## OFF

### T---1NC

T Subsets---

#### “For workers” requires the plan applies to all employed people.

ILO 81 – a United Nations agency designated with setting global labor standards and policies.

International Labor Organization, “Safety and Health and the Working Environment,” International Labor Conference, 67th Session, https://webapps.ilo.org/public/libdoc/ilo/1980/80B09\_513\_engl.pdf

PART I. SCOPE AND DEFINITIONS

Article 1

For the purpose of this Convention – (a) the term " branches of economic activity " includes work in the public service ; (b) the term "workers" covers all employed persons, including public employees ; (c) the term "workplace" covers all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer ; (d) the term "regulations" covers all provisions given force of law by the competent authority or authorities.

Article 2 1.

This Convention applies to all branches of economic activity.

#### “In” means “throughout” the United States. Topical affs must apply throughout the country, not just in parts of it.

Words and Phrases 08 – a legal dictionary.

Words and Phrases, Permanent Edition, 2008.

Colo. 1887. In the Act of 1861 providing that justices of the peace shall have jurisdiction “in” their respective counties to hear and determine all complaints, the word “in” should be construed to mean “throughout” such counties. Reynolds v. Larkin, 14, p. 114, 117, 10 Colo. 126.

#### Violation: they don’t strengthen rights for all workers.

#### Voting issue for limits and ground. Encourages a race to the margins that vacates core neg prep which guts research and fairness.

### T---1NC

T Scope---

#### “To strengthen” a right means to increase its ability to overcome opposing interests. That’s legally distinct from expanding its scope.

Schauer 82 – Distinguished Professor of Law, UVA Law, and Stanton Professor of the First Amendment, Kennedy School of Govt. at Harvard

Frederick F. Schauer, David and Mary Harrison Distinguished Professor of Law at the University of Virginia School of Law and Frank Stanton Professor of the First Amendment at Harvard University's Kennedy School of Government, *Free Speech: A Philosophical Enquiry*,(New York: Cambridge UPress), 1982, at pp. 134-136

It would seem therefore relatively uncontroversial to assert that freedom of speech is not and cannot be an absolute right. This broad statement, however, must be tempered by two highly per- tinent qualifications. First, it is important to recognize not only the distinction but also the relationship between the strength of a right and the scope of a right. This terminology is but another way of expressing the distinction between coverage and protection that I discussed earlier, but the terms ‘strength’ and ‘scope’ are particularly illuminating here. The scope of a right is its range, the activities it reaches. Rights may be narrow or broad in scope. Defining the scope of free speech as freedom of self-expression is very broad, defining it as freedom of communication substantially narrower, and defining it as freedom of political communication narrower still. The strength of a right is its ability to overcome opposing interests (or values, or other rights) within its scope. This distinc- tion is nothing new, although it is often ignored in popular dialogue about freedom of speech. The point I wish to make here is that although the scope of a right and the strength of that right are not joined by a strict logical relationship, they most often occur in inverse proportion to each other. The broader the scope of the right, the more likely it is to be weaker, largely because widening the scope increases the likelihood of conflict with other interests, some of which may be equally or more important. Conversely, rights that are narrower in scope are more easily taken to be very strong within that narrow scope. It is much easier, for example, to say that there is a very strong, almost absolute, right to purely verbal political speech than it would be to say that a right to self- expression can be as strong. Any examination of rights must first recognize this interrelationship and then try to preserve someequilibrium between scope and strength. This is easiest but not necessarily best at the extremes. Meiklejohn, for example, definedfreedom of speech as freedom of political speech by those without profit motives. Within this narrow scope it was easier for him to define the right as absolute (which he did) than it would have been had he broadened the scope to include other forms of com- munication. Yet the more narrowly we define a right, the more likely we are to exclude from coverage those acts that may fall within the justification for recognizing the right. Freedom of speech as freedom of political deliberation gains simple absolutism at the cost of excluding much that a deep theory of the Free Speech Prin- ciple would argue for including.

Second, there is an important distinction between the absolute- ness of a political right and the absoluteness of a legal right. A strong but not absolute political right may still at the level of appli- cation be converted into an absolute legal right. The question con- cerns the level at which the weighing process will take place, and which people or institutions will be entrusted with the weighing process. In this respect the issues parallel the considerations involved in act-utilitarianism and rule-utilitarianism. We may balance the issues at the rule-making level, concluding that it is best to have an absolute right in order to preclude judges, juries, or (in the case of constitutional rules) legislatures from possibly giving insufficient weight to the Free Speech Principle in a parti- cularized balancing process. Or we may instead allow the balancing to take place at the level of application, thus permitting judges, for example, to determine in the individual case whether counter- vailing interests outweigh the strength of the Free Speech Princi- ple. It is commonly supposed that this type of ad hoc or particular- ized weighing results in an insufficiently strong principle of freedom of speech, that there is danger of freedom of speech being ‘balanced away’.\* This is probably true as an empirical observa- tion, but it is hardly a necessary truth. It is possible to create prin- ciples of insufficient strength at the rule-making level, and it is equally possible for a judge at the level of application to apply a principle in a way that gives it great power. A full analysis of any political principle must deal with the degree to which any insti- tution can protect that principle, and hence the problem of the strength of a principle is intertwined with the problem of design- ing institutions for the protection of political principles in general.

#### Violation: The aff expands the scope of CBR to cover new subjects.

#### Voting issue for limits and ground. Blowing the lid off the research burden structurally disadvantages the neg and crushes argumentative refinement on both sides.

### CP---1NC

Unions PIC

#### Congress should clarify that

#### ---stripping federal worker Collective Bargaining Rights is compliant with statute.

#### ---Schedule F does not conflict the CSRA.

#### The Supreme Court should grant cert in a test case and hold the will of congress supersedes the executive.

#### Federal CBRs strain flexible agency response.

Vernuccio 25 – President of the Institute for the American Worker

F. Vincent, “Trump puts America first with federal collective bargaining ban,” Washington Examiner, April 2, 2025, https://www.washingtonexaminer.com/restoring-america/faith-freedom-self-reliance/3366078/trump-america-first-federal-collective-bargaining-ban/

This language reflects what people need and want. Keeping the country safe requires a nimble and responsive government — one not burdened by bureaucracy. Yet collective bargaining is inherently bureaucratic, often bogging down federal agencies in lengthy negotiations and legal back-and-forth. When the country is in danger, you don’t want federal officials haggling with labor unions over issues that have nothing to do with ensuring the safety and security of the public.

Which is exactly what happens all too often. Government unions can’t legally bargain over wages and benefits, which are set by federal law. Instead, collective bargaining frequently descends into negotiations over many picayune issues.

The Institute for the American Worker has documented this reality. The federal government is negotiating with unions over a supposed right to wear sweatpants and spandex in federal offices. Unions are also negotiating with the federal government over the height of cubicle desk panels — specifically, how far they reach to the floor. Collective bargaining has even focused on things such as carving out smoking zones on federal properties that are supposed to be smoke-free.

None of this improves national security. Nor is America safer or more secure when a Veterans Affairs medical center gives a government union more than half a hospital wing, including a kitchen, a conference room, private bathrooms, and an outdoor patio. Under the president’s executive order, that never would have happened, and it shouldn’t have happened in the first place.

People need the federal government to focus on national security, not union negotiations. Nor do people need federal employees to spend part of their workday working for the union, a policy known as “official time.” The president’s order ends that practice, too. The most recent evidence shows that federal employees across the government spent more than 2.6 million hours doing union work instead of their jobs. The country will be safer when they’re 100% focused on national security.

Taxpayers have a clear and compelling interest in this reform. Collective bargaining with federal labor unions has cost billions of dollars over the years, covering everything from negotiators and lawyers to expert witnesses and travel costs. Taxpayers expect their hard-earned money to make them safer. People aren’t safer when they’re forced to fund negotiations over spandex and smoking zones.

And federal workers will benefit, too. Government union contracts tend to restrict employees, but when national security is on the line, federal workers need freedom and flexibility to do their jobs at the highest level. That’s why they went to work for security-focused agencies — not to get higher cubicle desk panels, but to help protect people.

Trump is right to end collective bargaining when national security is on the line. His reform will empower government workers, save taxpayers money, and make everyone safer. Rarely will you see a more obvious or praiseworthy example of what it means to put America First.

#### That’s key to a laundry list of national security threats.

Shumate et al. 25 – Civil Division's 36th Assistant Attorney General

Brett, Yaakov M. Roth, Emily M. Hall, Tyler Becker, Eric Hamilton, Alexander K. Haas, Jacqueline Coleman Snead, “Memorandum of Points and Authorities in Support of Defendants’ Cross-Motion for Summary Judgement and Opposition to Plaintiff’s Motion for Summary Judgement,” United States District Court for The District Of Columbia, 06/23/25, https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/162584.pdf

\*We do not endorse the use of problematic language.

Department of the Treasury (Treasury). NTEU’s principal complaint is with the exclusion of Treasury, but Treasury’s national security role is clear, primary, and longstanding. Treasury’s “‘mission is to maintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combating threats and protecting the integrity of the financial system, and manage the U.S. Government’s finances and resources effectively.’” Decl. of Trevor Norris ¶ 3 (quoting U.S. Dep’t of the Treasury, About: Role of the Treasury, https://perma.cc/9U5T-RCXR), attached as Exhibit 8 (“Norris Decl.”). “Put simply, Treasury exists to promote the economic and productive strength of the United States—a core national security mission.” Id.

Treasury also has investigative work as a primary function, for example through its components the Internal Revenue Service (“IRS”), the Financial Crimes Enforcement Network (“FinCEN”), and the Office of Foreign Assets Control (“OFAC”). Norris Decl. ¶ 4. IRS has a primary investigative function, as one of its principal duties is auditing tax filings. In fact, the IRS Criminal Investigations Division, which includes IRS special agents who investigate tax and related crimes, like money laundering, has been excluded since 1979. Id.; see also Exec. Order No. 12,171, § 1–2, 44 Fed. Reg. 66,565 (Nov. 20, 1979). FinCEN’s mission is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence. FinCEN analyzes financial transactions data for law enforcement purposes. Id. OFAC investigates and enforces potential violations of U.S. economic and trade sanctions. This includes investigating transactions involving targeted foreign countries, regimes, and individuals and entities engaging in harmful activity, such as terrorists, international narcotics traffickers, weapons of mass destruction proliferators, and other malign actors, in response to threats to the national security, foreign policy, or economy of the United States. Id.

Department of Energy. Energy’s “primary role is setting national energy policy, with obvious national security objectives and implications. The same Congress that enacted the FSLMRS acknowledged Energy’s national security objectives, closely tied to its role in regulating domestic energy production, when it created the Department of Energy. See 42 U.S.C. § 7111(2) (“[O]ur increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens.”).” Decl. of Reesha Trznadel ¶ 3, attached as Exhibit 6 (“Trznadel Decl.”). Energy “‘ensure[s] the security of the U.S. nuclear weapons stockpile,’” “‘manages the Strategic Petroleum Reserve, invests in protection against cyber and physical attacks on U.S. energy infrastructure,’” and “‘provides training tools and procedures for emergency response and preparedness.’” Trznadel Decl. ¶ 3 (quoting U.S. Dep’t of Energy, Energy Security, https://www.energy.gov/topics/energy-security) (brackets in original). On the first day of his second term, President Trump recognized that “[e]nergy security is an increasingly crucial theater of global competition”; “hostile state and non- state foreign actors have targeted our domestic energy infrastructure, weaponized our reliance on foreign energy, and abused their ability to cause dramatic swings within international commodity markets”; and “[a]n affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation.” Exec. Order No. 14,156, § 1, 90 Fed. Reg. 8,433, 8,433 (Jan. 20, 2025).

Bureau of Land Management (BLM). “Domestic energy production is a critical national security priority, and [BLM] oversees energy production on America’s hundreds of millions of acres of public lands as one of its principal responsibilities.” Decl. of Stephanie M. Holmes ¶ 4, attached as Exhibit 9 (“Holmes Decl.”). A primary function of the Department of the Interior, specifically BLM, is to protect the nation’s natural energy and mineral resources from internal subversion and foreign aggression by helping the nation become more energy independent and ensure safe energy production and mineral extraction and development from external and internal threats. Holmes Decl. ¶ 5. BLM thus directly manages the Nation’s “economic[] and productive strength.” Oak Ridge, 4 F.L.R.A. at 655–56. BLM’s “public lands management also plays a substantial role in funding the Federal Government’s operations through mineral development, the Nation’s second-largest revenue source after tax revenue.” Holmes Decl. ¶ 4.; see U.S. Dep’t of Interior, Bureau of Land Management, About the BLM Oil and Gas Program, https://perma.cc/CG9U-F4RU.

Department of Health and Human Services (HHS) Subdivisions. The relevant HHS subdivisions play major roles in, and have as primary functions, the “protection and preservation of the military, economic, and productive strength of the United States,” Oak Ridge, 4 F.L.R.A. at 655–56, “given their critical roles in anticipating, identifying, and responding to biological, chemical, radiological, and pandemic threats—threats which, if left unaddressed, could cripple national infrastructure, devastate economic activity, and imperil civilian and military readiness.” Decl. of Christina V. Ballance ¶ 4, attached as Exhibit 4 (“Ballance Decl.”). The Office of the Secretary plays key roles in achieving that objective, including by holding the power to declare an emergency in the event of a pandemic or bioterrorist attack, and broad powers stemming from such a declaration, 42 U.S.C. § 247d(a). The Centers for Disease Control and Prevention (CDC) likewise “has an essential role in defending against and combatting public health threats domestically and abroad,” including the threat of “bioterrorism.” 42 U.S.C. § 247d-4(a)(1). And the Administration for Strategic Preparedness and Response similarly “leads the nation’s medical and public health preparedness for, response to, and recovery from disasters and public health emergencies.” ASPR, ASPR: Administration for Strategic Preparedness and Response, https://aspr.hhs.gov/Pages/Home.aspx; see 42 U.S.C. § 300hh-10(f)(1) (“[T]he Assistant Secretary for Preparedness and Response shall implement strategic initiatives or activities to address threats, including pandemic influenza and which may include a chemical, biological, radiological, or nuclear agent … that pose a significant level of risk to public health and national security.”).

The Food and Drug Administration (FDA) is best known for investigating the efficacy of drugs and medical treatments like vaccines. These “investigative and regulatory functions extend beyond public health to encompass national economic and security interests[,]” Ballance Decl. ¶ 4(c)—for example, the FDA’s rapid approval of the COVID-19 vaccine facilitated the reopening of the American economy. Likewise, a secure food supply is critical to national security, as Congress recognized in 2011 by passing the Food Safety Modernization Act to enhance the FDA’s authority to prevent and respond to foodborne threats, including terrorist threats. See Pub. L. No. 111-353, 124 Stat. 3885. And, preparedness for chemical, biological, radiological, and nuclear threats is a key part of FDA’s mission, as it collaborates with other agencies to approve and stockpile treatments for national security threats such as anthrax, smallpox, and the like. See Press Release, HHS Strengthens Country’s Preparedness for Health Emergencies, Announces Administration for Strategic Preparedness and Response (ASPR) (July 22, 2022), https://www.hhs.gov/about/news/2022/07/22/hhs-strengthens-countrys-preparedness-health- emergencies-announces-administration-for-strategic-preparedness-response.html. And the FDA’s authority to issue Emergency Use Authorization for critical treatments, such as the COVID- 19 vaccine, represents an important part of its mission and a crucial tool for maintaining the country’s military, economic, and productive strength.

Finally, the Office of Refugee Resettlement has as its mission to aid refugees and other immigrants. Immigration and the government’s policy toward foreign nationals within the country are core national security issues and emphatically within the President’s national security prerogatives. See, e.g., Hawaii, 585 U.S. at 704.

Department of Justice (DOJ). DOJ performs investigative, intelligence, and national security work as primary functions. DOJ’s investigative work is carried out, for example, by prosecutors in U.S. Attorney’s Offices, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearm as well as its other litigating components. See U.S. Dep’t of Just., Organization, Mission and Functions Manual, https://perma.cc/SV2K-5LRJ. The Bureau of Prisons conducts internal investigations into inmate activities, including identifying and monitoring terrorist inmates’ communications. See U.S. Dep’t of Just. Off. of the Inspector General, DOJ OIG Releases Report on the BOP’s Monitoring of Inmate Communications to Prevent Radicalization (Mar. 25, 2020), https://perma.cc/R4Y7- U2AE. DOJ’s national security and intelligence missions are carried out principally (but not exclusively) by its National Security Division, which “consist[s] of the elements of the Department of Justice . . . engaged primarily in support of the intelligence and intelligence-related activities of the United States Government.” 28 U.S.C. § 509A(b). Similarly, “DOJ litigating divisions prosecute terrorist and other foreign threats against U.S. citizens, while other DOJ components investigate and prevent hostile actions.” Decl. of Matthew E. Hirt ¶ 4, attached as Exhibit 3 (“Hirt Decl.”) This is why DOJ components like the National Security Division, U.S. Attorney’s Offices, and the Criminal Division have long been exempted under 5 U.S.C. § 7103(b)(1).

Environmental Protection Agency (EPA). EPA has a “primary mission with respect to national security to prevent, limit, mitigate, or contain chemical, oil, radiological, biological and/or natural or man-made disasters and provide environmental monitoring, assessment, and reporting in support of overall domestic incident management[.]” Decl. of Michael Molina ¶ 3(a), attached as Exhibit 5 (“Molina Decl.”). As the FLRA has recognized, EPA’s mission of environmental regulation, investigation, and enforcement is a national security mission. “Any sabotage or interference with the availability of safe drinking water or breathing air may impact the economic and productive strength of the country as well as the general health and safety of U.S. citizens.” United States EPA, 70 F.L.R.A. 279, 283 (2017). EPA also has taken on a role in energy policy through its regulation of greenhouse gas emissions under the Clean Air Act. See, e.g., New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units, 89 Fed. Reg. 39,798 (May 9, 2024). EPA policies like its mandate to produce electric vehicles have serious national security implications, including by making America dependent on its adversaries for critical minerals necessary to produce electric vehicle batteries. See Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light- Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27,842 (Apr. 18, 2024). Congress has long recognized that policies that reduce our reliance on foreign nations for critical resources implicate national security. See 42 U.S.C. § 7111.

Federal Communications Commission (FCC). Congress created the FCC “for the purpose of the national defense[.]” 47 U.S.C. § 151. “The FCC secures the Nation by regulating and protecting its communications networks—crucial infrastructure for national defense and America’s economic productivity. The primacy of national security in the agency’s mission and operations is reflected, for example, in its Council on National Security, which ‘leverage[s] the full range of the Commission’s regulatory, investigatory, and enforcement authorities to protect America and counter foreign adversaries, particularly the threats posed by the People’s Republic of China (PRC) and Chinese Communist Party (CCP).’” Decl. of Mark Stephens ¶ 3 (quoting FCC, FCC Council on National Security, https://www.fcc.gov/fcc-council-national-security), attached as Exhibit 7 (“Stephens Decl.”).

