genetic makeup. This lethality would need to be preserved even against the best medical treatments, including quite possibly vaccines or synthesized antibodies. And it would have to be maintained throughout many generations of mutation despite selective pressures towards less lethal variants.

Fifth, you would need to find a way to evade basic public health measures such as masking and social distancing. This isn’t as easy as it sounds. How do you transmit a virus to someone who doesn’t leave their house?

Sixth, you would need the technological capability and equipment to synthesize the hypothesized biological agent, something it is widely agreed that humanity currently lacks.

Finally, you would need to find someone crazy enough to manufacture and deploy this biological agent, yet also competent enough to pull it off, which we have seen is no easy feat.

I am not sure if I would go so far as to say that the above is physically impossible. But without a very good argument, we should regard it as highly implausible that all of the above will come to pass by the end of the century.

## Shutdown

### AT: Shutdown – 2AC

#### Shutdown’s guaranteed. Everyone wants it and Dems fear their base.

WaPo Editorial Board 9/24, "The shutdown that no one, and everyone, wants," Washington Post, 09/24/2025, https://www.washingtonpost.com/opinions/2025/09/24/government-shutdown-trump-schumer-jeffries/

In previous clashes over impending government shutdowns, the media would often describe talks between the two parties as having “broken down.” If only that were true today.

Negotiations haven’t stalled this time around because, well, none have really taken place. Nor do they seem likely to happen before the lights turn off next week. The reason is simple: A government shutdown — though just about everybody in Washington says they want to avoid one — would serve the short-term political interests of both sides. Or so the leaders in each party believe.

Republicans are uninterested in engaging, preferring instead to fix the problem with a bill that keeps the government funded at current levels through Nov. 21. President Donald Trump on Tuesday canceled his scheduled Thursday meeting to discuss the impasse with Senate Minority Leader Charles E. Schumer and House Minority Leader Hakeem Jeffries (both New York Democrats). His stated reason was that Democrats have made “ridiculous demands” to reach a deal, and he didn’t believe a meeting “could possibly be productive.”

This aligns with messaging from Trump’s Republican allies, who see a shutdown as a chance to cast the Democrats as obstructionists. More counterintuitively, the president might stand to benefit if large portions of the government are forced to close, because that would give his administration greater leeway to decide which agencies to close, which workers to send home and what spending to prioritize. That is a backdoor opportunity to suffocate programs that Democrats would never vote to cut.

House Republicans last week passed their temporary extension, which would keep the government open until the week before Thanksgiving, but Senate Democrats refused to give up their leverage and rejected it. At least seven Democratic senators will need to join the GOP to pass any funding measure. They have not drawn red lines, but their main demand is to extend covid-era Obamacare subsidies that are set to expire at the end of the year. (The dilemma for House GOP leaders is that they risk losing dozens of votes from their right flank if they agree to that concession.)

With the minority party publicly begging Republicans to simply come to the table, Democrats argue that it would be unfair for them to get blamed. They are also emboldened because they won the blame game during shutdowns in 2013 and 2018-2019. A more important consideration for them, however, is that their base and left-wing commentators have been demanding brinkmanship.

Democratic leaders want to avoid a repeat of the March budget showdown, when a handful of Democrats — including Schumer — voted for a GOP funding bill out of the reasonable fear that a shutdown would empower Trump to further gut the federal bureaucracy. After intense blowback, the party’s leaders now believe they cannot accept anything less than significant concessions — or they risk a full-blown revolt. Schumer fears a primary challenge from his left in 2028.

Trump has made it more difficult for Democrats to compromise, even on a reasonable stopgap measure, by refusing to spend money that Congress has appropriated. The White House is using a gimmick to rescind foreign aid that has bipartisan support in Congress without securing approval from lawmakers. That money, which the administration is legally obligated to spend unless Congress says otherwise, is scheduled to lapse next Tuesday at the same time the government is set to close. So if Democrats accept a funding deal without addressing the “pocket rescission,” they would essentially be giving up any leverage to stop the administration from indefinitely impounding the funding. Democrats see this as an end run around Congress’s constitutional power over the purse.