In sum, these record facts bear out the President’s determination that each Defendant agency “has as a primary function intelligence, counterintelligence, investigative, or national security work[.]” 5 U.S.C. § 7103(b)(1)(A).

2. The FSLMRS cannot be applied here consistent with national security requirements and considerations. The President also properly determined that the provisions of Chapter 71 cannot be applied to Defendant agencies “consistent with national security requirements and considerations.” 5 U.S.C. § 7103(b)(1)(B). Such a determination requires “delicate, complex” assessments. Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp., 333 U.S. 103, 111 (1948). Here, the President determined that the exempted agencies’ missions require rapid responses to changed working conditions and unencumbered mobility of their employees—things incompatible with Plaintiff’s CBAs with Defendants.

Specifically, under the FSLMRS, agencies must postpone changes that have more than a de minimis effect on working conditions until the agencies have provided the union with notice and an opportunity to bargain. The process includes completing any subsequent negotiations, mediation, and impasse proceedings, when needed. 5 U.S.C. §§ 7106(b), 7119. The FLRA routinely pauses agency attempts to implement changes before this midterm bargaining process has concluded. See, e.g., Army Corps of Eng’rs, 53 F.L.R.A. 79, 81 (1997). This process often imposes significant delays before changes can take effect. Holmes Decl. ¶ 9. For example, “[p]rior to making any changes to conditions of employment, BLM is required to provide 14–15 days advanced notice to the union (depending on the agreement). The union is then allowed another 14–15 days to present proposals to the agency prior to the parties bargaining over the impact and implementation of the proposed change. If the parties are unable to reach agreement, the parties may seek the services of the Federal Mediation and Conciliation Services (“FMCS”) and/or the Federal Service Impasse Panel (“FSIP”).” Id. ¶ 8(a). The President appropriately determined that requiring lengthy delays before agencies with important national security roles can adjust their operations is incompatible with national security considerations.

Employee performance is also critical in agencies with important national security roles. Many provisions in federal agencies’ CBAs make it more difficult to remove employees who perform poorly. For example, “Bargaining Unit Employees receiv[e] more time to demonstrate performance than non-Bargaining Unit Employees which has resulted in inconsistent application of the requirements to demonstrate performance.” Trznadel Decl. ¶ 7(c). At times, the agency “must provide a minimum of 60 days and as many as 120 days for a performance improvement period (PIP). Shorter PIPs are not permitted for bargaining unit (BU) members, but they are now limited to 30 days for non-bargaining unit employees[.]” Norris Decl.¶ 7(a). Even after that process, CBAs allow unions to grieve dismissals of poor performers to binding arbitration, with arbitrators overturning approximately three-fifths of arbitrated removals. See James Sherk, America First Policy Inst., Union Arbitrators Overturn Most Federal Employee Dismissals 5 (2022). The result: OPM recently found that a plurality of federal employees reported that poor performers in their work units typically “remain in the work unit and continue to underperform,” including at Plaintiff agencies. See OPM, 2023 Office of Personnel Management Federal Employees Viewpoint Survey: Report by Agency 49–60, https://perma.cc/4PFM-XYVM. The Merit Systems Protection Board has concluded that only a quarter of Federal supervisors are confident they could remove a subordinate who was underperforming in a critical job element. See, U.S. Merit Sys. Protection Bd. Off. of Policy & Evaluation, Remedying Unacceptable Employee Performance in the Federal Civil Service (June 18, 2019), https://perma.cc/F257-N9JE. The President properly determined that the CBAs, as a clear impediment to separating underperforming employees, are inconsistent with national security considerations.

The CBAs further require Defendant agencies to divert resources from their primary work functions towards union related activities. For example, Defendant agencies must allow union officials time to work on union business, such as negotiating agreements, processing of grievances, presenting cases in arbitration, and representing employees at meetings with management, completely unrelated to the work the employees were hired to perform. See Trznadel Decl. ¶ 7(a).

### CP---1NC

CBR PIC---

#### The United States Congress should

#### - permit working-from-home for all federal employees,

#### - provide relocation assistance to federal workers,

#### - restore independent inspector generals at all federal agencies,

#### - enshrine confidentiality protections for whistleblowers through independent inspector generals,

#### - require whistleblower accusations be handled by neutral third parties,

#### - strengthen legal protections for people who whistleblow and publicly announce they will be exempt from investigation and prosecution,

#### - substantially increase financial rewards for whistleblowers, including through tax breaks,

#### - cover all expenses incurred as a result of whistleblowing, including attorney’s fees,

#### - adopt just-cause protections for all federal workers,

#### - regulate HFC’s,

#### The Executive should

#### - strike down Schedule F,

#### - permit working-from-home for all federal employees,

#### - re-establish diplomatic channels with other countries,

#### - restrain Trump’s nuclear authority.

#### The CP revitalizes a robust culture of whistleblowing within federal bureaucracy.

Oakley et al. 19 – Director of the Government Accountability Office, M.A. in Public Administration from the University of Pittsburgh.

Shelby S. Oakley, Kathy Larin, Brenda S. Farrell, James R. McTigue, Jr, and Michelle Sager, “Disclosing Wrongdoing: How to Improve Protections for Federal Whistleblowers,” GAO, 07-25-2019, https://www.gao.gov/blog/2019/07/25/disclosing-wrongdoing-how-to-improve-protections-for-federal-whistleblowers

Whistleblowers help protect the government from waste, fraud, and abuse by reporting potential wrongdoing.

Because there’s a risk of reprisal, such as being fired or reassigned, it’s important to safeguard whistleblowers’ identities and the information they provide.

For National Whistleblower Day, today’s WatchBlog explores some of our work on how federal agencies and Congress deal with whistleblowers—and what can be improved.

In space, can anyone hear you whistle?

Contractors who work for NASA are legally protected from reprisal for whistleblowing. This is important given their large role in helping NASA fulfill its mission—and the sometimes enormous safety risks involved in space exploration.

After NASA’s Inspector General investigates potential reprisal, the NASA Administrator is responsible for determining within 30 days whether it actually happened. Whistleblowers count on a speedy resolution to their complaints.

However, we found that NASA hadn’t been meeting the 30-day time frame since 2008. We recommended that NASA take steps to fix it.

Whistleblowing to ensure veterans receive proper care

Employee misconduct at VA's medical facilities can have serious consequences for veterans, including poor quality of care—which is why it’s important that employees feel safe coming forward with concerns. However, that may not always be the case.

We found that VA whistleblowers were significantly more likely than their peers to receive disciplinary action and had higher attrition rates than their peers who hadn’t reported misconduct—both of which may indicate that senior officials have retaliated against their whistleblower employees.

In addition, VA can’t ensure that all referred allegations of misconduct are investigated by a neutral third party. As a result, we found instances where managers investigated themselves for misconduct, presenting a clear conflict of interest.

We made 16 recommendations to the VA to address these issues.

What happens at the IG should stay at the IG

In addition to protecting whistleblowers from retaliation, confidentiality can also encourage whistleblowers to come forward.

At DOD, whistleblowers can report to one of several Inspector General offices. We found that the IG offices have taken steps to protect confidentiality and safeguard whistleblower information in their IT systems and applications, such as by restricting access to case information through unique user permissions.

However, we found instances in which DOD IG offices hadn’t fully restricted access to sensitive whistleblower information to only those IG employees with a need to know. While some actions have been taken to address this issue, additional steps should be taken to ensure whistleblower confidentiality isn’t in jeopardy.

We made 12 recommendations to DOD to help protect whistleblowers and improve other aspects of IG investigations.

What’s in it for tax whistleblowers?

Whistleblowers who report people who don’t fully pay their taxes have helped IRS collect billions of dollars in unpaid taxes. In exchange, IRS pays qualifying whistleblowers 15-30% of the proceeds it collects as a result of their information.

However, until last year, IRS wasn’t required to reward whistleblowers for information that led to the collection of penalties against people who don’t report their offshore bank accounts and other violations.

After Congress began to require IRS to reward whistleblowers for this information in February 2018, both the IRS and whistleblowers saw an immediate and large uptick in payments. From February 9 to September 30 that year, IRS paid awards for $810 million in collections that previously would have been excluded—significantly more than had been collected in prior years for all tax code violations. The whistleblowers got their cut.

According to attorneys we spoke with for our report, whistleblowers are now more likely to come to IRS with valuable information.

#### Whistleblowing solves every 1AC internal link and impact.

Kenny 25 – Professor of Business and Society at University of Galway, PhD from the University of Cambridge.

Kate Kenny, “After months of Trump’s shock tactics, whistleblower groups are pushing back against attacks on workers’ rights,” The Conversation, 03-25-2025, https://theconversation.com/after-months-of-trumps-shock-tactics-whistleblower-groups-are-pushing-back-against-attacks-on-workers-rights-252861

But the US needs whistleblower rights. In the past ten years alone, US government workers speaking out have protected citizens from a long list of ills. This includes food contamination, health risks, airline dangers and climate censorship. And they have called out managers for fraud and corruption.

Recent UK research demonstrates how listening to whistleblowers in some cases – including the Post Office scandal and the collapse of contractor Carillion – would have saved taxpayers nearly £400 million.

Functioning government bureaucracies, staffed by well-qualified, professional and independent civil servants, curtail attempts by politicians to control the state.

In the US, long-standing structures like the Pendleton Act of 1883 and the Civil Service Reform Act of 1978, were put in place to ensure this. These laws insist government workers are hired and fired on the basis of skill and ability, not their political views. New employees take an oath of loyalty to the US constitution, not to the president.

Whistleblower protection is a critical part of ensuring this independence, because it enables civil servants to challenge abuses of power. But whistleblowers can only call out wrongdoing if they are protected from reprisal. Right now, these protections are under threat.

Shock and awe

Critics of the new US administration know all this. But the speed of change seems overwhelming. And the will to resist depletes, as people struggle to make sense of the constant disruption.

What to do with widely reported shows of anti-democratic aggression, like the recent appearance of senior Trump adviser Elon Musk on stage with a red chainsaw, shouting about a “chainsaw for bureaucracy”?

This is exactly the kind of chaotic, performative scene that stokes fascist passions, but leaves critics frozen.

Connecting such moves with Trump’s aggression against diversity, equity and inclusion (DEI) programmes and trans citizens, US philosopher Judith Butler has warned that people can be stunned into inaction by increasingly shocking events. They stop seeing how they are connected.

What links these events, fundamentally, is contempt for ordinary US citizens’ rights and for constitutional democracy. As Butler also says, it’s important that citizens are not left immobilised by the outrage.

To counter the chaos, cool heads are needed. Supporters of whistleblower rights are pushing back. With partners, the nonprofit whistleblower organisation Government Accountability Project is suing Trump over the unconstitutional roll-back of federal worker protections. And civil society groups successfully challenged February’s firing of the chief of the federal whistleblowing agency.

This kind of whistleblower activism has happened before in other parts of the world. In Europe, NGOs monitor countries’ adoption of the new EU whistleblower protection law.

Organisations like the Whistleblowing International Network and the UNCAC coalition support civil society groups in countries around the world with new but fragile whistleblower protection systems introduced to support public trust and democratic accountability. These partnerships harness public opinion through the media and lobby for change. They come together in regular online events and forums to sustain momentum.

These coalitions of whistleblower activists have a history of working together, celebrating small wins and publicising each other’s work.

As my recent book details, this collective activism is not easy. These organisations operate on limited funding. And in the face of disinformation on social media, defending truth and facts can be challenging. Yet as I found, strategising and collaborating can help counter aggressive opposition.

A shared commitment to democratic rights is what keeps coalitions of whistleblower activists going – they demonstrate passions for equality and the right to live without fear.

Trump is working to remake the federal government in the service of his political agenda. It is a classic move made by “strongman” leaders. They seize control of government bureaucracy in order to reward elite supporters, give favours and jobs to insiders, and weaken oversight on corruption.

Attacking government bureaucracy has been a first step in the power grab by authoritarian leaders worldwide, from Hungary to Benin, Turkey and Venezuela.

Working with his largest election donor Elon Musk, who already owns businesses benefiting from government contracts, Trump’s aggressive overhaul of the federal government radically dilutes the potential for dissenting workers to speak out in protest.

It is tempting to remain paralysed in the face of daily attempts to roll back workers’ rights. But through their dedication, mutual support and celebration of even small wins, international collectives of whistleblower activists remind us that there is a way forward and why it’s vital to keep going.

#### So do just-cause protections.

Herbert 22 – Distinguished lecturer and faculty associate, Roosevelt House Public Policy Institute, Hunter College. Executive director of the National Center for the Study of Collective Bargaining in Higher Education and the Professions.

William Herbert, “What Is “At-Will Employment,” and Why Does It Matter?” Jacobin, 12-22-2022, https://jacobin.com/2022/12/at-will-employment-just-cause-nyc-caban

In the United States, we often take for granted the immense power our employers have over us. Consider, for instance, the fact that your boss could fire you tomorrow for absolutely no reason. Didn’t get a hearing to defend yourself? What about an opportunity to come up with a plan to improve your job performance? Doesn’t matter — for most workers in the United States, none of that is required. Your boss isn’t even legally required to explain why you’ve been let go.

This near-total lack of protection from unfair firings has a name: the at-will employment doctrine. This doctrine doesn’t come from some old dusty law on the books that voters could mobilize around. Instead, the rule that governs the most important economic relationship of our lives comes from a nineteenth-century lawyer who lied.

The short version of the story: in his 1877 treatise called “Master and Servant,” lawyer Horace Wood gave four examples that prove that bosses legitimately can fire workers for no reason. Those examples, as it turns out, were made up. But no matter. Judges across the country used his reasoning, and to this day, the at-will doctrine remains precedent.

Earlier this month, New York City Council member and Democratic Socialists of America (DSA) member Tiffany Cabán introduced legislation that curbs this power bosses have over their workers. The Secure Jobs Act requires employers to actually have a reason for firing a worker — or “just cause” for their termination.

Cabán’s bill expands just-cause rights that New York City’s fast-food workers recently won to workers across all of the city’s sectors. Instead of firing employees on the spot, employers would be required to give advance notice of a worker’s termination and a written explanation of their firing. Workers who are wrongfully terminated — say, for asserting their health and safety rights in the workplace — would have an opportunity to be reinstated. The bill also limits employers’ ability to use technology to surveil workers on and off the clock, along with other worker protections.

Jacobin contributor Melanie Kruvelis spoke with William Herbert, distinguished lecturer at Hunter College and an expert on New York labor law, to discuss the significance of Cabán’s legislation and what its passage would mean for New York City’s workers.

Melanie Kruvelis

Whether we’re talking about the National Labor Relations Act (NLRA) or local labor legislation, labor law in the United States is fundamentally about regulating the balance of power between bosses and workers. So, let’s start with the basics: What is at-will employment? And between bosses and workers, who has the power under at-will?

William A. Herbert

The at-will employment doctrine was developed in the nineteenth century, as part of the common-law legal system in the United States. Under the at-will doctrine, an employer can fire a worker for any reason or no reason, period. The doctrine grants employers a tremendous amount of power over workers and the ability to discharge or otherwise discipline them for any reason or no reason at all.

The at-will doctrine remains the default rule when it comes to employment, particularly in the private sector. One of the few checks on this power are laws prohibiting discrimination, which generally require proof that the employer was unlawfully motivated based on race, gender, or other specific protected classes.

The power dynamic created by the at-will doctrine places limits on the willingness of workers to assert workplace rights out of fear of being terminated.

There is obvious unfairness when a worker is fired for no reason, without any notice, any investigation, or any hearing. Under the at-will doctrine, employers have the right to proceed in that manner. The only legal recourse for the worker is to file a claim that the employer was motivated by an unlawful discriminatory or retaliatory reason. However, proving unlawful motivation is difficult, and being successful often requires hiring an experienced and knowledgeable employment lawyer. The time and cost required for that can be out of reach for many workers.

The power dynamic created by the at-will doctrine places real limits on the willingness of workers to assert workplace rights they have out of fear of being terminated. Think about during the pandemic: the fear of raising issues about health and safety, out of fear the employer can fire someone for raising those or other workplace issues. This fear exists despite the fact that the Occupational Safety and Health Act and other laws were enacted to protect worker health and safety.

Melanie Kruvelis

Just-cause legislation aims to change this balance of power. Can you explain what just-cause protections are? Do these protections exist in other cities, states, or countries? How would passing this legislation change the balance of power for workers in New York City?

William A. Herbert

The just-cause doctrine is the antithesis of at-will employment. Simply put, it mandates the core value of due process in the workplace. Under just cause, before an employer can take adverse action against an employee, employees must be given notice, an opportunity to be heard, and a fair investigation into the nature of the alleged misconduct. It also mandates progressive discipline, meaning that a penalty should match the severity of the alleged misconduct, and take into account an employee’s work record.

### DA---1NC

Midterms DA---

#### Dems win now but it’s razor thin. Best polls show.

Mitchell et al. 9-19 – Work at Real Clear Politics.

Mark Mitchell & Matt Towery & Robert Cahaly & Rich Baris, “Generic Ballot Tracking Poll: Republicans Narrow Dems' Lead” Real Clear Politics. 9-19-2025. https://www.yahoo.com/news/articles/generic-ballot-tracking-poll-republicans-111728477.html

As four of the nations most accurate pollsters, we recently formed the National Association of Independent Pollsters. The four founding member organizations participated in a joint national survey of likely voters, asking which party they prefer in next years midterm elections.

Our association will be announcing new members next week. Meanwhile, the four founding firms each surveyed the exact same questions nationwide. Results were combined and then weighted.

The national survey included 2,071 likely voters. It was conducted Sept. 6-13, 2025. The margin of error is plus or minus 2%.

The two generic ballot tests were as follows:

In the 2026 midterm congressional elections next fall, for whom would you most likely vote?

Democrat Candidate: 45%

Republican Candidate: 43%

Undecided: 12%

If the 2026 congressional elections were held tomorrow, and you had to decide between the following choices, for whom would you most likely vote?

Democrat Candidate: 47%

Republican Candidate: 46%

Undecided/Would Not Vote: 5%

As of Sept. 16, the RealClearPolitics 2026 generic ballot average showed Democrats leading the ballot test for the midterms 44% to 41%.

Here is a list of our major collective thoughts based on the survey and the demographic breakdowns:

While Democrats are in many national surveys polling poorly as a party, Republicans would be unwise to assume that will translate into a winning year in 26. We recognize that at this point prior to the 2022 midterms (Sept. 21), most polls showed Democrats leading somewhere between one point, to as much as eight points. That narrowed before the actual contest with pollsters, ranging from ABC News to The New York Times, and including several of our member organizations, in their last pre-election polls showing Republicans leading in the generic ballot test. As most will recall, 2022 turned out to be less spectacular than predicted for the GOP. Republicans would be wise to recognize that despite perceived Democrat weakness, without Donald Trump on the ballot their task is more difficult than most might believe.

Our poll did, however, show a narrowing of the gap versus the average of all recent polls. It should be noted that our surveys started prior to the tragic assassination of Charlie Kirk. We did not survey reaction to Kirks murder, given that the surveys were set prior to the event. However, the bulk of our time surveying occurred after Kirks death. It is speculative to link the incident to Republicans reducing the Democrats lead. But the survey does show that Kirks efforts to reach the youngest of voters is still needed by the GOP. Our survey showed voters age 18-29 favored the generic Democratic candidate by some 10 points or more in both ballot questions we asked of them.

For both parties there was some good news when it came to the racial demographic breakdown. Republicans continued to hold on to their advantage among white voters and are receiving support from African American voters in the mid-30 percentile range - a number once thought of as impossible for the GOP. But Democrats continue to have strong support among Hispanic/Latino voters (50%-36%) as well as among Asians and respondents of other races.

Turnout and voter intensity are crucial in determining the outcomes of tight races for the House and Senate in midterm elections. Although we did not survey public opinion related to last weeks tragedy, our collective experience suggests that if the midterms were held tomorrow, there would likely be a significant surge in GOP motivated voters due to the recent events. The reaction to Charlie Kirks assassination has sparked a national expression of grief and a renewed determination among younger voters to continue his efforts on college campuses. However, with over a year until the elections, the Democrats currently hold a very slim advantage; this small lead appears to be diminishing as the actual contests approach.

#### Major labor policy flips the midterms.

Gibson 24 – Politics reporter. Former POLITICO Fellow.

Brittany Gibson, Meredith Lee Hill, and Adam Cancryn, “‘Union Joe,’ Harris and Trump all made gains with unions — but not enough,” POLITICO, 11-01-2024, https://www.politico.com/news/2024/11/01/harris-trump-unions-elections-00186873

Ask union members, and there’s some caution about the future.

“Change is weird for everyone, and we have change coming upon us,” said Ray Marini, a leader of the local sprinkler fitters union hosting a packed event with Biden in northern Philadelphia on Friday, acknowledging some of the “nervous energy” that coursed through the labor movement after Harris took over the top of the ticket.

But Biden has made a hard push for his vice president, and Marini said he and many other union leaders in this crucial swing state have prioritized making the economic case in favor of Harris to their members. The rank-and-file attending Friday’s event pledged to vote for Harris, even if driven largely by their faith in Biden’s judgment.

Wayne Miller, the head of the sprinkler fitters union, was even more bullish: “She’s going to be absolutely fantastic, and she’s going to surprise a lot of people,” he said of Harris. “We win in Philadelphia. And we win because of the union.”

Still, union members in both Pittsburgh and Philadelphia question Harris, Trump and Biden’s labor records and commitment to them.

Despite Biden’s pro-labor appointments to the National Labor Relations Board, which oversees disputes between workers and employers, and his signing into law a bill that helped bailout distressed union pensions, some members weren’t convinced he was as pro-labor in office as he claimed. Harris was viewed with even more skepticism as a comparatively new party leader.

“I don’t think anyone is pro-union,” Karen, a 65-year-old retired teacher who did not want her last name used, told POLITICO after a retired electrician knocked on her door recently in the Penn Hills neighborhood of Pittsburgh. “It’s up to us. The workers have to make our voices heard.”

Harris, meanwhile, missed out on the endorsement of three unions that all endorsed Biden in 2020, and polling shows a continuation of working class voters trending toward Trump. Some Harris aides are livid over some of the union non-endorsements, privately saying they feel betrayed by key union leaders who didn’t have the “courage” to press their rank-and-file to support the candidate with the pro-labor record.

Harris’ recent campaign focus on courting Republicans and fundraising with wealthy donors has only brought more skepticism from some in the organized labor movement.

“All Democrats and all Republicans are not monolithic, right? There are people you can work with. There’s others that you know, they do one thing for you, and 40 years later, they’re still, you know, expecting to get a pat on the back for it, and that’s not how things operate,” said Kara Deniz, spokeswoman for the International Brotherhood of Teamsters, which opted to not endorse either presidential candidate.

Part of the Teamsters’ reason for not endorsing was a lack of commitments from Harris about supporting striking workers in an interview at the IBT office as well as rank-and-filing polling that favored Trump, Deniz said.

AFL-CIO President Liz Shuler, who oversees about 60 unions and 13 million members, is running a door knocking program that aims to reach 5 million people in battleground states. Union members represent about 20 percent of voters in the blue wall states, she said, and at a recent press call she shared that of canvassed members, about 64 percent of members are backing Harris compared to 19 percent for Trump.

The United Auto Workers, which is also running a door knocking program to reach almost 300,000 workers and retirees, put its stats at 62 percent for Harris and 33 percent for Trump, according to a recent press release.

But a perceived lack of organized labor support from both presidential candidates also kept some unions on the sidelines this campaign, with them opting to not endorse anyone.

In addition to the Teamsters, the International Association of Fire Fighters and the International Longshoremen’s Association also held back endorsements. The longshoremen’s president, Harold Daggett, criticized Biden’s commitment to unions in a video interview ahead of his own union’s strike this October, which ended after about two days with a new tentative agreement.

“Where’s the president of the United States? He’s not fighting for us. He told in LA, he told the union, hurry up and get a contract. That’s the mentality they have,” Daggett said, referencing the West Coast’s contract strike in 2023.

Daggett and the firefighters union declined interview requests.

Despite the longtime union membership of Harris’ running mate, Tim Walz, he’s struggled to influence key union support — especially among the male-dominated industrial unions. Surprisingly, Harris campaign officials even have argued Walz wasn’t intimately involved in negotiations over key union endorsements after they fell apart. He’s also drawn backlash by publicly attacking some union leaders as overtly political operators.

But even some union members who back Harris have privately admitted that their colleagues’ concerns about her track record are valid, especially on border policy and sky-rocketing everyday costs.

One senior union official, who recounted an internal fight among members about whether to endorse Harris, said fellow members brought up what they argued were Harris’ failures on immigration and inflation as reasons not to back her.

“Some of these things may have happened on her watch. Maybe some things in hindsight might have [been] done different,” said the union official, who was granted anonymity to discuss the private conversations. “But also, a lot of really good things have happened under the Biden-Harris administration.”

“You can’t hang that shit around her neck without giving her the accolades for where this country has turned around,” the union official added.

A Harris official, however, said there’s really no comparison between the vice president’s record and Trump’s and mentioned the former president appointing “union busters” to the National Labor Relations Board, among other things.

“Biden and Harris saved billions in Teamsters union pensions, and Trump threatened to withhold emergency funds for union firefighters risking their lives in wildfires,” the official said.

But other Harris supporters in the rank-and-file have concerns about the Biden-Harris administration’s record.

“When [Biden] first got in, he disappointed me with the pipeline,” said Mark Provenza, a retired letter carrier, referring to the Keystone XL Pipeline. “You’re supposed to be the pro-union guy.”

Provenza, who is voting for Harris, also said he was “disappointed” that Biden didn’t support the railway workers who tried to go on strike in 2022 but were prevented by the Railway Labor Act. He expects Harris will approach labor the same way as Biden.

The White House did not respond to requests for comment.

Union members on canvases in Pittsburgh and Philadelphia tried to make the case that Harris, like Biden, would protect member benefits and keep unions strong. But undecided voters from union households weren’t immediately convinced. Some said they wouldn’t be voting at all.

“We know that unions are basically on the line,” Shuler said in an interview at the Allegheny-Fayette County Central Labor Council office ahead of one canvas. “[It’s] whether there’s a future with unions where workers can collectively bargain and fight for better wages or, as we know, in Project 2025 the elimination of public sector unions and things like overtime and safety and health protections.”

The Trump campaign rejected the affiliation with Project 2025 and said no policy is official unless it comes directly from Trump.

“American laborers and unions support President Trump because they have paid the price for Kamala’s failed economic policies over the past four years,” Karoline Leavitt, the Trump campaign’s national press secretary, said in a statement.

Dino Guastella, a Teamster from Philadelphia whose local has endorsed Harris, believes Harris should talk more about successes from the Biden Administration to make her case to union members and working class voters.

“I think it’s a mistake. She should be taking credit for the infrastructure bill, the CHIPS Act, the Inflation Reduction Act,” Guastella said while tabling for Harris outside of the UPS Warehouse. “Those all brought good blue collar jobs.” He also mentioned that when I-95 collapsed, Biden’s bills helped fix it in record time.

But in his view, it’s also hard to sway any voters weeks from Election Day — even when talking about policy.

#### Dems winning the House aggressively restrains DHS and ICE through aggressive oversight.

Schermele 8-21 – a congressional reporter on USA TODAY's politics team.

Zachary Schermele, „If Democrats succeed in midterms, they're coming for Kristi Noem” USA Today, 8-21-2025. https://www.usatoday.com/story/news/politics/2025/08/19/hakeem-jeffries-kristi-noem-midterms/85726623007/

If the Democrats take back the U.S. House of Representatives in 2026, one member of the Trump administration is going to be spending a lot of time on Capitol Hill.

Kristi Noem, the secretary of the Department of Homeland Security, will be among the first Cabinet officials to be "hauled up" to Congress to face hearings, according to House Minority Leader Hakeem Jeffries.

Speaking on a recent episode of "The Bulwark Podcast," Jeffries promised "aggressive oversight activity" would center around Noem if the balance of power changes after the midterms.

“It’s my expectation that Kristi Noem will be one of the first people hauled up to Congress shortly after the gavels change hands," he said.

The intent of the investigations, he said, would be "to get a real understanding for the American people" of what Jeffries called "the lack of respect for due process, for the rule of law, the unleashing of masked agents on law-abiding immigrant communities, and the disappearing of people in some instances, to other countries without any real evidence that criminal behavior took place."

As the head of DHS, Noem, the former Republican governor of South Dakota, spearheads the White House's immigration enforcement agenda, which has drawn intense criticism from advocates and progressive lawmakers.

Though congressional Republicans ultimately approved her to her post, she struggled during her confirmation hearings. In one instance, she couldn't identify a basic constitutional right that requires law enforcement officers to justify prisoners' continued confinement.

#### Collapses food supplies.

Olmos 25 – an investigative reporter for CalMatters.

Sergio Olmos, “A surprising immigration raid in Kern County foreshadows what awaits farmworkers and businesses” Cal Matters. 1-10-2025. https://calmatters.org/economy/2025/01/kern-county-immigration-sweep/

Fuentes says none of the regular farm workers showed up to buy breakfast on Wednesday morning. “No field workers at all,” she said.

Growers and agricultural leaders in California and across the nation have warned that Trump’s promised mass deportations will disrupt the nation’s food supply, leading to shortages and higher prices. In Kern County this week, just the word of the deportations inspired workers to stay away from the fields.

“People are freaked out, people are worried, people are planning on staying home the next couple of days,” said Antonio De Loera-Brust, director of communication for the United Farm Workers. De Loera-Brust said the Border Patrol detained at least one UFW member in Kern County as they “traveled between home and work.”

#### Strong U.S. ag prevents hotspot escalation.

Castellaw 18 – CEO of Farmspace Systems LLC, a drone-based precision agriculture data collection company, Board Member for Cultivating New Frontiers in Agriculture

John Castellaw, “Why Food Security Matters,” Senate Committee on Foreign Relations, 03-14-2018, https://www.foreign.senate.gov/imo/media/doc/031418\_Castellaw\_Testimony.pdf

Food Security Is Critical to Our National Security

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings.

### DA---1NC

MQD DA---

#### The United States federal government should issue an Executive Order rehiring bureaucrats fired by the Trump administration and reinstate agency funding.

#### The Supreme Court is satisfied with recent limits on agency authority via the Major Questions Doctrine. But, increased motivation to curtail agencies risk revival of non-delegation.

King 24 – Journalist, MA in Environmental Resource Policy from The George Washington University.  
Pamela King, “The next frontier in the Supreme Court war against agency power”, 9/10/24, E&E News, https://www.eenews.net/articles/the-next-frontier-in-the-supreme-court-war-against-agency-power/

The impact of a potential nondelegation doctrine revival depends not just on the Supreme Court’s appetite for revisiting the issue but also on how the justices would rule.

Legal observers say the court’s recent administrative law rulings may have taken the pressure off the justices to elevate nondelegation. They also note that revisiting the matter would potentially upend about a century of legal precedent.

“Obviously it’s not unheard of for the Supreme Court to go back on things that have a long pedigree, but there’s also the question of what would motivate them to do that — especially in a world where they have just overturned Chevron and they’ve added the major questions doctrine as a real tool that does something similar,” said Fischell, of MoloLamken.

#### Durable fiat requires the plan be upheld despite the MQD.

Ziaja 25 – Interim Director at the Martin H. Malin Institute for Law and the Workplace of Chicago-Kent College of Law, Assistant Professor at the University of Baltimore School of Law.  
Andrew J. Ziaja, “Machinists Preemption in the New Administrative Law”, 2025, Seattle University Law Review, Volume 48, Issue 4, https://digitalcommons.law.seattleu.edu/sulr/vol48/iss4/7/

The major questions doctrine may also end up mattering more to the NLRB. The theory has surfaced that the Board’s decisions could fall subject to the doctrine on judicial review. The Board’s recent decision in Cemex Construction Materials Pacific216 is an example.217 Cemex revisited the question of whether the Board would order an employer to recognize and bargain with a newly formed union on the basis of a showing of majority support, most often in the form of authorization cards signed by employees, other than a full-blown NLRB-supervised election.218 The Board held that once a union is able to show majority support through signed authorization cards, the obligation to seek an election rests with the employer, who then must refrain from committing unfair labor practices that would invalidate that election; otherwise, a recognition and bargaining order will result.219 What upsets employers—and likely some judges—about Cemex is that it eases the path for unions to be newly certified in the absence of an election. They envision NLRB-supervised elections as the only appropriate path to union certification, despite the NLRA’s broad language allowing collective bargaining representatives to be “designated or selected”—not only elected.220 According to the theory, this broad language should fail the major questions doctrine’s second prong, which requires a “clear statement” in the delegating language.221

Scrutiny of NLRB decisions should not proceed to the second prong of the major questions doctrine, though.222 The union-certification rule in Cemex should not meet the major question doctrine’s first prong, if it is at all rigorous, which asks whether the exercise of authority addressed a “major question” owing to its “economic and political significance.”223 Much like the NLRA survived Commerce Clause scrutiny thanks to its emphasis on private contract and the case-by-case nature of the NLRB’s adjudicative process, over which courts maintain continual supervision, adjustments to Board union-election procedures should seem far from the sweeping regulatory changes of “vast economic and political significance” that have received major-questions-doctrine scrutiny.224 Such adjustments can at most result in more frequent collective bargaining processes between private parties who are capable only of binding one another, with no guarantee of any collective bargaining agreement resulting even among themselves. Unlike the EPA’s asserted authority to define the “waters of the United States,”225 or the Department of Education’s authority to revise student-loan terms,226 the NLRB lacks any form of substantive policymaking authority that could compare.227 The NLRA was instead tailor-made to survive Lochner as a form of government regulation through procedure rather than substance. Its vision of restrained executive-branch supervision of localized substantive labor-and-employment policymaking through private agreement should comfortably survive the revival of Lochner-era anti-administrative values encoded in the major questions doctrine, accordingly. Among the NLRB’s greatest weaknesses and strengths is its comparative lack of “major” authority.228

Substantive labor and employment policy nevertheless emanates from the margins of the NLRA in ways that should offend the new administrative law, in particular the major questions doctrine and related clear statement rules. The following section more deeply examines recent developments in the still-evolving major questions doctrine before finally analyzing Machinists preemption in light of it and other emergent administrative law principles.

#### That exposes the inadequacy of the MQD to reign in executive overreach, which spurs revival of the non-delegation doctrine.

Coglianese 25 – Edward B. Shils Professor of Law and Professor of Political Science at the University of Pennsylvania.  
Cary Coglianese and Daniel E. Walters, 2025, “The Great Unsettling: Administrative Governance After Loper Bright”, Administrative Law Review, Volume 77, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=5046620

II. LOPER BRIGHT AND THE COMPLEXITY OF THE ADMINISTRATIVE GOVERNANCE “GAME”

In this Part, we contend that, beyond the ambiguous nature of the majority opinion, which gives license to various possible readings, the simple fact is that Loper Bright’s impact will depend not only on how lower courts (and future Supreme Court decisions) resolve those ambiguities and implement Loper Bright, but also on how other institutions and actors respond. A central reason that forecasting Loper Bright’s effects on administrative governance is difficult rests with the sheer complexity of what we call the “administrative governance game.” By invoking the concept of a “game,” we do not mean to trivialize the implications of the decision, which can matter very much to many individuals and institutions. Instead, we mean to refer to the well established analytic framework of “game theory”—or the analysis of individual or organizational behavior as comprising an adaptive, dynamic equilibrium that reflects the goals, strategies, and constraints of decisionmakers in relationship with one another in a given political or institutional environment.123

The administrative process can be understood as a particularly intricate game involving many procedural steps and players.124 If they are to play this game well, agency actors must take into account many other individuals and institutions with whom they are interacting and anticipate how to respond to their choices, including how these other actors will understand their legal options should these other actors expect that they might lose the game.

Most obviously, given the focus of the Chevron framework and the Loper Bright decision itself, the game involves judicial review of agency action, where courts decide whether individual agency actions exceed the agency’s substantive statutory authority.125 Although judicial review is never an inevitability,126 it undoubtedly looms over much agency decisionmaking and action. Agencies always undertake action against the potential backdrop of judicial review.127 Officials must make judgments about whether to take action at all in the face of litigation risk128 and, if so, how far to push the envelope in their interpretations of their statutory authority.129 They might also, at times, take strategic action to avoid judicial review.130

Judges and agencies are not the only players in the game, however. Outside groups, particularly business interests, often have a keen interest in administrative proceedings as well. They have numerous opportunities to participate in the process and influence outcomes.131 Political principals— e.g., Congress and Presidents (and their White House staffs, such as in the Office of Information and Regulatory Affairs)—are likewise involved in overseeing agency actions.132 Political principals are, moreover, affected by voters’ attitudes, which gives the electorate an indirect say in the administrative governance game.133 In some (admittedly rare) instances, agency initiatives can become so controversial that the general public becomes highly aware and participates in “mass commenting” campaigns that have the potential to shape the dynamic of administrative policymaking.134 The National Highway Traffic Safety Administration’s experience in the 1970s imposing an ignition interlock requirement on automobiles—such that cars could not be started until vehicle occupants were buckled—illustrates how a widespread public backlash against administrative action can shape regulatory outcomes.135 The Food and Drug Administration’s efforts in the 1990s to bring tobacco products under its regulatory control also revealed well the complex dynamics involving voters—in that case, smokers—and Congress, the White House, the agency, and ultimately the courts.136

Even thinking of any of these actors as single players artificially simplifies the picture.137 Congress, of course, is famously a “they” and not an “it.”138 Neither is a presidential administration reducible to the singular will of the president.139 Courts are organized in a hierarchy, but most of the responsibility for handling cases is delegated to a band of lower courts dispersed around the country.140 Increasingly, these lower courts exhibit a considerable degree of ideological division.