Taken together, all of this suggests that the chances for an 11th-hour deal are vanishingly small. Democrats have signaled that they know they need to eventually compromise, which will require giving up on key demands and angering their activist wing. Meanwhile, Republicans still need to come to terms with the reality that they cannot pass a funding bill without some Democrats. So long as members of the minority party stick together, the GOP will eventually have to negotiate with them, either now or during a shutdown.

#### Impact non-unique. They will dismantle public services no matter what.

Sophia Cai 9/24, White House Reporter at Politico, co-author of West Wing Playbook newsletter, covered 2024 presidential campaign for Axios, reported from Butler Pennsylvania during Trump assassination attempt, covered White House and Congress for Bloomberg News, frequent guest on CNN CBS and MSNBC, Princeton University graduate, "White House to Agencies: Prepare Mass Firing Plans for a Potential Shutdown," Politico, 09/24/2025

The White House budget office is instructing federal agencies to prepare reduction-in-force plans for mass firings during a possible government shutdown, specifically targeting employees who work for programs that are not legally required to continue.

The Office of Management and Budget move to permanently reduce the government workforce if there is a shutdown, outlined in a memo shared with POLITICO ahead of release to agencies tonight, escalates the stakes of a potential shutdown next week.

In the memo, OMB told agencies to identify programs, projects and activities where discretionary funding will lapse on Oct. 1 and no alternative funding source is available. For those areas, OMB directed agencies to begin drafting RIF plans that would go beyond standard furloughs, permanently eliminating jobs in programs not consistent with President Donald Trump’s priorities in the event of a shutdown.

The move marks a significant break from how shutdowns have been handled in recent decades, when most furloughs were temporary and employees were brought back once Congress voted to reopen government and funding was restored. This time, OMB Director Russ Vought is using the threat of permanent job cuts as leverage, upping the ante in the standoff with Democrats in Congress over government spending.

“Programs that did not benefit from an infusion of mandatory appropriations will bear the brunt of a shutdown,” OMB wrote in the memo. Agencies were told to submit their proposed RIF plans to OMB and to issue notices to employees even if they would otherwise be excepted or furloughed during a lapse in funding.

Programs that will continue regardless of a shutdown include Social Security, Medicare, veterans benefits, military operations, law enforcement, Immigration and Customs Enforcement, Customs and Border Protection and air traffic control, according to an OMB official granted anonymity to share information not yet public.

The guidance comes as Republicans and Democrats on Capitol Hill are locked in an impasse over funding, with just days before the fiscal year ends Sept. 30. The House passed a stopgap spending measure to float federal operations through Nov. 21, but Democrats in the Senate have refused to advance it, demanding that Republicans come to the table to negotiate a bipartisan package that could include an extension of expiring Affordable Care Act subsidies.

The OMB letter notes that if Congress successfully passes a clean stopgap bill prior to Sept. 30, the additional steps outlined in this email will not be necessary.

The memo appears to vindicate warnings issued by some Democrats — most prominently Senate Minority Leader Chuck Schumer — during the last shutdown standoff in March. Schumer at the time moved to allow a GOP-written spending bill to pass, arguing that a shutdown would be a “gift” allowing Trump and his deputies “to destroy vital government services at a significantly faster rate than they can right now.”

Schumer says he has since revised that view, saying this month that the administration’s attacks on federal agencies “will get worse with or without [a shutdown], because Trump is lawless.”

He made a similar point Wednesday after POLITICO published details of the memo, calling it an “attempt at intimidation.”

“This is nothing new and has nothing to do with funding the government,” he said. “These unnecessary firings will either be overturned in court or the administration will end up hiring the workers back, just like they did as recently as today.”

But House Minority Leader Hakeem Jeffries struck a different note in an X post that appeared to take the threat seriously. He addressed it to voters in federal-worker-rich Virginia, who will soon elect a governor and other state officials.

“Their goal is to ruin your life and punish hardworking families already struggling with Trump Tariffs and inflation,” he said. “Remember in November.”

#### DA not intrinsic. Logical policymaker does both.

#### The plan is perceived as a populist replacement for regulatory labor schemes.

American Compass ’23 [Company focused on developing the conservative economic agenda to supplant blind faith in free markets with a focus on workers, their families and communities, and the national interest; “Allow Sector-Wide Bargaining to Supplant Regulation”; 2023; https://americancompass.org/rebuilding-american-capitalism/supportive-communities/allow-sector-wide-bargaining-to-supplant-regulation//ekc]

Allow Sector-Wide Bargaining to Supplant Regulation

Clarify that broad-based collective bargaining agreements are permissible under federal labor and antitrust law, creating space for state and local leaders to innovate. Specify appropriate areas of federal employment regulation from which broad-based collective bargaining agreements can choose to depart.