Agencies themselves are composed of different internal players, such as agency lawyers, scientific experts, and political appointees, who collaborate and compete for influence over agency initiatives.141 The reality is that “bureaucracy is a complex and varied phenomenon.”142 The complex organizational politics of administrative agencies—affected by both internal and external factors—makes predicting their organizational behavior generally beyond reach. One of the most renowned political scientists ever to study bureaucratic organizations—the late James Q. Wilson—even noted toward the end of his career that, “[a]fter all these decades of wrestling with the subject, I have come to have grave doubts that anything worth calling ‘organization theory’ will ever exist. Theories will exist, but they will usually be so abstract or general as to explain rather little. Interesting explanations will exist, some even supported with facts, but these will be partial, place- and time-bound insights.”143

Modeling the entire administrative governance game can be exceedingly difficult because the process has so many moving parts and complex interactions. But that does not mean that there is no such thing as the administrative governance game nor that the various players who participate in the administrative governance game had not previously reached a settlement or equilibrium that yielded relative stability for a period of time before Loper Bright. We think it evident that, in fact, there had been such an equilibrium for years. Agency rulemaking outputs have been remarkably stable over the last several decades, regardless of party control of the White House,144 as have rates of vacatur in the courts.145 All of this suggests a game that had been relatively stable and even predictable—albeit still quite complex.

It may be that part of what made the administrative governance game relatively stable was the Chevron doctrine. For supporters of the doctrine, as Justice Antonin Scalia had once been, one of Chevron’s selling points was that it provided a relatively consistent “background rule of law against which Congress [could] legislate,”146 which in turn structured options and strategy at every subsequent level of the game all the way to judicial review. For this reason, Chevron may have reduced one source of potential gamesmanship, which was the risk that judges in different parts of the country would interpret statutes in divergent ways (even as Chevron introduced other opportunities for political dynamism, such as temporal changes in policy due to shifting presidential administrations).147 Empirical studies of judicial applications of Chevron appear consistent with the idea that the doctrine may have made the outcomes of judicial review at least somewhat more predictable than they otherwise would have been, at least in the lower courts.148 In light of these dynamics, Loper Bright’s overturning of Chevron might render the extraordinarily complex administrative governance game even more complicated by eliminating some of Chevron’s ostensibly simplifying and delimiting devices.

Of course, in truth, even the game under Chevron was complex enough to be practically inscrutable. Although Chevron came to be viewed by many as the most important doctrine in administrative law and as a symbol of the ascendance of the administrative state, there is precious little evidence that this 1984 Supreme Court decision ever mattered much in terms of changing agency work at the ground level.149 If it has been so difficult to discern whether Chevron itself made much of a difference to actual judicial outcomes or administrative work product, then it is reasonable to think that it will be similarly difficult to discern what difference Loper Bright will make in terms of agencies’ work150—and for the same basic reason too, namely that both Chevron and Loper Bright are simple doctrinal “plays” in a complex, multi-player, multi-move game.

Consider, for example, some of the players and potential moves that they might make under the new Loper Bright regime. Each player will face the prospect (but by no means the certainty) of an altered set of incentives that may change their behavior, such as the following:

• Agencies’ judgments about whether to pursue rules or other challengeable actions, and how far to “push the envelope” of statutory meaning, could change. If agencies have a “set point” of judicial losses they can tolerate (after all, why expend resources on activities that will only be struck down in court?), then they might be expected to lessen their investment in new rules or other challengeable activities, or in the “boldness” of these activities. A new equilibrium could be established whereby agency win-rates post-Loper Bright look the same as under Chevron, but this could be an artifact of agencies’ more cautious adaptation to their new legal environment.

• Within agencies, there might be a shuffling of influence from those professional staff members with scientific or policy expertise to those with legal expertise, as statutory interpretation decisions made by courts may grow in importance and variability.151 Lawyers will presumably have the best insights as to how to predict those decisions. No longer will agency policy experts necessarily be able to assume, in cases of generally worded statutes, that they need only find the best or preferred policy, with agency lawyers following behind to develop a reasonable argument in support of these policy positions. Instead, the agency lawyers may need to assume more primacy in agency decisionmaking, as they presumably will have the ability to claim that they are the agency officials who can best discern what the courts will find to be the “best reading” of the relevant statutory provisions.

• Outside groups’ estimation of their chances of prevailing in a legal challenge could change—at least in the short term—and so they may be willing to file more challenges to agency action than they might have but for Loper Bright’s overruling of Chevron (and whatever symbolic signal that overruling has sent).152 Of course, it is not just conservative litigation groups that might conclude their prospects of prevailing in court have changed—so too might more progressive groups, who can be expected to seek out favorable courts of their own.153

• Congress could use its legislative powers to change Section 706 of the APA to codify Chevron. Soon after Loper Bright was handed down, legislation was introduced that would have had such an effect.154 Congress might also one day be motivated by Loper Bright (and other decisions) to expand the federal judiciary. If the lower courts end up having more work to do following decisions such as Loper Bright and Corner Post, Congress might use these Supreme Court decisions as a rationale for expanding the number of judges in federal courthouses around the country, perhaps altering the ideological composition of circuit courts and their panels. Congress could even conceivably— however unlikely—one day take steps to expand the size of the Supreme Court, diluting the majority that overruled Chevron and effectively creating a new majority that could reinstate something like a deference doctrine. Other developments, such as term limits on Supreme Court justices, could lead to a changed composition of the Court at some point in the future. Less boldly, Congress might simply adopt clearer legislative language in the future or pass specific amendments to old legislation when new needs for agency action arise but when ambiguities exist in older statutes.155

• Presidents might change the way they deploy strategies of “presidential administration” that some believe have encouraged the Court’s recent pushback against agencies.156 Perhaps it is unlikely, but presidents and their administrators could shift away from seeking to heighten the visibility of important political agenda items pursued through agency action. They might even shift their attention to pursuing policy change through the legislative arena, although the realities of divided government in a polarized era will generally make that pathway a difficult one to follow.

• Voters may engage with the administrative governance game in different ways if Chevron’s demise prompts public opinion responses and affects turnout in elections. These changes could affect who occupies the White House in years to come or could impact the incentives of Congress to adopt judicial reforms. It is not entirely implausible that, in close presidential elections in the future, the Supreme Court’s posture toward regulation and other administrative actions might, at some point, have some effect on electoral outcomes. If reaction to the Court’s positioning does influence these outcomes, that itself might have effects down the road on how courts approach cases reviewing agency action. If public opinion reaches a point where it reacts against what it sees as the effects of the overturning of Chevron and other decisions of the Roberts Court, then Loper Bright’s overturning of Chevron might have contributed to making future efforts at judiciary reform more likely, ceteris paribus. We have already seen public attitudes about the Court’s legitimacy decline significantly in recent years.157 It is possible, for example, that the political left will one day make reforming the Supreme Court as effective a part of its political agenda as the political right has done for decades.

• Lower courts will have to apply Loper Bright’s general guidance to concrete cases. In doing so, they will enjoy considerable discretion in many cases, due to the limited institutional capacity of the Supreme Court to review each and every application with which a majority of the justices might disagree.158 Lower courts will confront choices about how to proceed with the immense task of offering their own best reading of statutes that can be highly technical—and even “mind-numbing” in their complexity159—and that, as such, can call for specialized expertise to interpret.160 As a result, lower courts could make Loper Bright less imposing in practice—or they could, of course, also amplify it beyond what even the Supreme Court anticipated.

• The Supreme Court itself may revisit the issue in the future. Loper Bright will hardly be the last word of the Court on issues involving statutory interpretation in administrative law cases. How the system adapts will likely be affected, in part, by how the Court itself acts in the future. And how the Court acts in the future may be a function of how the system adapts.

These are all plausible hypotheses of the range of effects that Loper Bright could have, and there are many more that we have not mentioned, including some that might be in tension with the ones we have suggested here. Complicating the matter further, each of these adjustments by players may depend on the adjustments other players make and the order in which they make them. For instance, whether lower courts step up the stringency of their review compared to a pre-Loper Bright baseline may depend on whether agencies beat them to the punch by changing the qualities of their actions to avoid scrutiny by courts.161 This mutual dependence and contingency makes even the hypotheses above little more than genuine guesses.

None of the changes by any players in the administrative governance game occur in a vacuum. It would take considerable effort and time to verify if any single one of the above hypotheses captures the reality of the post-Loper Bright administrative governance game and to attribute causal significance to Loper Bright itself. Complicating matters further will be actions taken by the second Trump Administration, which presumably could have more disjunctive effects on what agencies do than anything the Supreme Court might have induced by overruling Chevron.162 With both Loper Bright and Donald Trump’s reelection occurring within months of each other, sorting out the precise effects of one or the other on administrative governance may add to the challenges in drawing reliable empirical inferences. If agencies in the second Trump Administration are more tentative and avoid pushing the envelope when taking administrative action, will this be due to Loper Bright or the 2024 presidential election? Determining whether Loper Bright matters, or how it matters, will not simply be a matter of comparing judicial affirmance rates of agency actions taken before versus after the decision.163 Instead, it will require taking into account the many moving parts and mutual adjustments throughout the administrative game and, at a minimum, considering how they might affect both the numerators and denominators that factor into agency win rates in court.

III. PUNCTUATION, FLUX, AND UNCERTAINTY POST-LOPER BRIGHT

Although it will be difficult to know for sure what specific effects Loper Bright will have on the balance of power in the administrative governance game,164 it seems safe to say that Loper Bright will have some generally destabilizing effect on the game, at least in the short run. As scholars of the policymaking process have noted, institutions can abruptly “shift from underreacting to overreacting to information,” which can sometimes (but not all of the time) create “punctuations” that lead to rapid changes from one longstanding equilibrium to a new one.165 If, as seems plausible, Loper Bright creates such a punctuation, it may jog the many players of the administrative governance game out of a general stasis that existed before Loper Bright, triggering some kind of “disjoint policy change.”166 Where the new equilibrium settles—and whether it will ultimately prove to be much different than it would have been in the absence of Loper Bright—is the pivotal, if vexing, question.

The outpouring of commentary detailed in Part I tends to reinforce the possibility that the U.S. governmental system is in one of those rare moments in its history when a stable equilibrium is rapidly being replaced, reconstituted, or at least reconsidered. The 2024 presidential election may well reinforce such realignment. But the question will be whether the Supreme Court’s decisions in cases such as Loper Bright will contribute to a “high moment” of administrative law.167

Not every major decision of the Supreme Court, nor every major political development, serves as a punctuation accelerant—otherwise, punctuated equilibrium models would never have much equilibrium to them. There may be reasons to question whether Loper Bright is really the kind of event that will truly disrupt the administrative governance game enough to change it. For one thing, we have been here before. Judges and commentators predicted that United States v. Mead Corp.’s168 creation of what many scholars have called a Chevron “Step Zero”—one that determined whether Chevron deference should apply—would lead to a revolution in administrative law.169 But in retrospect, the changes that Mead wrought seem to have functioned more like incremental adjustments within a stable regime.170

Even the original handing down of Chevron itself seemed not to have created any major disruption to the administrative game. Although researchers have looked for the effects of Chevron on agencies’ track records in the courts or on agencies’ behavioral propensities, systematic empirical evidence of any major Chevron effect on the administrative governance game has proven to be scant if not entirely elusive.171 If Chevron made little or no discernible difference in how agencies fared in litigation following its adoption, then perhaps, by extension, we could reasonably expect that overturning this decision will make little or no difference as well. Is it possible that overturning Chevron will do little to disrupt the game if the handing down of Chevron itself never registered as much more than a blip in the first place?

We think that is an unlikely occurrence—if for no reason other than the intense and widespread attention that Loper Bright has received among lawyers, judges, legal scholars, politicians, and informed members of the public. The salience of the handing down of Loper Bright contrasts sharply with the original obscurity of the Chevron decision. But this does not necessarily mean that the disruption will yield some fundamental reshaping of the administrative state. Loper Bright’s unsettling of the administrative governance game’s traditional equilibrium has almost certainly disturbed the status quo in some fashion—thereby opening at least the possibility of a genuine punctuation that will set off cascading mutual adjustments in the administrative governance game. But it is impossible at this time to specify the precise nature, magnitude, and form of this disturbance—or to know how long aftershocks might ripple through the administrative governance game. With more time, and then careful retrospective empirical analysis, it may be possible to see what effects Loper Bright may have wrought—as well as to analyze whether the administrative governance game has truly changed all that dramatically over the longer term.172 At least until such analysis can be conducted, determinate predictions put forward by pundits and professors alike will likely be affected as much by the cultural or ideological lenses through which they view law and politics as by anything “objective” about the situation created by the Court’s overturning of Chevron.

To illustrate this point, in this Part we begin by drawing on sociological research that conceptualizes how observers often rely on cultural perceptions or “myths” about the resilience of other complex systems—such as those that make up the natural environment. We suggest that certain archetypal myths of resilience chart out plausible, but diverging, predictions about the nature of the punctuation we are experiencing with Loper Bright. These myths of Loper Bright go a long way towards explaining why there has been such a range of opinions in the “prediction industrial complex” described in Part I.173 Notwithstanding our central point that forecasting the future of administrative governance after Loper Bright involves questions of belief more than knowledge, we conclude this final Part of this Article with our own modest hypothesis about the future. Specifically, we argue that Loper Bright has, if nothing else, significantly disturbed the status quo symbolically by taking aim at a core doctrinal feature of a longstanding equilibrium in administrative governance. That is another reason why—in addition to all the uncertainties that Loper Bright contains—we think the Court’s decision represents a great unsettling in administrative law.

A. The Myths of Loper Bright

One is tempted to compare the position that administrative law scholars and practitioners find themselves in when trying to assess the disruptive potential of Loper Bright with the position of anyone, even experts, in trying to forecast the disruptive potential of new technologies, such as gene editing, nanotechnology, or artificial intelligence. In an important book unrelated to administrative law, sociologists Michiel Schwarz and Michael Thompson articulated a typology of four archetypes in cultural views about how people think pollution or other human activity might affect the ecological equilibria that sustain human life.174 These archetypes—or “myths of nature,” as Schwarz and Thompson called them—are illustrated in the four panels contained in Figure 1, which is intended to depict a cross-section of four different surfaces upon which a marble rests.

For Schwarz and Thompson, the marble’s relationship with each surface represents the current environmental equilibrium needed to sustain human life.175 (Think: the Earth.) An environmental disruption that shakes the surface might do little or nothing to shift where the marble settles out, as illustrated in panel 1.a, where nature is forgiving and benign. Or such a disruption might do nothing to the marble’s ultimate settling within some bounds— panel 1.b, where nature is forgiving up to a point—but past a tipping point, the marble comes crashing down. Panel 1.c has the marble sitting precariously in a very sensitive equilibrium, where any slight disruption will cause the marble to come crashing down. Panel 1.d would appear not much better because any slight bump on the surface (e.g., a tabletop) leads to the marble going any which way it wants, with nothing to contain its movement (even if it does not lead to a precipitous crash). Whether$ one believes the marble is in one scenario or another will determine how one perceives the ecological effects of any oscillation created by the introduction of new chemicals or technologies—that is, the consequences of disturbing the present equilibrium. And whether one believes the marble is in one scenario or another will depend on background assumptions, heuristics, or cultural predispositions, not objectively provable facts. This is not to deny that an objective reality exists about how ecosystems respond to disruptive occurrences or how physiological systems respond to the exposure of certain chemicals, but rather to say that, for many questions about environmental risks, the reality can be out of reach in the here and now.

Myths about nature arise because we have only one Earth and because of the extreme complexity of natural systems. In much the same vein, we have one system of government in the United States—and, as suggested in Part II of this Article, the interactions between its many parts make it extremely complex.176 Due to the challenges of knowing what the precise consequences will be of the overturning of Chevron, a comparable set of myths will likely emerge about how Loper Bright will affect administrative governance. Some will see the administrative governance system as resilient to change and adaptable in the face of the Court’s action unsettling forty years of administrative law—a position comparable to the “benign” myth illustrated by panel 1.a. Others will see administrative governance as resilient to a point (“perverse tolerant” in panel 1.b), although even this group may split on whether to view Loper Bright as the proverbial “last straw” that leads to significant impacts on administrative governance or, less ominously, as falling “within the bounds” of the system’s tolerances. Still, other observers might see the administrative governance system as highly precarious, such that Loper Bright did not have to do too much to lead to major disruption (comparable to the “ephemeral” myth shown in panel 1.c). On this view, agencies may be perceived as highly skittish and risk-averse, and the overturning of Chevron will lead to a dramatic ossification, if not abandonment, of meaningful agency action.177 A final group could very well take the perspective that Loper Bright provides more or less a random shock to the system that will be disruptive in a manner akin to the “capricious” myth represented by panel 1.d.

Much as with Schwarz and Thompson’s myths of nature, how one reads Loper Bright and perceives its implications likely depends on one’s background assumptions and predispositions. In the case of Loper Bright, these will be assumptions and predispositions about how law and politics factor into administrative governance. We thus offer our own four archetypes or “myths of Loper Bright” that depend on whether one sees law or politics as a primary determinant of judicial decisionmaking and administrative governance— and, further, on whether one sees Loper Bright as having effectuated much of a change in the law. These are “myths” not because none of them are true (or could be true) but rather because, like the myths of nature, they reflect dispositions that are deeply contestable. They draw on worldviews that shape or filter how new evidence is perceived and interpreted in the future. Scholars would do well to be aware of these myths of Loper Bright as they start to build a mosaic and draw conclusions from the bits and pieces of additional information that will emerge in the days and years to come.

Myth 1: Loper Bright will not change much in administrative governance because it did little to change the law.

If one is inclined to think that the law is what drives change throughout government, Loper Bright leaves room for reasonable disagreement about whether or how much the law really changed. As we explored in Part I.B, even though the Loper Bright Court said, “Chevron is overruled,”178 it is nevertheless plausible to read Loper Bright as otherwise accepting basically what the law had always been, even under Chevron—namely that Congress can delegate authority to agencies to carry out statutes and make the necessary judgments, embedded in binding rules or adjudications, for such implementation.179

Chevron recognized that “[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation,” and that “[s]uch legislative regulations are of controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.”180 Yet Chevron’s famous twostep test also applied to implicit delegations.181 Loper Bright took aim at how courts discovered implicit delegations while still accepting a view consistent with Chevron’s treatment of express delegations. Loper Bright most pointedly indicated that mere ambiguity in a statute was not sufficient to justify a court finding of an implicit delegation, but it did not entirely rule out a “best reading” of a statute that accommodates what might otherwise have been considered an implicit delegation.182

Loper Bright did not say where the line falls between a clearly permissible express delegation and a decidedly non-best reading of a purported implicit delegation, especially in the context of situations that necessarily will involve agencies exercising delegated authority. This line-drawing might well become, in time, just as rote a judicial exercise as anything under Chevron, and with no different effect, especially since many instances of what might otherwise be thought of as an implicit delegation could well be characterized as an express delegation whenever the implicit nature is drawn from explicit textual analysis.183 One arguable reading of Loper Bright might be that, at most, it collapsed two categories of delegation into a single category framed around the question of whether Congress delegated to agencies the decision to clarify and apply the terms of a statute. Much now appears to hinge on a determination of a statute’s delegation to the agency. But, of course, it always did.184 On some legal readings, then, perhaps one myth of Loper Bright might be that it did not do much at all to change the law—and hence, it will do little to change administrative governance.

Myth 2: Loper Bright will dramatically change administrative governance because it dramatically changed the law.

At the same time, it is plausible—and even arguably the “best” reading of Loper Bright—that it did fundamentally change the law. After all, it did expressly overturn a forty-year-old precedent.185 Even if one reads Loper Bright as containing the possibility that a court may permissibly find, in some circumstances, reason to conclude by implication rather than by express language that Congress intended to delegate to an agency the authority to construe a statute, the presumption surrounding such an implication has shifted. On this view, courts previously were to presume that general statutory delegations to agencies also necessarily included delegations to determine what ambiguous provisions in those statutes meant, which then meant that courts were obligated to defer to those agencies’ reasonable interpretations.186 Going forward, there is now the opposite presumption—and so a much higher hurdle exists to be surpassed, or a higher burden to be met, in overcoming the presumption and accepting an agency’s reasonable approach. Owing to this shift in presumptions, many semantic ambiguities will be settled by courts rather than agencies in the years ahead, effectuating a substantial change in how administrative governance proceeds. At base, this myth of Loper Bright sees the Court’s decision as effecting a consequential shift in the role of the judiciary and its relationship vis-à-vis agencies in cases involving questions of statutory authority.

Myth 3: Loper Bright will dramatically change administrative governance but only because it dramatically signals an ideological shift in judicial politics.

Another potential myth of Loper Bright stems less from any legal content or analysis of Loper Bright than from the political salience of its message. Loper Bright’s primary audience could be seen as lower court judges, who handle the bulk of challenges of agency rules. The Court has flexed its muscles and revealed how it plans to exercise its power over these lower courts, telling them that it expects them to scrutinize agency actions more closely.187 Loper Bright could have this effect even if it did little to change the law (the premise underlying Myth 1). Adherents of Myth 3 may alternatively think that legal doctrine—even if changed—is not the real driver that explains judicial decisionmaking. Either way, Loper Bright could be seen as a powerful decision not because of the law but because of what it communicates about the Supreme Court’s ideological posture toward agency action. Those attracted to this myth of Loper Bright see the Court’s decision not in legal terms but in political ones. They see the Court signaling a dramatic unleashing of an ascendant conservative view throughout the court system that will necessarily render substantial agency action more difficult in the years ahead.

Along these lines, it is worth acknowledging that the judiciary that receives the Court’s political signal from Loper Bright differs from the judiciary at the time Chevron was handed down. When Chevron was decided, the lower courts (and especially the U.S. Court of Appeals for the District of Columbia Circuit, which heard a large proportion of administrative law cases) skewed in favor of Democratic appointees who were generally more accepting of the role of agencies as organs of governmental power. To be sure, those judges had their own skepticism about agency power, particularly during the Reagan Administration when Chevron was decided. But now that the lower courts are filled with more Republican-appointed judges, and since other circuits (such as the Fifth Circuit) are becoming important venues for administrative law cases, the soil into which the seed of Loper Bright has fallen has changed. In an era with increased judicial polarization that tracks more or less the political polarization of our time, the signal sent by overturning Chevron could very well sway outcomes more than Chevron ever did when it was first handed down.188 It is also much more likely today that litigants can find judges whose interpretations of statutes do not align with those of an agency. All in all, the political signaling effects of Loper Bright, in interaction with the more ideologically divided court system, means that there is a greater chance today of agencies losing in court, even independent of any view about how much doctrinal change Loper Bright has actually effectuated.

Myth 4: Loper Bright may do little to change administrative governance because the shift in judicial politics that it signaled had already occurred.

On the other hand, a political reading of Loper Bright’s effects might well lead to the conclusion that the decision itself will bring about little change— but precisely because politics had already done its work well before Loper Bright was decided. On this view, the decision to overrule Chevron will not on its own alter the partisan or ideological dynamic of the courts vis-à-vis agencies in any significant way. Some observers have suggested, for instance, that agency win rates were already being affected by a Supreme Court that has been taking a more muscular or skeptical posture toward agency authority, as well as by lower court judges willing to question agency decisions and agency interpretations of their statutes, such as by invoking the major questions doctrine.189 Perhaps Loper Bright will itself have little effect because the real source of any increase in agency losses was already established before Loper Bright was ever handed down. And with another four years of a President Donald Trump or another future conservative President, the judiciary might change further to the point that, with or without Loper Bright, judges would be taking a deeply skeptical posture to agency action.

The question, again, is whether, with the overturning of Chevron, this skepticism will yield stronger anti-agency outcomes than it otherwise would have. Even if Chevron had remained in place, judges skeptical of agency power would have continued to have the ability at Step One to say that a statute was clear but in a way that did not comport with the agency’s interpretation. They also would have had the continued ability at Step Two to declare that the agency’s interpretation was unreasonable. They even would have had the ability never to reach Step Two and instead reach their own judgment about a statute’s meaning in cases of statutory ambiguity.190 It may be far from clear whether or to what extent the Chevron doctrine was a barrier to finding against an agency interpretation for those judges who possess a general aversion to agency power. Consequently, it is plausible to think of a myth that treats Loper Bright—even if it did effectuate a change in legal doctrine—as little more than window dressing.

B. A Middle Ground? Loper Bright’s Symbolic Resonance

Ultimately, it is very difficult to tell which of these myths resemble reality—that is why we refer to them as “myths.” Part of why Chevron lost support was because there was room for myths about Chevron itself to proliferate— that is, both critics and supporters believed it to be extremely important despite the lack of clear evidence that it had been all that consequential.191 Much like with the myths of nature, the myths surrounding Loper Bright can operate in such a way that they serve both to reflect and to reinforce each observer’s own prior attitudes and beliefs.

What might tip the balance between a view that Loper Bright will make little difference and one that it will effectuate monumental change? We are inclined to think that, at a minimum, Loper Bright’s symbolic import will lead it to make much more of a difference than Chevron did in the first place. Symbols are not law, but they can hold great power to shape how the law is perceived, applied, and elaborated. Law more generally holds expressive value that can induce changed behavior even in the absence of formal sanction.192 Symbols also matter greatly in politics.193 As a result, whether one perceives administrative governance as shaped more by law or by politics, it seems that Loper Bright is likely to bring about a significant disequilibrium due to the symbolic resonance of its three key words: “Chevron is overruled.”194 Whether that disequilibrium eventually settles out on a new path may ultimately depend on how exactly the players in the administrative governance game perceive Loper Bright as a symbol.

Administrative law scholarship has room to acknowledge the role of symbolism in how we think about major cases. As Kristin Hickman has noted in the context of the moribund nondelegation doctrine, the Roberts Court may be particularly interested in a symbolic approach to reinforcing what it views as core separation of powers values.195 Loper Bright might then be a rather self-conscious effort, in keeping with these patterns, to send a shot across the bow of the administrative state. In overturning Chevron, the Court has, if nothing else, clearly “expressed a mood.”196 Lower courts will, of course, not always know exactly what the Court’s mood is, but they will know that it is suspect of agency authority, and they may in the future be more likely to be primed themselves to view administrative actions with skepticism. Agencies, in turn, may perceive that their work product will be more likely to receive greater scrutiny in court, and they may therefore change the way they select and defend regulatory initiatives. It may be, in other words, that Loper Bright’s clear antipathy to Chevron, which rightly or wrongly came to be itself a symbol of the power of the administrative state, has sent a symbolic message to anybody listening in the administrative governance game that agencies should proceed with caution, at least for the time being. If the symbolic shock of Loper Bright is sufficiently motivating, it is reasonable to assume that there could be permanent adjustments triggered.

#### Non-delegation causes extinction.

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Peter Conti-Brown and David A. Wishnick, “Technocratic Pragmatism, Bureaucratic Expertise, and the Federal Reserve,” January 2021, Yale Law Journal, https://www.yalelawjournal.org/pdf/Conti-BrownWishnick\_e526wjhc.pdf