A well-functioning capitalist system relies upon workers and employers both possessing sufficient power in the labor market to defend their interests and come to mutually acceptable arrangements. This is not a natural state of affairs, as economists since Adam Smith have warned. Absent worker power, policymakers necessarily step forward with redistribution to ensure widely shared prosperity and regulation to govern the workplace. But America’s enterprise-level system of workplace-by-workplace unionizing and bargaining has proved unworkable. It cannot offer the kind of worker power required to return decision-making power from the federal government back to American communities, employers, and workers where it belongs.

The United States should begin to foster broad-based bargaining models, in which representatives for all workers in a group defined by region, industry, and occupation negotiates with representatives for the counterpart employers. State and local leaders must lead the way in experimenting with these approaches, but federal law can help by getting out of the way. Congress should amend the National Labor Relations Act to clarify that broad-based, sectoral models of bargaining are permissible, and by amending antitrust law to provide safe harbor for employers and workers cooperating in this way. Congress should also permit broad-based collective bargaining agreements to depart from appropriate areas of federal employment law, creating upside for workers and employers to bargain in this way and beginning the process of transitioning back to privately settled agreements. When workers and employers on equal footing agree on an approach different from the federal default, they should be allowed to follow it.

1. **Air power is resilient but fails**

William J. **Astore 16**, Retired Lieutenant Colonel (USAF), Taught at the Air Force Academy and the Naval Postgraduate School, Currently Teaches at the Pennsylvania College of Technology, “Air Power Is Unlikely to Solve America’s Problems”, The Nation, 6/21/2016, https://www.thenation.com/article/archive/air-power-is-unlikely-to-solve-the-united-statess-problems/

But here’s a question: What does it say about our overseas air wars when the greatest danger American pilots face involves performing aerial hijinks over the friendly skies of “the homeland”? In fact, it tells us that US pilots currently have not just air superiority or air supremacy but total mastery of the fabled “high ground” of war. And yet in Afghanistan, Iraq, and elsewhere in the Greater Middle East, while the United States rules the skies in an uncontested way, America’s conflicts rage on with no endgame in sight.

In other words, for all its promise of devastating power delivered against enemies with remarkable precision and quick victories at low cost (at least to Americans), air power has failed to deliver, not just in the ongoing “war on terror” but for decades before it. If anything, by providing an illusion of results, it has helped keep the United States in unwinnable wars, while inflicting a heavy toll on innocent victims on our distant battlefields. At the same time, the cult-like infatuation of American leaders, from the president on down, with the supposed ability of the US military to deliver such results remains remarkably unchallenged in Washington.

AMERICA’S EXPERIENCE WITH AIR POWER

Since World War II, even when the US military has enjoyed total mastery of the skies, the end result has repeatedly been stalemate or defeat. Despite this, US leaders continue to send in the warplanes. To understand why, a little look at the history of air power is in order.

In the aftermath of World War I, with its grim trench warfare and horrific killing fields, early aviators like Giulio Douhet of Italy, Hugh Trenchard of Britain, and Billy Mitchell of the United States imagined air power as the missing instrument of decision. It was, they believed, the way that endless ground war and the meat grinder of the trenches that went with it could be avoided in the future. Unfortunately for those they inspired, in World War II the skies simply joined the land and the seas as yet another realm of grim attrition, death, and destruction.

Here’s a quick primer on the American experience with air power:

In World War II, the US Army Air Forces joined Britain’s Royal Air Force in a “combined bomber offensive” against Nazi Germany. A bitter battle of attrition with Germany’s air force, the Luftwaffe, ensued. Allied aircrews suffered crippling losses until air superiority was finally achieved early in 1944 during what would be dubbed the “Big Week.” A year later, the Allies had achieved air supremacy and were laying waste to Germany’s cities (as they would to Japan’s), although even then they faced formidable systems of ground fire as well as elite Luftwaffe pilots in the world’s first jet fighters. At war’s end, Allied losses in aircrews had been staggering, but few doubted that those crews had contributed immeasurably to the defeat of the Nazis (as well as the Japanese).

Thanks to air power’s successes in World War II (though they were sometimes exaggerated), in 1947 the Air Force gained its independence from the Army and became a service in its own right. By then, the enemy was communism, and air power advocates like General Curtis LeMay were calling for the creation of a strategic air command (SAC) made up of long-range bombers armed with city-busting thermonuclear weapons. The strategy of that moment, nuclear “deterrence” via the threat of “massive retaliation,” later morphed into “mutually assured destruction,” better known by its telling acronym, MAD. SAC never dropped a nuclear bomb in anger, though its planes did drop a few by accident. (Fortunately for humanity, none exploded.) Naturally, when the United States “won” the Cold War, the Air Force took much of the credit for having contained the Soviet bear behind a thermonuclear-charged fence.

Frustration first arrived full-blown in the Korean War (1950–53). Primitive, rugged terrain and an enemy that went deep underground blunted the effectiveness of bombing. Flak and fighters (Soviet MiGs) inflicted significant losses on Allied aircrews, while US air power devastated North Korea, dropping 635,000 tons of bombs, the equivalent in explosive yield of 40 Hiroshima bombs, as well as 32,557 tons of napalm, leveling its cities and hitting its dams. Yet widespread bombing and near total air superiority did nothing to resolve the stalemate on the ground that led to an unsatisfying truce and a Korea that remains bitterly divided to this day.

The next round of frustration came in the country’s major conflicts in Southeast Asia in the 1960s and early 1970s. American air power bombed, strafed, and sprayed with defoliants virtually everything that moved (and much that didn’t) in Vietnam, Laos, and Cambodia. A staggering seven million tons of bombs, the equivalent in explosive yield to more than 450 Hiroshimas, were dropped in the name of defeating communism. An area equivalent in size to Massachusetts was poisoned with defoliants meant to strip cover from the dense vegetation and jungle of South Vietnam, poison that to this day brings death and disfigurement to Vietnamese. The North Vietnamese, with modest ground-fire defenses, limited surface-to-air missiles, and a few fighter jets, were hopelessly outclassed in the air. Nonetheless, just as in Korea, widespread American bombing and air superiority, while generating plenty of death and destruction, didn’t translate into victory.

Fast-forward 20 years to Operation Desert Shield/Desert Storm in 1990–91, and then to the invasion of Iraq in 2003. In both cases, US and coalition air forces had not just air superiority but air supremacy as each time the Iraqi air force fled or was otherwise almost instantly neutralized, along with the bulk of that country’s air defenses. Yet for all the hype that followed about “precision bombing” and “shock and awe,” no matter how air power was applied, events on the ground proved stubbornly resistant to American designs. Saddam Hussein survived Desert Storm to bedevil US leaders for another dozen years. After the 2003 invasion with its infamous “mission accomplished” moment, Iraq degenerated into insurgency and civil war, aggravated by the loss of critical infrastructure like electrical generating plants, which US air power had destroyed in the opening stages of the invasion. Air supremacy over Iraq led not to long-lasting victory but to an ignominious US withdrawal in 2011.

Now, consider the “war on terror,” preemptively announced by George W. Bush in 2001 and still going strong 15 years later. Whether the target’s been Al Qaeda, the Taliban, al-Shabbab, Al Qaeda on the Arabian Peninsula, or more recently the Islamic State, from the beginning US air power enjoyed almost historically unprecedented mastery of the skies. Yet despite this “asymmetric” advantage, despite all the bombing, missile strikes, and drone strikes, “progress” proved both “fragile” and endlessly “reversible” (to use words General David Petraeus applied to his “surges” in Iraq and Afghanistan). In fact, 12,000 or so strikes after Washington’s air war against ISIS in Syria and Iraq began in August 2014, we now know that intelligence estimates of its success had to be deliberately exaggerated by the military to support a conclusion that bombing and missile strikes were effective ways to do in the Islamic State.