Complex Problems and the Necessity of New Expertise Complex problems are ubiquitous and, by their very nature, defy ready-made expertise. These are existential problems that threaten global security, health, and well-being. Combatting global climate change is the quintessential example of these complex problems, but global pandemics, global financial crises, refugee crises, endemic and systemic racism, cybersecurity threats, and many others would also qualify.22 [Footnote 22] See Kelly Levin, Benjamin Cashore, Steven Bernstein & Graeme Auld, Overcoming the Tragedy of Super Wicked Problems: Constraining Our Future Selves to Ameliorate Global Climate Change, 45 POL’Y SCI. 123,126-28 (2012) (discussing “super wicked” problems in the context of global climate change); Horst W.J. Rittel & Melvin M. Webber, Dilemmas in a General Theory of Planning, 4 POL’Y SCI. 155, 160-67 (1973) (describing “wicked problems”). Richard Lazarus applied this concept to law in Richard J. Lazarus, Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future, 94 CORNELL L. REV. 1153 (2009), which examines the unique challenges endemic to the historical failure of lasting climate-change legislation. [End FN] These require creative solutions that necessitate significant resources. While the private and civil sectors have important roles to play, only government can muster the resources and manage the coordination necessary to address these problems. Scholars diagnosing one class of these complex problems—“super wicked” problems—identify several conceptual aspects that render them unusually unsuited for prompt, far-sighted governmental response. For these, “time is running out; those who cause the problem also seek to provide a solution; the central authority needed to address them is weak or non-existent; and irrational discounting occurs that pushes responses into the future.”23 There is another aspect of these kinds of problems peculiar to the structure of government that must confront them: the expertise required to solve them may not yet exist. Indeed, the very nature of complex problems is that previous, off-the-shelf solutions are insufficient. 1. Four Sources of Expertise How should the Fed go about developing the “ascertainable body of knowledge”24 needed to address such problems? One of the central themes of the past decade of administrative-law scholarship is that expertise does not come preinstalled in agencies when created by Congress.25 Instead, a wide array of statutory, judicial, and institutional features collectively determine the contours of an agency’s body of expertise. Indeed, we might distinguish between four general sources: input from the public, internal knowledge production, dialogue within the administrative state, and experiments in the field. First, agencies learn about the potential range and impact of policy choices by receiving input from the public. This mode of expertise acquisition is perhaps the most prominent in the minds of lawyers, given its centrality to the judicial review of agency action. When an agency seeks to cra� a rule that fits well with a given policy goal, it o�en benefits from seeking public comment (and usually must do so, as a matter of law).26 Though the public-comment channel for developing knowledge about a given policy problem is prone to a range of breakdowns—of information overload,27 of the absence of broad-based public participation,28 and of missed opportunities for deliberation29—it remains a decent enough way for agencies to receive knowledge and opinions from outside their own doors. This is especially true when agencies develop “epistemic communities” of the motivated public to participate in knowledge generation from the outside.30 Similar, if less formal, means of receiving input from a given policy domain’s interested parties—such as ex parte communication, public convenings, and direct requests for colloquies with agency staff—all do the work of gathering knowledge and opinion towards the formation of expertise.31 A second form of expertise development that holds a prominent place in debates over judicial review arises from internal processes of knowledge production. In this mode, agencies act like applied research divisions of the regulatory state. Scientists conduct experiments,32 economists run regressions,33 and engineers devise workplace-safety protocols.34 The effective and comprehensive use of internal knowledge-production and policy-evaluation processes is core to the legitimation of many agency actions in the eyes of reviewing courts. Indeed, one of the key functions of judicial review of agency action is to “prod[] agencies to . . . buttress[] their internal expertise and capacity” to make reasoned decisions in complex areas of policy.35 It takes expertise, a�er all, to develop a record that will hold up to scrutiny.36 For instance, as Catherine Sharkey has documented, elevated scrutiny of the Securities and Exchange Commission (SEC) in the wake of Business Roundtable v. SEC has had an investment-inducing effect 37: the Commission has doubled its headcount of staff economists and created an entire new division to conduct cost-benefit calculations.38 Whether producing better cost-benefit analyses is a useful or distracting form of SEC expertise,39 it nevertheless exemplifies importance of internal expertise production.40 A third mode of acquisition comes from dialogue with partners and rivals across the executive branch. Joint rulemakings marry expertise in one agency with authority held by another,41 consultation procedures enable or require agencies to incorporate effects on other regulatory programs into their decisions,42 and agreements to coordinate policy reviews enable collaborative oversight and alignment of policy initiatives.43 Through mechanisms like these, the agencies themselves act as sources of expertise development for one another. Finally, and most centrally to our examination of pragmatism at the Fed, agencies engage in expertise development from hard-won experience. By this, we mean the process of enacting policy followed by feedback, review, and incorporation of lessons into future policymaking processes. Experience-based learning might take place via serial adjudication as a policymaking form, or it might take place over time in the wake of a major rulemaking whose effects only appear gradually.44 Alternatively, it may be explicitly “experimentalist,” in the sense meant by Charles Sabel and William Simon, where a central hub coordinates policy attempts by federated units possessing some amount of local discretion.45 Across these modes of expertise production, agencies can build a mix of factbased expertise—details about how a policy achieved or failed to achieve intended effects in the real world—and practice-based expertise—the kind of know-how that enables agencies to be effective implementors of policy programs. 2. Expertise and Experimentation Through these methods, the Fed’s aim is simple: developing expertise to make sound policy relevant to its statutory responsibilities. Much of this expertise pertains to industry operations—“regulatory problems, potential solutions, and expected consequences” that arise within institutions and markets that are not susceptible to study by pure scientific method.46 Consider the Fed’s core statutory duty to ensure that banks within its purview are “[]safe and []sound.”47 To carry out this responsibility, the Fed obviously must understand how banks work; this means it must stay current with developing trends in financial markets, from simple modifications of preexisting modes of business to new fields of finance altogether.48 For the task of monetary-policy implementation, the Fed must draw on—and therefore continually develop—a related body of expertise on the abstract theories of interest-rate transmission, inflation, employment slack, and various other ideas that are constantly being deployed and challenged in the pursuit of what all agree is an essential Fed business.49 Administrative priorities change, and not only because of political forces pushing for those changes.50 Even more challenging are situations where entirely novel problems place an agency on unsound footing. They might struggle to write a rule that successfully targets a new form of mischief, or even to understand how the mischief operates in the real world. Developing expertise at the center of agency authority is retrospective, a battle for small improvements on existing competence. It thus mostly avoids controversy. But complex problems, by their nature, are different in two ways. First, they likely have little to do with past experience. Second, they are likely to be highly controversial because their outcomes are so uncertain. Developing expertise at the limits of agency authority thus creates an acute need for an important kind of value-laden experimentation, an instance of the science of “muddling through,” in Charles Lindblom’s classic articulation.51 A technocratic-pragmatist Fed o�en has been—and we argue should be—a muddler of a specific sort, one that prizes what Sabel and Simon call “learning and adaptation,” consistent with statutory mandates.52 Such learning and adaptation can be administratively messy.53 Instead of regularity in service of clearly established midlevel policy objectives, an experimentalist Fed would embrace midlevel goal evolution. Such an approach would, like various forms of experimentalist governance, engage in “provisional goal-setting,” afford greater discretion to agency subunits to develop policy responses in the first instance, and only then follow an initial round of attempts with “a recursive process of . . . revision based on learning from the comparison of alternative approaches.”54 Over time, the Fed would succeed if it incorporates perspectives on goals and tactics from a range of agency subunits into an agency-wide strategy for tackling a problem under conditions of strategic uncertainty.55 On some matters, this might involve experimentation at the level of the individual Reserve Bank; on others, it might involve time-limited experimentation at the Board level. In all cases, though, it would embrace flexibility in service of being responsive to the complex problems that most challenge the core missions of the agency. That development, however, must immediately run into important limits aimed at protecting democratic legitimacy. When central bankers take upon themselves the authority to identify which looming problems, on which time horizons, are worthy of their formidable resources, they risk undermining their value as bureaucrats and usurping the role of political representatives. This fear of unmoored bureaucrats can be overstated. The instruments of expertise development are crucial to a well-functioning administrative state, and not simply at the margin. These tools help government match the challenges that it must face, enabling it to steer industrial dynamism beneficially.56 But the concern about bureaucratic legitimacy is real and runs alongside a deeper question of where, exactly, expertise fits into a legitimating account of the administrative state. Leading accounts today focus on the role of reason-giving in justifying agency action to the courts and the political branches.57 A complementary conception of administrative expertise, however, focuses on its role in developing and maintaining state capacity. This conception—which was ascendant during the New Deal—sees regulation “as the application of expert knowledge to pressing modern problems in service of the public interest.”58 Even if the “pretense of the New Dealer’s insulated, neutral expert”59 has been abandoned over decades, the core ambition—in workaday bureaucracy in the midst of crisis—is for bureaucrats to do technical work and politicians to be responsible for selecting the values that technical work supports. Technocratic pragmatism aims for a truce between these competing demands. It honors the demands of legality, accountability, and noncoercion while also creating space for experimentation, thereby providing the Fed with flexible, effective tools to accomplish the work Congress has reasonably given it to accomplish. This is true not only in the development of expertise in the face of changing environments for essential agency business, like monetary policy or bank regulation. Technocratic pragmatism also permits the Fed to anticipate, mitigate, and even resolve complex problems that pose existential threats. Such experimentation rests not on the ability of central bankers to evade “political” topics, as Former Deputy Governor of the Bank of England Paul Tucker contends60 but rather on their ability to help solve the broad set of problems that plausibly implicate the bailiwick that Congress has already given to them. But to accomplish these tasks, technocratic pragmatism requires three guardrails: legality, accountability, and noncoercion. B. Pragmatism and Legality A key motivator for technocratic pragmatism is our view that the development of expertise outside of core competence is in fact essential to carrying out the mandates and achieving the goals of the broad delegations in the Federal Reserve Act. Indeed, when complex problems affect Fed mandates, specified by statute, there is no other way to live up to those mandates without trying new things and building new expertise. But this does not mean that Fed bureaucrats are free to set the agenda and choose the values that they view as most deserving of government resources. The first of three major guardrails against experimentation run amok is law: a technocratic-pragmatist Fed should not disregard clear legal prohibitions written in the Federal Reserve Act. This assertion raises a series of questions: What does the law permit and prohibit? Who decides on those legal permissions and prohibitions? And is it appropriate for the Fed to engage in activity that statutory framers did not contemplate, even if these framers did not directly proscribe that activity? Most debates about the meaning of statutes focus on the practice of statutory interpretation as conducted via judicial review. The primary methodological difference for judges (and those who argue about statutory interpretation in courts’ shadows) concerns the embrace of “textualism”61 versus “purposivism”62 or sometimes “pragmatism.” The first is, as the Supreme Court’s recent pronouncement of the methodology stated, the interpretation of “a statute in accord with the ordinary public meaning of its terms at the time of its enactment.”63 The second requires judges to “[i]nterpret the words of the statute . . . so as to carry out the purpose as best it can, making sure, however, that it does not give the words . . . a meaning they will not bear.”64 A technocratic-pragmatic Fed need not entangle with this long-standing debate. In part, this is because it is not a particularly useful one, since most judges practice “methodological pluralism.”65 But the second reason is more fundamental: the kinds of limited experimentation that the Fed must embrace will virtually never become subject to judicial review. The act of statutory interpretation, then, must be invoked to ensure “legality,” not merely textual fidelity. Legality, as we mean the term, requires the Fed to find both justification for its actions and limitations for those actions. How it does so will depend on the specific kinds of actions or limitations. The need to define boundaries of legality, then, encourages both limitations and experimentation, together. It also asks of the Fed a legitimating interaction with law that some central-bank critics would prefer be exercised only by legislatures. For example, some view central-bank discretion as inherently suspect and argue that any central-bank power should be tightly circumscribed by legislative rules: Congress should write clearer laws, with fewer delegations, to restore accountability through the electoral process.66 Tucker is a prominent proponent of that view, articulating detailed “Principles for Delegation” that would tightly circumscribe when a delegation is appropriate at all.67 For example, no delegation is appropriate unless “[s]ociety’s preferences are reasonably stable” and “policy instruments are confidently expected to work, and there exists a relevant community of experts outside the [independent agency].”68 The problem with Tucker’s principles is that they do not create a space for the development of expertise: they assume (or require) that such expertise already exists. But expertise is endogenous to experience: expertise in combatting new, complex problems cannot be willed into existence by legislative fiat. Another problem with this approach to statutory interpretation is that it does not answer what happens in the face of changing circumstances. Whether Congress delegates narrowly or broadly, with multiple missions or one, the agency must still encounter a changing world with ever-increasing complexities. The question in that event is: What next? The answer is a kind of transparent grappling with the opportunities and demands of legality. Technocratic pragmatism requires confronting the text and structure of the Federal Reserve Act such that, as the Fed contemplates experimentation to combat complex problems, it will look muscularly at congressional authorizations and limitations. This is not a controversial statement. Whatever the methodological controversies between purposivism and textualism in courts, there is broad agreement among administrative-law scholars that agencies should interpret their statutes for the “purpose” that Congress has given them.69 Even when discerning statutory purpose is challenging, an agency is well suited to that challenge given its constant engagement with the statutory text, its own regulations, and Congress itself.70 As the Fed interprets its statute to determine the appropriate scope for its experimentation around new and complex problems, it can do so motivated by statutory purpose in part because doing so will lead it to more dialogue with political institutions. Technocratic pragmatism requires identification of legal boundaries and a willingness, in the face of complex problems, to push experimentation “to the edge,” to quote political theorist Philip Wallach’s diagnosis of legality in crisis.71 That effort must also be consistent with the Fed’s congressional purposes as articulated in the overall structure of the Federal Reserve Act itself. This should be done transparently and with a diversity of inputs, two aspects of the Fed’s current legal dialogue that leave much to be desired.72 The structure and legal design of the Federal Reserve Act, first passed in 1913 but amended scores of times since, support that view.73 The Federal Reserve Act is a mix of highly discretionary instructions and highly specific ones. For example, arguably the Fed’s most important authority is its ability to engage in monetary policy. Section 2A contains Congress’s instruction about the appropriate ends of monetary policy: The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy’s long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.74 What is the specific suite of policies that are consistent with this triple mandate of “maximum employment, stable prices, and moderate long-term interest rates?” That is for the central bankers to decide. Congress identified in very broad terms the “goals” of the Fed; the “instruments” needed to accomplish those goals are not well specified.75 Importantly, the scope of these goals differs comparatively from other central banks that lack goal—and, in some cases, instrument—independence.76 It also differs appreciably from the scope of other U.S. regulators’ statutory mandates, which are much narrower.77 This generous statutory discretion means that there is a legal space within which the Fed can experiment; when that space is curtailed, the space for experimentation shi�s.78 The amendments to the Federal Reserve Act bear this out. Not all of the statute is as highly discretionary as section 2A’s monetary-policy mandates. For example, beginning in 1947, the Fed began remitting the Reserve Banks’ excess earnings back to the Treasury. There was no legal requirement that it do so.79 But this changed in 2015, with the passage of the Fixing America’s Surface Transportation Act (FAST Act).80 The FAST Act formalized this informal arrangement: the Fed now lacks discretion over where to send its excess earnings.81 For the most important powers that the Fed can use to experiment in the face of existential, complex problems, its statutory authority looks like a blend of section 2A’s wide-open monetary-policy objectives and the FAST Act’s restrictions. This gives the Fed even more permission from Congress to engage in technocratic-pragmatic experimentation. 1. Who Decides What the Law Requires? Of course, declaring the Federal Reserve Act to be broad in its mandates and permissive in the discretion it grants to the Fed is one thing. But when the Fed engages in this experimentation, who decides whether the legal boundaries, such as they are, are honored? For agencies in general, the answer has historically been the judiciary. The requirement that agencies conform to statute is the bedrock of administrative law.82 For the Fed, however, the answer is not as simple. Judicial oversight of the Fed’s regulatory actions is straightforward enough: the judiciary still participates in determining the appropriate scope of the Fed’s powers and limitations.83 But for the Fed’s most important authorities, and where the development of expertise is likely to occur most frequently, the Fed exists as something of a lawmaker unto itself. By old tradition, the Fed’s monetary policy and constitutional structure are not subject to judicial review.84 This lack of judicial oversight creates a vacuum that makes it unclear how the Fed can engage in lawful experimentation within established boundaries of law. This legal-interpretive question lies at the heart of some of the most important critiques of the Fed’s actions in both 2008 and 2020. Consider, for example, Wallach’s critique of Fed actions in 2008 through a lens of legality and legitimacy, a topic to which we will return in Part III.85 Wallach’s critique focuses on the divergence between legality and legitimacy in combatting financial crises (but with application to other kinds of complex problems the Fed must address). The conundrum of many complex problems is that, in Wallach’s words, “[r]elying on already existing legal authorities may be insufficient to meet the challenges, and exigency may make obtaining new ones impossible. History generally esteems leaders who seize these moments and respond forcefully, whether in strict compliance with the law or not.”86 Thus, strict adherence to legal requirements can in fact undermine efforts at legitimacy according to Wallach. Wallach’s argument is that “legality is neither necessary nor sufficient to establish an action’s legitimacy during a crisis.”87 Wallach is largely responding to a descriptive account of executive power during military and financial crises by Eric Posner and Adrian Vermeule that places legal formalism on the backburner while the Executive plunges into the void to resolve major crises—in their view, “legislatures and courts[] ‘come too late’ to crises . . . .”88 At first blush, it would appear that technocratic pragmatism takes a dim view of legal constraints, similar to that of Posner and Vermeule or the position implicit in Wallach’s separation of legitimacy and legality. In fact, however, technocratic pragmatism takes as given that experimenting agencies will stay within the boundaries of law. Legality, then, is necessary but insufficient for promoting the appropriate level of bureaucratic expertise in the face of complex problems. However, the question remains: When interpreting a complex, discretionary statute like the Federal Reserve Act, what in fact did Congress prohibit? Legality, broadly construed and transparently defended, provides the statutory guidance that the Fed—especially in the absence of judicial review—requires. C. Pragmatism and Accountability The second primary protection for technocratic pragmatists is political accountability. Political accountability provides cover against the critique that a technocratic-pragmatist agency like the Fed will seek out opportunities to experiment for reasons inconsistent with the common weal. In the face of complex problems, will it choose the correct paths along which to experiment? Will it usurp the political processes by substituting its own biases for democratic values in the name of technocratic expertise? Will this experimentation result in the abdication of the hard work of making policy choices through democratic governance? There are no easy answers to these concerns, but political accountability is as close to the correct answer as one can come. An agency that experiments to increase its expertise, even in the face of existential, complex problems, can outrun the demands of legislative oversight and public accountability. To counteract these risks, we need a framework for articulating when technocratic-pragmatic agencies can embrace experimentation and when they should avoid it. 1. Bureaucratic Dri� First, we must identify the nature of the problem itself, part of which is the risk of “bureaucratic dri�.” Bureaucratic dri� refers to “the problem where the high costs of monitoring and controlling bureaucracies leads to situations in which bureaucrats will act in ways inconsistent with the original deal or ‘coalitional arrangement’ struck between interest groups and politicians.”89 The agency costs associated with the gap between the interests of the enacting legislative coalition and the implementing bureaucratic actors cause bureaucratic dri�.90 “If greater delegation allows agencies greater opportunities to pursue their own goals, it only helps the agencies, not the political principals.”91 The answer to controlling bureaucratic dri� from the original literature on the subject is more and better ex post oversight by congressional subcommittees or specialized executive or legislative agencies like the Office of Information Regulatory Affairs and the Government Accountability Office.92 But part of a technocratic-pragmatist answer is to accept dri� as both a fact of life and, in important cases, a benefit rather than a cost to be managed. In other words, given the complexity of existential problems within the broad statutory frameworks that Congress has articulated for the Fed, the fact that the Fed develops expertise in areas not imagined by enacting coalitions is for the greater good. Rather than serving the Fed’s own interests by deviating from a narrow mandate, the Fed is serving legislators’ goals. Their goals are simply very broad, and the path of expertise unspecified. It is incumbent on the agency to develop necessary expertise, not for Congress to legislate it.93 2. Democratic Deficit, or the Problem of Hard Choices Perhaps the most important critique of technocratic pragmatism is that it facilitates the evasion of appropriate political accountability over judgments that are not for technocrats to make. This comes from an old critique. In his 1980 defense of constitutional interpretation that promotes democratic participation, John Hart Ely critiqued broad legislative delegations—legislators “refusing to legislate”—as one of the central flaws in American democracy.94 “There can be little point in worrying about the distribution of the franchise and other personal political rights,” Ely wrote, “unless the important policy choices are being made by elected officials.”95 A similar concern motivates attempts to revive the so-called “nondelegation doctrine,” a constitutional doctrine of great theoretical appeal but limited practical application.96 [Footnote 96] The doctrine, although substantially revived in conservative legal circles, has been mostly a dead letter since the Court’s last application in Schechter Poultry in 1935. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). Most recently, the Supreme Court in Gundy v. United States described the standard as stating that “a statutory delegation is constitutional as long as Congress ‘lay[s] down by legislative act an intelligible principle to which the person or body authorized to [exercise the delegated authority] is directed to conform.’” 139 S. Ct. 2116, 2123 (2019) (quoting J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928)). The debate is ongoing, including in this volume; its future application in a newly constituted Supreme Court is unknown. Compare Ilan Wurman, Nondelegation at the Founding, 130 YALE L.J. (forthcoming 2021) (arguing that the nondelegation doctrine existed at the Founding and applied to “important subjects” that Congress could not delegate to the Executive), with Nicholas R. Parrillo, A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence from the Federal Tax on Private Real Estate in the 1790s, 130 YALE L.J. (forthcoming 2021) (exploring the 1798 direct tax’s administration as a Founding-era example of coercive and domestic congressional rulemaking delegation). [End FN] As Justice Gorsuch has written, “if Congress could pass off its legislative power to the executive branch,” serious accountability problems might arise. 97 “Legislators might seek to take credit for addressing a pressing social problem by sending it to the executive for resolution, while at the same time blaming the executive for the problems that attend whatever measures he chooses to pursue.”98

### DA---1NC

Venture Capital DA---

#### The venture capital market is being revived, but it’s tenuous---investors are wary.

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Michelle Celarier, “Is Venture Capital Finally Starting to Come Back?”, 8/28/2025, Institutional Investor, https://www.institutionalinvestor.com/article/venture-capital-finally-starting-come-back

After more than three years in the wilderness, venture capital is starting to find its way out. But even as exits and funding rounds are increasing in number, many of the VC-backed startups are still worth a lot less than they were during boom times — and that doesn’t seem likely to change anytime soon. Even some AI companies, which have accounted for more than a third of VC deals, are not immune.

A parsing of the numbers by PitchBook shows how precarious the VC market remains at a time when the stock market continues to hit new all-time highs.

To finally provide exits for investors in VC funds, the unrealistically high valuations that peaked at the end of 2021 have had to come down for many companies. During the second quarter of this year, almost every VC company that went public did so below its peak valuation, according to the private markets data provider. For example, Chime went public at a $9.1 billion valuation, which is a fraction of the $25 billion it was said to be worth at its peak. And four of the six unicorns that went public are trading below their initial day close, PitchBook said.

Meanwhile, some startups still seeking additional rounds of funding from private market investors have also had to lower their expectations. Almost a quarter of such deals last quarter were either down rounds or flat, according to PitchBook. Even 30 percent of AI companies were forced to lower their valuations in their latest rounds.

“Initial market views suggest that companies still face pricing compromises,” PitchBook said.

There is another factor at play in all of this: Trump.

Startups involved in AI, defense tech, national security, fintech, and crypto — and thus “aligned with the political and economic priorities of the Trump administration” — are showing “greater resilience to valuation compression,” PitchBook said in its recent analysis of VC valuations and returns.

“It is no coincidence that stablecoin issuer Circle more than doubled its stock price on its first trading day, buoyed by legislative progress on the GENIUS Act,” the data provider said, referring to the crypto legislation passed by Congress. That said, Circle’s IPO price was 17 percent lower than its peak private valuation, PitchBook noted.

The health of the VC market is also obscured by the concentration of value in its ranks — similarly to what has been seen in the public markets.

During the first half of 2025, AI companies accounted for 65 percent of VC capital and 35 percent of the number of deals.

“Two distinct venture markets are emerging: one for AI and one for everything else,” PitchBook said.

In the second quarter, the five largest deals made up 37 percent of the funding, which is more than double their 17 percent share last year, PitchBook noted. For example, Scale AI’s “pseudo-acquisition” by Meta was the second largest venture deal in history, it said. PitchBook nonetheless found that the “rate of value creation” for AI companies is still “shy” of the 2021 highs.

Another VC trend that is emerging is the use of secondaries to provide liquidity to investors, who remain wary of the sector.

#### Strengthening labor rights collapses venture capital.

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Helena Sarkodie\*, Kwabena Boasiako, Michael O’Connor Keefe\*\*, Justin Nguyen, and Bernard Tawiah, “Right-to-work laws and venture capital investment”, March 2025, Journal of Banking & Finance, Volume 172, https://www.sciencedirect.com/science/article/pii/S0378426625000044

Using data spanning from 1984 to 2009, Chen and Chen (2013) provide evidence to support the inverse correlation between unionization and investment. Overall, their research shows that unionization and investment have a negative relationship, which implies a positive relationship between investments and firms in RTW laws states. By influencing the level of venture capital involvement, labor unions decrease the benefits of VC financing. According to Bozkaya and Kerr (2014), venture capitalists prefer companies with high labor flexibility. When confronted with strong labor rights, venture capitalists may opt to cut their investments in new companies or sell their shares in these firms earlier than they would under normal circumstances. Labor market rigidity is widely regarded and regularly highlighted as a significant factor influencing the intensity of venture capital investment. As a result of the preceding arguments, the following hypothesis emerges:

Hypothesis: The passage of RTW laws leads to an increase in Venture Capital (VC) investments.

#### VC-funded startups will create advanced space technology.

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Scott Atkins, “Financing the space economy: Scaling up private investment to transform industries and help solve global challenges”, July 2025, Norton Rose Fulbright, https://www.nortonrosefulbright.com/en/knowledge/publications/b8a10e07/financing-the-space-economy

Space financing trends

The future growth trajectory of the space economy will be highly dependent on scaling up investment and financing sources.

At present, government funding for outer space activities continues to significantly outweigh private investment. In 2024, global government spending on space programs reached US $135 billion.6 Of this amount, US $73 billion (54 per cent) was allocated to defence-related activities, highlighting the growing strategic importance of space as a means to support national security, alongside maritime, aerial and cyber capabilities.7 The remainder of government space investment was allocated to civil spending – of which the leading component globally was human spaceflight to support exploration activities, followed by investments across space manufacturing, space launch and R&D activity.8

The growth in government space investment is expected to continue in future years, fuelled by competition between the United States and China, as well as increased expenditure by India and China, and several nations (such as Saudi Arabia, the United Arab Emirates, Thailand and Peru) investing in space activities as part of their official economic plans.9

However, in light of the dominant focus of government space programs on defence capabilities, the true commercialisation of outer space – and the cultivation of the innovation required to spark new applications of space technology and infrastructure relevant for businesses and consumers – will be driven by private funding.

Over US $47 billion of private capital – consisting of equity, debt and acquisition finance – has been invested across the global space sector since 2015.10

The bulk of this has been equity finance, particularly venture capital, which accounts for around 80 per cent of private space capital inflows.11 Significant dedicated space VC funds include Seraphim Capital, Starbridge, Noosphere Ventures, TypeOne VC and Space Capital, with aerospace venture arms such as Airbus Ventures and Boeing Horizon also among active global VC space investors.

Private funding has played a crucial part in enabling the entry of “new space” entities from other sectors, sparking innovations that have expanded commercial opportunities from space activity, such as reusable launchers and microsatellites.

Reaching a peak of US $15.4 billion in 2021,12 private funding has seen a downturn in the space economy in subsequent years, corresponding with the broader economic instability experienced with COVID-19 related supply chain disruptions, rising inflation and interest rates, and declining business and consumer confidence.13

Growth prospects for space venture capital

Despite future economic headwinds, and downside risks posed by geopolitical tensions and US tariff policies, venture capital in particular remains a strong growth prospect in the space economy, due to systemic factors such as:

* The proportion of digital start-ups involved in the space economy, and the resulting “high risk, high return” equation sought by venture capitalists in any industry.
* Lower launch costs, and ever-reducing barriers to entry for private space actors, which enhances the diversity of investment options and intensifies the cycle of competition and innovation ripe for venture capital funding.
* The growing application of space technologies in the economy, and the reliance placed on those technologies by a broadening range of businesses and consumers across multiple industries, which enhances the prospect of genuine financial returns for venture capitalists.

Further, venture capitalists are likely to be drawn to future growth areas in the space economy which extend beyond the current dominant activities in the low-Earth orbit – such as space mining and engineering, and the development of advanced propulsion methods and other technologies. The more speculative nature of these projects presents greater investment risk, but at the same time also gives rise to a great potential return – music to the ears of venture capitalists.

#### Extinction---space technology leadership solves all threats--- private financing is key.

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Charles Beames, “SmallSat Alliance is on a path toward a new space horizon”, 8/8/18, SpaceNews, https://spacenews.com/op-ed-smallsat-alliance-is-on-a-path-toward-a-new-space-horizon/

We find ourselves still at the dawn of a new space century, mindful of the victories and setbacks of our past, eager to pass the torch to the next generation of space visionaries, scientists, engineers, and enthusiasts. We look to the future not just to see how much bigger, faster, or higher we can reach, but also how the United States, and specifically the U.S. space community, can again inspire the nations of the world to align with us, as it did in the 20th century. The SmallSat Alliance is an alliance of companies developing, producing, and operating in all segments of the ‘next generation’ space economy; championing renewed U.S. leadership in the burgeoning commercial space economy, and advocating for the transformation of government-led space capabilities. We are experienced space professionals who have chosen to join with others leveraging our decades of hard-won experience, to develop smarter ways to explore space in the 21st century. A wonderful outgrowth of the legacy space program is the commercial, entrepreneurial, and job-creating commercial space business that it bequeathed. These next-generation enterprises range from multi-million-dollar startups providing rideshare opportunities or components for small satellites to multi-billion-dollar space data-analytic platforms reinventing urban car service and agricultural production. The early returns of this economic revolution are already on our doorstep: space data capabilities are exponentially growing elements of the 21st century world economy. Beginning with the dreams and funding by successful tech entrepreneurs, enormous venture investments are already delivering wondrous benefits to the world.

Commercial Space – Profit and Non-Profit

There are really two major categories in the commercial sector, the profit driven and the non-profit. The classic for-profit companies include not only those designing, building, launching, and operating satellites but also the tech sector that is turning that raw space data into gold through machine-learning analytics. Since for-profit companies are no longer dependent upon the revenues generated by the Cold War space race culture of a bygone era, this new generation of space companies is able to more efficiently capitalize on Moore’s Law, the nonstop exponential growth in chip density, and the associated networking technology co-evolving with it. This new generation is building profitable businesses helping to clean up our oceans of garbage and debris with satellite surveillance, reconnoitering to assist in enforcing laws that protect our oceans from illegal, unregulated, unlicensed fishing, something that is rapidly depleting the world’s most valuable and essential lifeforms. It’s leading in the innovative use of low-cost satellite constellations to produce ubiquitous remote-sensing data, enabling small business owners to be more profitable and less wasteful. For example, precise timing signals from space are already optimizing transportation of people, goods, and services, with even further gains anticipated with the introduction of artificial intelligence to assist drivers, perhaps even someday replacing them entirely.

The non-profit sector is the other side of commercial space, concerned more for the general welfare of society, but every bit as integral to this new space enterprise. Much like every century before it in human history, ours is not without its unique challenges, some of which have been a consequence of the last, and all of which the space data domain can be leveraged to help solve. Examples are endless, but one challenge that this new space community is uniquely well-adapted for is to further inform worldwide resource allocation for the 21st century and beyond. These two primary resources are sustainable water and the materials needed for adequate housing for an ever-increasing human population. As cities and urbanization continue to expand, governmental planning challenges such as transportation design optimization for goods and services are only the beginning. Additionally, through using inexpensive remote sensing technologies, some members are designing space data analytics to mitigate human suffering from plagues, contain outbreaks, and combating illegal poaching. Some are connecting with other non-profits to curtail human trafficking for the sex trade or forced labor for migrant debt repayment. Still others are helping non-governmental organizations in their work to expose the use of children as soldiers. Addressing these challenges has little to do with resuscitating dreams conceived by long deceased science-fiction writers and much more to do with turning “swords back into plowshares” to solve real threats to humanity.

Other non-profit initiatives include pursuing an even more foundational understanding of who we are and how to be the best custodians of our environment. Much as exploring and monitoring the world’s oceans has advanced civilization through a better understanding of human life and the planet, so too does exploring and monitoring from space. Low Earth orbit (LEO) provides a unique vantage point to look back on the planet and understand what is happening, anticipate what might happen and prepare for the future. In addition to better understanding Earth, responsible and rapid exploitation of the low Earth orbit domain will enhance the understanding of the solar system and the rest of the universe. Small satellites already offer low-cost platforms to study and explore what lies beyond the Earth. Other members are pioneering the use of zero-carbon, hydrogen-based reusable propulsion systems to ensure we don’t worsen our atmosphere using kerosene-fueled rockets for the coming tsunami of satellite launches. Finally, a mission ensuring the general welfare and planet survival for the next thousand years is finally confronting the existential threat that asteroids and comets pose to humanity. These extra-terrestrial, deep-space threats are passing dangerously close to our planet, and today we have no solar map of them and no defense.

National Security Space – Anticipating changes in the character of war

Completely intertwined with commercial space, the national security sector of space is already being dramatically affected, whether it resists the changes or not. The era of unfettered access to a tranquil space domain is clearly over, and the domain itself has become quite dangerous. Much like secure ocean transportation lanes and ports are essential to modern civilization and are secured by multi-national agreements and treaties, national defense and economic security is reliant upon robust national security space capabilities. As much as small satellites are enabling a rapid exploitation of low Earth orbit for commercial missions, they are already showing great promise in tackling routine national security needs like surveillance and early warning at greatly reduced costs. According to the Defense Advanced Research Projects Agency (DARPA), the current process of slow, monstrously expensive, and risk-averse decision-making to produce strategic-only space assets only perpetuates more stove-piped operations, insufficient resiliency, and on orbit electronics 20 years out of date. And apparently this approach keeps us on a path to be incapable of addressing today’s more agile threats from China, Russia, and North Korea.

While the small satellite industry builds upon a technical foundation created by the early visionaries in aerospace engineering and space exploration, a departure has begun. Very recently, DARPA and other offices within the Department of Defense (DoD) have highlighted that our adversaries are outmaneuvering us by increasing their rate of innovation. With the U.S. small satellite industry now well-capitalized and profitable, the DoD today has the ability to commercially acquire off-the-shelf capabilities with industrial reliability and focus its precious R&D on exquisite and niche components where there is no commercial market.

As our space industry hurtles ever faster towards a freer market, legacy companies designed and built to mimic their highly bureaucratic customer seem to be struggling to lead. The best near-term course correction for the national security sector is that when segments of missions of the defense space business have low-cost commercial equivalents, the government should become a buying customer along with the rest of the global market and benefit from the free market competition. This is exactly what emerged in the 1990s as the DoD and intelligence community adapted to the advent of commercially available UNIX (and eventually PC) high-performance platforms and the rapid phase out of costly custom-designed computers for command, control, communications, and intelligence. Relentless competition among the UNIX based companies drove down prices, enabling tactical use of data.

Behind the headlines across the space community, there is a revolution in the space economy that is unfolding. Discrete company events and milestones are reported regularly but very rarely are these stories written within a framework that puts a proper context to the revolution that’s underway. What the new commercial space community is finally doing is shattering an ossified space business model, largely rooted in a militaristic, planned economy system, and served by a consolidated industrial oligopoly. It may take longer than some of the most ambitious entrepreneurs expect, but the competition and opportunity to make a real difference is challenging all of us to “do better.” The members of the alliance are plying their respective abilities and acumen to solve one of the nation’s gravest threats, the absurdly high cost and grotesquely vulnerable “juicy targets” as Air Force Gen. John Hyten, the United States’ most senior warfighting space general, describes the current operational assets with which he is equipped to fight. As a nation, we risk losing future space wars if we wait to adapt ourselves after these changes have occurred.

Private investor perspective

The SmallSat revolution now underway has obvious national security value, but should the investor community continue to invest in space as the next economic frontier? The answer is an unequivocal ‘yes’, but as much as the next generation space economy parallels the internet expansion of the last 20 years, the needs and expectations are different. The financing community, both equity and debt financing, should worry less about being an early stage investor in the next “unicorn” and focus more on solid business fundamentals with realistic expectations, vision and risk. Legacy space companies have required tremendous capital expenditures (CAPEX) before revenue generation, yet many new companies are discovering through standardization, smart partnering, and leveraging off-the-shelf technologies, that is no longer the case. Because of that CAPEX, low earth orbit (LEO) remained for decades the exclusive domain of National Security and “Civil” Space, meaning NASA and NOAA endeavors. Today, it is rapidly becoming a successful commercial economic domain, one where utilization and exploitation is no longer the privilege of a few governments but open to virtually everyone including students. This revolution is now well underway and is accelerating as humanity becomes ever more communicative and data consuming. New missions, both governmental and non-profit, aim to improve our awareness of our planet and to help cure what ails it. Better weather prediction will enable more informed operational planning, preparation, and response to weather catastrophes. Increased export of these services will improve other peoples lives as well as our own. To get the best value for the taxpayers dollar, competitive/fixed price contracting for these commercial products and services needs to be the rule, not the exception. Private investors have very rigorous due diligence processes in place and are underwriting the technical risk, so rarely is there a need for the cost-plus development contracts of old. Naturally, some legacy companies see the small satellite community as the existential threat they could become and are already reacting accordingly. Others, though, are seeing the future and smartly working to truly partner or leverage this next generation of technology.

## Case

### Civil Service---1NC

#### 2. The plan fails:

#### A) Mass firings, called RIFs.

Berger 25 – Senior Fellow, JD from Yale Law School.   
Sam Berger and Jacon Leibenluft, “Trump Administration’s Mass Layoffs of Federal Workers Are Illegal”, Center on Budget and Policy Priorities, 5/2/25, https://www.cbpp.org/research/federal-budget/trump-administrations-mass-layoffs-of-federal-workers-are-illegal

Since shortly after the inauguration, the Trump Administration has made it a central goal to sharply reduce the number of federal workers, with little regard to the impact on the functioning of basic government services. This effort began with an attempt to encourage voluntary resignations through the so-called “fork in the road” initiative[1] and continued with the indiscriminate termination of probationary employees. It has now proceeded to large-scale layoffs through “reductions in force” (RIFs).[2]

The consequences of a depleted workforce are already being felt across the country, from Social Security recipients’ inability to access basic services,[3] to concerns that core data systems at the Department of Health and Human Services might collapse,[4] to the Centers for Disease Control and Prevention’s inability to help investigate potential lead poisoning.[5] These impacts will only increase over time. The Administration reportedly plans additional RIFs with a goal of eliminating another 150,000 positions, on top of the 130,000 employees who have already been laid off or taken buyouts. Personnel losses on this scale are likely to undermine public health,[6] food and drug safety,[7] veterans’ access to benefits and care,[8] and many other critical government functions.

#### B) Schedule F causes circumvention.

Schulman 22 [Loren DeJonge Schulman, Vice President of Research, Evaluation and Modernizing Government at the nonpartisan, nonprofit Partnership for Public Service, formerly served in senior staff roles at the National Security Council and the Department of Defense from 2005-2015, Master in Public Policy, Distinguished Fellow for International Peace and Conflict Studies, University of Minnesota, “Schedule F: An Unwelcome Resurgence,” Lawfare, 8-12-2022, https://www.lawfaremedia.org/article/schedule-f-unwelcome-resurgence]

Best-Case Scenario: Weakening the Civil Service Risk Management Role

Over 2 million career civil servants working across dozens of large and small agencies are hired under the competitive service process. More than 70 percent work in national security-oriented agencies, such as the Defense Department, the State Department, the Treasury Department, and the Energy Department. Many more work in technical, administrative, policy, and legal roles. They do work that often results in news that makes headlines—negotiating sanctions policies, advising on the legality of drone strikes overseas, maintaining relationships with allies and partners, preparing procedures and resources for future pandemic response—and a great deal more behind the scenes that may end up on a cabinet secretary’s or president’s desk for consideration.

Author Michael Lewis describes civil servants’ responsibilities in the “The Fifth Risk,” calling the U.S government the manager of “the biggest portfolio of [catastrophic] risks ever managed by a single institution in the history of the world.” Some are obvious—the threat of nuclear attacks, for example—but most are glacial and opaque, demanding a portfolio of reliable and steady risk managers who can prioritize the nation’s security without fearing for their job security.

Thousands of such “risk managers” who work in policy-adjacent roles would be implicated by a Schedule F policy that removes the civil service protections set out for them in the Civil Service Reform Act of 1978. Civil servants today are protected against possible political retaliation, coercion, or removal by presidents and political appointees. They must be hired on the basis of relative ability, knowledge, and skills, using fair evaluation metrics. And they are protected against reprisal for whistleblowing.

These rules are frequently shorthanded derisively in (false) assumptions that civil servants cannot be fired. To the contrary, there are set guidelines for when federal employees can be lawfully terminated and disciplined based on performance or misconduct. The antiquated federal hiring process faces similar—albeit fairer—criticism, but its slowness is intended to screen for those who have “a high standard of integrity and trust to promote the interests of the public” and for good reason. Overall, these critiques misunderstand that the competitive hiring process and subsequent protections are what make it possible for civil servants to perform exceptionally, particularly in high pressure, complex policy areas where the government is managing extreme risk on behalf of the country, such as national security.

By protecting them from political reprisal, these rules give civil servants in policy roles the foundation to offer advice that may be tough for presidents to hear, to execute policies with high stakes, to report illegal activity and misconduct as a part of their duties, and to trust that they and their peers owe their first fealty to protecting and defending the Constitution. They do all of this with the confidence that their integrity will be rewarded and protected.

At best, shifting policy-aligned roles to Schedule F roles would have a chilling effect on such policy experts whom we rely on for their unique expertise, candor, and integrity, potentially making them more cautious about the advice they give, the portfolios they support, the risks they take in defending the Constitution, and their willingness to call out malfeasance or bad news.

Worst-Case Scenario: Harming National Security

At its worst, Schedule F will make it possible for presidents to remove thousands of experts who make U.S. global leadership possible. By shifting protected civil servants to at-will employees, Schedule F makes it possible to fire them without the due process currently owed to civil servants. In other words, civil servants could be fired for any reason at all—for giving unwelcome advice, for prior jobs, for being the subject of unsubstantiated accusations of any type, for perceptions of partisan affiliation, or simply for being in a role the president wishes to open up for a loyalist.

#### C) Trump goes rogue.

Friedman 25 - workforce, pay and benefits reporter for Federal News Network

Drew Friedman, “Environmental Protection Agency terminates federal union contracts, effective immediately,” Maryland Matters, August 11, 2025, https://marylandmatters.org/2025/08/11/environmental-protection-agency-terminates-federal-union-contracts-effective-immediately/#:~:text=Roughly%204%2C000%20VA%20employees%20in,speech%20wasn't%20an%20issue.

Trump issued an executive order in March citing “national security” as justification for suspending collective bargaining agreements at more than 40 federal agencies and offices. Those included the EPA, the Food and Drug Administration and the Federal Emergency Management Agency, among others with more obvious ties to national security.

The VA on Wednesday similarly said it was terminating the vast majority of its contracts with federal unions, effectively ending collective bargaining for more than 370,000 federal employees. Roughly 4,000 VA employees in police, firefighter and security positions are the only agency personnel who will maintain collective bargaining rights. The union contract terminations come after the 9th U.S. Circuit Court of Appeals last week granted the Trump administration’s request to stay a lower court’s preliminary injunction. In effect, the appeals court decision allowed agencies to move forward with implementing Trump’s March executive order to cancel union contracts at a majority of federal agencies, using the narrow legal provision that lets the president suspend collective bargaining for national security reasons. Federal unions quickly sued the Trump administration over the anti-union executive order. They maintain that Trump’s order was a form of retaliation for the labor organizations’ First Amendment protected speech. That claim was based, in part, on a White House fact sheet that said Trump signed the order because unions were “hostile” toward his policies.

The appeals court, however, determined that based on the language of the executive order itself, the president likely would have terminated the union contracts anyway, even if the federal unions’ constitutionally protected speech wasn’t an issue.

#### 3. CBR is totally useless in the public sector.

McGinnis 10 – Stanford Clinton Sr. Professor of Law, Northwestern Uni Law School. J.D., Harvard Law School.

John O. McGinnis and Max Schanzenbach, Benjamin Mazur Professor of Law at Northwestern Uni School of Law, “The Case Against Public Sector Unions,” Hoover Institution, 08-01-2010, https://www.hoover.org/research/case-against-public-sector-unions

But the potential benefits of unions in the private sector are very attenuated and probably nonexistent in the public sector. First, public employees are typically protected by civil service statutes that provide an important measure of job security and protection from arbitrary hiring and firing decisions. These statutes also tend to regulate promotion and compensation decisions. The potential for a spoils system to arise or for politicians to seek vengeance on opponents in government employ provide strong arguments for such statutes. Their omnipresence, however, at the very least mitigates the need for an additional layer of union protection. Second, governments typically face lower borrowing costs and enjoy easier access to sources of direct financing (i.e., taxation) than private sector employers, which insulates the public sector from the business cycle. Indeed, despite much talk of layoffs in government, since the present recession began in 2008, private sector payrolls have declined by over seven million, while government payrolls overall hardly budged. Third, workers who prefer government employment typically have a variety of options (federal, state, county, city) or possess skill sets that are transferable to the large private service sector. In short, the potential social benefits offered by private sector unions are not present in the public sector.

#### 4. Federal bureaucracy is dead:

#### A) Firings and funding cuts.

Pozen and Chertoff 25 – Betts Professor of Law and Director of the Center for Constitutional Governance at Columbia Law School, former Attorney Advisor at the Department of Justice, J.D. from Yale Law School, MPhil from the University of Cambridge; Professor of Law at Georgetown University, J.D. from Yale Law School.

Jessica Bulman-Pozen and Emily Chertoff, “The Administrative State’s Two Faces,” Lawfare, 02-24-2025, https://www.lawfaremedia.org/article/the-administrative-state-s-two-faces

In many ways, the first month of the second Trump administration has been shocking. The President has quickly and emphatically demonstrated his contempt for the Constitution, for Congress and the courts, and for federal workers and foreign allies alike. But if some of the particulars have come as surprises, the basic outlines of the administration’s plan to decimate the regulatory and service-providing portions of government while consolidating and building executive enforcement capacity were long evident—and long preceded Trump’s presidency.