So here we are, in 2016, 25 years after Desert Storm and nearly a decade after the Petraeus “surge” in Iraq that purportedly produced that missing mission accomplished moment for Washington—and US air assets are again in action in Iraqi and now Syrian skies. They are, for instance, flying ground support missions for Iraqi forces as they attempt to retake Fallujah, a city in al-Anbar Province that had already been “liberated” in 2004 at a high cost to US ground troops and an even higher one to Iraqi civilians. Thoroughly devastated back then, Fallujah has again found itself on the receiving end of American air power.

If and when Iraqi forces do retake the city, they may inherit little more than bodies and rubble, as they did in taking the city of Ramadi last December. About Ramadi, Patrick Cockburn noted last month that “more than 70% of its buildings are in ruins and the great majority of its 400,000 people are still displaced” (another way of saying, “It became necessary to destroy the town to save it”). American drones, meanwhile, continue to soar over foreign skies, assassinating various terrorist “kingpins” to little permanent effect.

TELL ME HOW THIS ENDS

Here’s the “hot wash”: something’s gone terribly wrong with Washington’s soaring dreams of air power and what it can accomplish. And yet the urge to lose the planes only grows stronger among America’s political class.

Given the frustratingly indecisive results of US air campaigns in these years, one might wonder why a self-professed smart guy like Ted Cruz, when still a presidential candidate, would have called for “carpet” bombing our way to victory over ISIS, and yet in these years he has been more the norm than the exception in his infatuation with air power. Everyone from Donald Trump to Barack Obama has looked to the air for the master key to victory. In 2014, even Petraeus, home from the wars, declared himself “all in” on more bombing as critical to victory (whatever that word might now mean) in Iraq. Only recently he also called for the loosing of American air power (yet again) in Afghanistan—not long after which President Obama did just that.

Even as air power keeps the US military in the game, even as it shows results (terror leaders killed, weapons destroyed, oil shipments interdicted, and so on), even as it thrills politicians in Washington, that magical victory over the latest terror outfits remains elusive. That is, in part, because air power by definition never occupies ground. It can’t dig in. It can’t swim like Mao Zedong’s proverbial fish in the sea of “the people.” It can’t sustain persuasive force. Its force is always staccato and episodic.

Its suasion, such as it is, comes from killing at a distance. But its bombs and missiles, no matter how “smart,” often miss their intended targets. Intelligence and technology regularly prove themselves imperfect or worse, which means that the deaths of innocents are inevitable. This ensures new recruits for the very organizations the planes are intent on defeating and new cycles of revenge and violence amid the increasing vistas of rubble below. Even when the bombs are on target, as happens often enough, and a terrorist leader or “lieutenant” is eliminated, what then? You kill a dozen more? As Petraeus said in a different context: Tell me how this ends.

#### PC fails. Trump-world is totally incompetent and doesn’t know how to wield power.

David Faris 12/23, Associate Professor of Political Science at Roosevelt University, author of "The Kids Are All Left", author of "It's Time To Fight Dirty", contributing writer at The Week, "2025's Big Question: Can Republicans Govern? | Opinion," Newsweek, 12/23/2024, https://www.newsweek.com/2025s-big-question-can-republicans-govern-opinion-2005202

As the sun rises on 2025—at least in the parts of the country where there is January sunlight—America's basic predicament has become clearer. The country has one political party that can govern but not consistently win elections, and another that can win elections but can't seem to govern.

Americans chose to give the latter group virtually unfettered power in November, and three weeks into 2025, the Republican Party will complete its takeover of Washington with the second inauguration of Donald Trump as the president of the United States. The looming question is whether he will be able to get much of anything done given one of the narrowest House majorities in American history, the reality of his lame duck status, and emerging fissures in the Republican coalition that are cracking open weeks before Trump is even sworn in.

Overall, the transition period has not been an encouraging sign for MAGA enthusiasts hoping to radically reorient American trade and immigration policy, wage a multi-front administrative war on "wokeism" and somehow also not accidentally break an economy they just spent several years trashing as a disaster, only to now inherit responsibility for it wholesale. Trump himself has shown his age and disastrous instincts in multiple ways, wasting precious political capital on transparently absurd personnel choices like Matt Gaetz as attorney general and Fox News commentator Pete Hegseth as Secretary of Defense. These are strange, unqualified people whose already worrisome scandals seem to have their own sub-scandals.

The idea that Trump would come into office a second time with a seasoned, battle-ready staff, sporting an expansive and legally-vetted day one agenda has run headlong into the reality that the beating heart of MAGA world still appears to have no earthly idea how to effectively wield power on a moment-to-moment basis. Instead, it has once again been amateur hour for close to two long months, with 48 more to go. Meanwhile, the President-elect's frivolous lawsuits intended to silence press critics and non-profits have inadvertently roused the resistance from its post-election hangover.

The fact that prominent Republicans are trial ballooning the idea of making Elon Musk the Speaker of the House is a clear sign they believe the ship they've built isn't actually seaworthy. It's not just that current Speaker Mike Johnson (R-La.) briefly couldn't find the votes for a basic government funding stopgap that would be pro forma for any functioning political party; it's that some in the GOP believe that among the hundreds of elected Republicans in Congress, there isn't a single one capable of doing the job, including the one who already has it, who himself has held the gavel for barely a year. That's not because the job of Speaker is inherently impossible, but rather, beacause the Republican Party's baseline dysfunction has for years been papered over with reliance on Democrats for key spending votes that routed around the austerity hardliners and created a mirage of continuity and competence.

Belowdecks, a mutiny is brewing that may force a reckoning with the fundamental contradiction of MAGA, a movement that seeks, at least rhetorically, to burn down the post-WWII liberal order both at home and abroad but also needs to reliably service the millionaire-and-billionaire classes who write the checks to the movement's think tanks, candidates, and SuperPACs, and who collectively extract far more out of that dying order than they put in. Just before the holidays, more than three dozen Republican austerity hawks stood their ground against the full heft of the right-wing machine and refused to rubber stamp a two-year debt-ceiling suspension without cuts to the entitlements that Trump literally just promised the voters he wouldn't touch.

#### Fights are compartmentalized.

Pergram 18 (Chad Pergram, Congressional reporter. “Amid Kavanaugh cacophony, Congress forges bipartisan agreements on key issues”. October 13, 2018. https://www.foxnews.com/politics/amid-kavanaugh-cacophony-congress-forges-bipartisan-agreements-on-key-issues)

Step back from the Kavanaugh cacophony. Examine what lawmakers from both parties in both chambers accomplished in September and early October, with virtually zero fanfare. Amid the turmoil, Congress approved the first revamp of national aviation policy in years. The Senate approved the final version of the legislation 93-6. This came after a staggering six extensions due to bickering and disagreement. Then, Congress approved a sweeping, bipartisan measure to combat opioid abuse. The House okayed the package 393-8. The Senate adopted the measure 98-1. And, there was no government shutdown. The House and Senate came to terms on two bipartisan bills which funded five of the 12 annual spending bills which operate the government. The sides agreed to latch an additional measure to one of the spending plans to fund the remaining seven areas of federal spending through December 7. President Trump briefly threatened to force a government shutdown if lawmakers didn’t include money for his border wall in the plan. But the President ultimately punted that battle until December. Democrats praised Republicans for keeping conservative “poison pill” riders out of the appropriations bills. That decision drew Democratic support for the measures. The Senate approved a bipartisan water and infrastructure package. McConnell hailed the bipartisanship which descended upon the Senate – even as the senators fought over Kavanaugh. Nearly in the same breath, McConnell derided boisterous, anti-Kavanaugh protesters outside the Capitol as a “mob.” McConnell insisted this week he needed the Senate to clear a slate of 15 conservative judges to lower courts before he could cut senators loose for the midterm elections. McConnell and Schumer appeared at loggerheads. McConnell’s goal was clear: extract the confirmation of these nominees – or tether to Washington vulnerable Democratic senators from battleground states to keep them off the campaign trail. Schumer knew McConnell would ultimately prevail on the nominees after the midterms. So the New York Democrat accepted McConnell’s ransom, permitting the Senate vote on a slate of nominees on Thursday night. Schumer also extracted a concession from McConnell: send senators home until November 13th. One may wonder how lawmakers can find themselves in an imbroglio over a major issue like Kavanaugh – yet forge major bipartisan accords on other. Frankly, that’s just politics. Politics always elicits strange bedfellows. Successful lawmakers know they should compartmentalize their disputes. The enemy today may be your best ally tomorrow.