Shortly after his election, Trump announced that Elon Musk would “pave the way for my Administration to dismantle Government Bureaucracy, slash excess regulations, cut wasteful expenditures, and restructure Federal Agencies.” The America First Policy Institute, the Heritage Foundation, and Project 2025 joined the call for “dismantling the administrative state.” Over the last month, Musk and his acolytes have indeed rampaged through many federal agencies, firing employees and slashing domestic spending and foreign aid. Trump’s own flood of executive orders targets independent agencies and civil servants, among others.

At the same time as it strikes at regulatory agencies, the Trump administration has been arrogating agency resources for a mass deportation plan that Stephen Miller calls “an undertaking every bit as . . . ambitious as building the Panama Canal.” Even as it attempts to purge FBI agents seen as insufficiently loyal, the administration has detailed FBI and DEA officers and U.S. Marshals to interior enforcement work. It has used military planes for removals and the Guantanamo military base for immigration detention, and it is actively “ramping up plans to detain undocumented immigrants at military sites across the United States.” As they look on, the very same actors calling to tame the administrative state argue for expanding U.S. military capacity, increasing the number and authority of ICE officers, and devolving power to law enforcement field offices.

Recent Supreme Court decisions have greased the wheels of this agenda, undermining agency regulation while championing executive enforcement. This past summer, the Court overruled Chevron. It limited the reach of agency adjudication. It eased challenges to agency rules based on cherry-picked comments in the record and allowed suits many years after a rule’s promulgation. The Court has also been developing an appointment and removal doctrine that insists on presidential control, and it has begun to question long-standing principles concerning congressional delegation of authority to agencies. Despite this anti-administrative turn, however, many agencies have grown more powerful, and less constrained, than ever. Law enforcement, corrections, and intelligence agencies’ work has gone untouched by both the Supreme Court’s holdings and political calls to dismantle the administrative state.

#### B) Expertise.

Nichols 25 – Professor Emirituss of National-Security Affairs at the U.S. Naval War College, PhD in Government from Georgetown University, M.A. in Political Science from Columbia University.

Tom Nichols, “The Death of Government Expertise,” The Atlantic, 02-17-2025, https://www.theatlantic.com/ideas/archive/2025/02/career-civil-servant-end/681712/

DOGE isn’t really a department; it’s not an agency; it has no statutory authority; and it has little to do with saving money, streamlining the bureaucracy, or eliminating waste. It is a name that Trump is allowing a favored donor and ally to use in a reckless campaign against various targets in the federal government. The whole enterprise is an attack against civil servants and the very notion of apolitical expertise.

Trump allies make noises about expert failures—and yes, experts sometimes do fail. In particular, MAGA world continues to demonize what its constituents believe was the medical establishment’s attempt to curtail civil rights during the coronavirus pandemic. (Those are arguable charges; Trump himself presided over a wave of shutdowns in 2020.) None of these complaints explains why DOGE teams have been unleashed in places such as the Department of Veterans Affairs, the Federal Aviation Administration, and the National Reconnaissance Office, which is responsible for American spy satellites. Worse, Musk’s team accidentally posted sensitive information from NRO in what one intelligence official called a “significant breach” of security.

DOGE also blundered into dismissing hundreds of people from the National Nuclear Safety Administration, the agency within the Energy Department that is responsible for the stewardship of the nation’s nuclear-weapons stockpile. It’s one thing to be angry about having to wear a mask at Costco; it’s another to engage in the apparent indiscriminate firing of more than 300 people who keep watch over nuclear materials. (The agency backtracked on Friday and rescinded some of those terminations.)

Populists are generally wary of experts, especially those who work for the government, but Musk is no man of the people: He is the richest human being in the world, and he runs major companies that rely both on government-provided expertise and significant government subsidies. As my colleague Anne Applebaum wrote, “Musk has made no attempt to professionally audit or even understand many of the programs being cut”—a willful indifference that gives away the game.

Musk’s assault on expertise is coming from the same wellspring that has been driving much of the public’s irrational hostility toward experts for years. I have been studying “the death of expertise” for more than a decade, and I have written extensively about the phenomenon in which uninformed laypeople come to believe that they are smarter and more capable in almost any subject than experts. The death of expertise is really about the rise of two social ills: narcissism and resentment.

#### C) The Courts.

Trujillo and Dichio 25 – Research Director of the Wason Center for Civic Leadership at Christopher Newport University, PhD and M.A. in Political Science from Michigan State University; Professor of Political Science at the University of Utah, PhD in Government from Cornell University.

Rebecca Bromley-Trujillo and Michael Dichio, “The State of American Federalism 2024–2025: Resisting and Reinforcing the Rise of the Transactional Presidency,” Publius, 07-22-2025, https://academic.oup.com/publius/article/55/3/415/8211977

Some of the Court’s rulings this past term had more indirect effects on federalism while also having profound consequences for the administrative presidency. In particular, the Supreme Court’s challenge of the administrative state might undermine the administrative presidency by limiting the scope of bureaucratic agency autonomy, as in the case of Loper Bright. Since Trump seeks to weaken and dismantle the administrative state, Loper Bright and the Court’s challenge to the administrative state has actually aligned with Trump’s bureaucratic retrenchment efforts, at least for now. Loper Bright overturned the judicial deference provided to bureaucratic agencies; it held that judges no longer must defer to agency officials when interpreting ambiguous federal statutes, overturning the “Chevron deference” doctrine. In this way, Loper Bright shifts power from the executive branch to the judicial branch, as presented in last year’s Annual Review. Thus, with a Supreme Court supportive of executive power (but skeptical of the administrative state) coupled with the rise of a more transactional presidency, American intergovernmental relations remain in an uncertain transition. With these changes, states can potentially deepen their divergence as they challenge federal administrative regulations in a Supreme Court more open to questioning the administrative state.

Other administrative state rulings this term may also weaken federal agency power. For example, Corner Post, Inc. v. Board of Governors of the Federal Reserve System held that federal rules and regulations are open to challenge under the Administrative Procedure Act, expanding the time frame to sue federal agencies. Indeed, the dissenting opinion from Justice Ketanji Brown Jackson claimed that combined with the Court’s decision in Loper-Brown, Corner Post would create a “tsunami of lawsuits,” which could “devastate the function of the federal government” (Howe 2024). Moreover, the Court concluded that Securities and Exchange Commission (SEC) civil enforcement proceedings must proceed in an Article III court before a jury in SEC v. Jarkesy. The 6-3 win for the regulated parties suggests that the environment is favorable for plaintiffs challenging agency rulemaking and adjudication in general.

#### 5. Diplomacy is thumped.

#### B) Trump thumps diplomacy.

Weinstein 25 – Deputy director of the Middle East Program at the Quincy Institute for Responsible Statecraft

Adam, “Trump Is Blowing Up Soft Power,” The Nation, June 11, 2025, https://www.thenation.com/article/world/trump-diplomacy-power-aid-development/#

As the Trump administration tightens its grip on government, it is branding diplomacy as personal theater and sidelining the institutions that once sustained it—trading soft power and lasting influence for fleeting spectacle. What’s being lost isn’t just influence but also understanding.

For this reason, “soft power,” a term coined by the late Harvard political scientist Joseph Nye to describe influence through attraction rather than coercion, may be better understood today as “soft diplomacy”: Washington’s ability to understand other societies—and for those societies to understand America.

Understanding, on its own, doesn’t guarantee sound foreign policy—especially when it’s routinely used to justify a reflexive commitment to American primacy, military intervention, or zero-sum competition. But dismantling global engagement, educational exchange, and soft diplomacy all but ensures worse outcomes—and makes it harder to carry out good policies when they do emerge. By tying diplomacy to the president’s personal brand—as if it belongs to one person or administration—the US erodes its long-term credibility and undermines the very diplomats charged with carrying it out.

#### 6. Environment is thumped.

#### A) Even before Trump, the EPA failed to effectively do its job.

Read 23 – Watershed journalist at WHYY.

Zoe Read, “Environmental groups say EPA failed to meet Clean Water Act requirements for refineries, chemical plants.” WHYY, 04-11-2023, https://whyy.org/articles/lawsuit-epa-failure-regulate-chemicals-clean-water-act/.

Environmental groups filed a federal lawsuit on Tuesday against the Environmental Protection Agency (EPA), claiming the agency has failed to update restrictions for pollutants released into the water by oil refineries, chemical plants, and factories.

The EPA’s alleged lack of action violates Clean Water Act requirements to update regulations at least every five years, and require facilities to utilize modern filtration systems, according to the plaintiffs. The lawsuit was filed in the U.S. Court of Appeals for the Ninth Circuit in San Francisco by the Environmental Integrity Project and other environmental organizations.

The filing follows an Environmental Integrity Project report that found the Delaware City Refinery, owned by PBF Energy in New Castle County, released more than one million pounds of nitrogen into the Delaware River in 2021. That’s equivalent to the amount of pollution generated by about 10 municipal sewage plants, according to the Environmental Integrity Project.

An EPA spokesperson said the agency cannot comment on pending litigation.

“These industries are some of the dirtiest; releasing billions of gallons of wastewater into our rivers, streams, and lakes each year — wastewater that contains nitrogen that fuels algae blooms and chokes the life out of waterways, and toxics that are harmful to humans and fish, like benzene and selenium,” said Jen Duggan, deputy director of the Environmental Integrity Project.

Some regulations for chemical discharges haven’t been updated in 40 years, giving the EPA what Duggan calls a “free pass to pollute.” Certain chemicals haven’t been regulated by the agency at all, she said.

#### B) Environmental expertise is permanently dead. Brain drain’s irreversible.

Newton 25 – Journalist at The Debrief, Founder of VOCAB Communications.

Chrissy Newton, “Brain Drain: How Trump’s Second Term Is Reshaping the Future of U.S. Science,” The Debrief, 04-17-2025, https://thedebrief.org/brain-drain-how-trumps-second-term-is-reshaping-the-future-of-u-s-science/

“The U.S. was a beacon of light for science research, attracting the best students from all over the world for their science education and funding the best research labs in many fields,” the research fellow said. “The recent political changes are gutting the present and future of scientific research in the US in every field. Building a career in science research in the US was always challenging, but it now seems pretty impossible for early career researchers.”

The postdoctoral researcher explained how this could affect the U.S. scientific future, citing the “gut-wrenching funding cuts to universities, research funding agencies, and general ideological attacks on universities trying to bring them down and force them to close shop.”

“The damage from the past three months alone will take decades to recover for science in the US, and no early career researcher can afford to wait a decade to start their career,” they said. “The US is losing a generation of scientists who either have to flee abroad to keep doing their research, or have to give up altogether on science.”

With many scientists considering leaving the U.S., the resulting “brain drain” could potentially also evolve into a national security concern.

America’s Looming “Brain Drain”

“While I fully appreciate the need for safeguarding technologies, the reported potential 75% scientist exodus is both a scientific catastrophe and a critical national security threat,” said Daniel Ragsdale, Ph.D., former Deputy Assistant Director for Workforce and Education within the White House Office of the National Cyber Director (ONCD) and now Chief Technology Officer at Full Spectrum Cyber Solutions, in an email to The Debrief.

#### 7. Warming isn’t existential.

Willis et al. 24 – Associate Director, Meselson Center; Senior Policy Researcher; Professor of Policy Analysis, Pardee RAND Graduate School. Member of the Council on Foreign Relations. Ph.D., Engineering and Public Policy, Carnegie Mellon.

Henry H. Willis, Anu Narayanan, Benjamin Boudreaux, Bianca Espinosa, Edward Geist, Daniel M. Gerstein, Dahlia Anne Goldfeld, Nidhi Kalra, Tom LaTourrette, Emily Lathrop, et al., “Global Catastrophic Risk Assessment,” RAND, 10-30-2024, https://www.rand.org/pubs/research\_reports/RRA2981-1.html

Probabilities of Rapid and Severe Climate Change What would be required for such large-scale effects to be realized, and how likely are those conditions to develop? The latest projections of future climate change are based on a set of emission scenarios that result in different levels of radiative forcing. Those scenarios imply different economic development and technology pathways, as well as different levels of global investment in GHG-emission reductions. Those projections suggest that the world is not on track to limit warming to less than 2.0°C, much less 1.5°C. That level of warming is likely to be realized as early as the 2030s.27 Despite the focus on 1.5 to 2.0°C as a key global warming threshold, greater magnitudes of global warming are possible and, given the current state of emission reductions, even probable (Table 7.2). Some scenarios project warming of up to 2.5°C (4.5°F) by 2050 and 4 to 5°C (7.2 to 9.0°F) by 2100.28 These increases imply much larger effects, including up to 1 m (39 inches) of sea-level rise by 2100. Nevertheless, even at these more-extreme magnitudes of climate change, it is not clear that these constitute global catastrophic or existential risks. At present, global GHG emissions are tracking along a trajectory that would imply warming on the order of 2 to 3°C by 2100, making such worst-case scenarios unlikely, particularly by 2050.29 Any one or any combination of four developments would have to transpire to drive greater magnitudes of climate change in the 21st century (Table 7.3). First, a resurgence in GHG emissions would have to reverse progress made in the past decade, particularly in wealthy countries. Specifically, this could involve expanded use of coal, which has seen a significant contraction in North America and Europe, combined with continued exploitation of natural gas resources. This would cause emissions to accelerate in the next few decades. Second, the climate would have to be more sensitive to GHG emissions than currently estimated from models and observations. Climate sensitivity is often expressed as the magnitude of global warming that would be realized from a doubling of the preindustrial atmospheric concentration of GHGs. The best estimate of climate sensitivity is 3.0°C.30 However, there is a wide range of uncertainty around this estimate, resulting in a long tail of potential sensitivity that goes higher than 5°C. That higher sensitivity could contribute to large magnitudes of climate change even for more-modest emissions. Third, social, ecological, and economic thresholds would have to be exceeded despite the efforts to manage and adapt to climate change. An inability for agricultural production to be managed in the face of high rates of climate change, insufficient freshwater resources to meet human demand despite conservation efforts, and rates of sea-level rise greater than humans can retreat from the coastline would all be examples of potential limits to adaptation.31 Fourth, although some of the direct effects of climate change can be readily anticipated based on understanding of projected magnitudes of climate change and systems’ sensitivity to those changes, many effects can be difficult to predict or even anticipate. In particular, climate change has the potential to cause consequences that arise indirectly through cascading effects that propagate among sectors or communities.32 For example, much of the concern about climate change’s contributions to national security challenges or conflict arise from the cascading effects of drought, disasters, and other climate-related effects on human security, migration, and resource scarcity.33 Similarly, the degradation and loss of ecosystems and related services (including agriculture, fisheries, and forestry) can destabilize communities and entire regions.34 In addition to such indirect consequences, the compounded hazard of multiple effects occurring simultaneously can yield greater damage than a single effect in isolation.35 Compounded hazard can undermine the ability to manage risk, thereby increasing the likelihood adverse effects. Collectively, cascading and compounded hazards act to increase the risk of catastrophic outcomes. However, their complexity makes them difficult to predict or for anyone to assign likelihood to potential outcomes. Hence, although cascading and compounded hazards could pose global catastrophic or existential risk, a lack of understanding of the pathways by which such consequences would arise contributes to significantly more uncertainty than when assessing the moredirect and -discrete effects of climate change. In addition to the likelihoods of exceeding global average temperature thresholds, the likelihood of catastrophic climate change is also informed by the probabilities of exceeding specific thresholds for key risks (see Table 7.4 for examples). For example, irreversible melting of the Greenland or Antarctic ice sheet would reshape coastlines around the world, permanently inundating existing population centers where economic activity is concentrated. The simultaneous loss of multiple breadbasket regions that produce much of the world’s staple crops could significantly undermine global food security, particularly if those effects were sustained over multiple years. Existing literature is consistent in reporting the plausibility of such scenarios but reflects significant uncertainty about their likelihoods.36 This uncertainty is attributed to multiple sources, including the method of probability assessment (e.g., biological or physical modeling versus expert elicitation), estimates of the sensitivity of key risks to global warming, and the use of different climate scenarios to estimate effects. However, Table 7.4 also indicates that the probabilities of exceeding thresholds for key risks are relatively high. In almost every example in Table 7.4, the low end of the probability range is greater than 1 percent; in most cases, the upper end of the probability range exceeds 50 percent, particularly for large magnitudes of warming and long time horizons. Probabilities have generally increased, rather than decreased, in response to scientific advances over time. Although some of these outcomes (e.g., melting of ice sheets) have direct implications for global catastrophic risk, the consequences of other key risks (e.g., shifts in patterns of ocean circulation, such as ENSO) are less certain because their consequences would manifest indirectly through effects on other systems.

### Presidency---1NC

#### 1. No Trump lash out. He’d never risk national suicide. Plus, the military says no.

Carpenter et al. 25 – Professor of Political Science at the University of Massachusetts Amherst, PhD in Political Science from the University of Oregon; Researchers in the Human Security Lab at the University of Massachusetts Amherst.

Charli Carpenter, Grace Bernheart, Joseph Mara, and Zahra Marashi, “Military-trained Americans’ trust in the president’s nuclear launch authority dropped during Iran Crisis. Here’s why it matters.,” Union of Concerned Scientists, 07-18-2025, https://thebulletin.org/2025/07/military-trained-americans-trust-in-the-presidents-nuclear-launch-authority-dropped-during-iran-crisis-heres-why-it-matters/

With nuclear brinksmanship so commonplace, it’s easy to feel like the world could easily spiral into a nuclear war. Even some proponents of the “nuclear taboo”—the moral opprobrium against nuclear weapons use—fear it could be collapsing. That’s because most studies of the nuclear non-use norm look to public opinion or political elite opinion to measure the strength of the taboo. But listening to those in a position to actually execute a nuclear launch—members of the military—paints a different picture.

At UMass Amherst’s Human Security Lab, we’ve been studying US military and veteran attitudes toward US nuclear doctrine and the legality of nuclear use. Even before the latest crisis, our data showed that contrary to popular belief, the nuclear taboo may actually be strengthening in an era of resurgent nuclear brinksmanship—if not among political elites, then among members of the military who would be in a position to actually launch such a weapon.

That’s partly because, like the general US population, current and former members of the US military largely believe that the use of nuclear weapons against civilian cities would be unlawful. This matters because members of the military are required under the Uniform Code of Military Justice to disobey manifestly unlawful orders. (See figure 1.)

Our survey has found that military-trained Americans also largely support a no-first-use norm—a significantly more restricted posture than that actually allowed by US doctrine. Moreover, a major concern of the general US population has long been the President’s unilateral launch authority. For example, one poll found that 61 percent of Americans are either somewhat or very uncomfortable with the US president having sole nuclear launch authority.

The Human Security Lab / YouGov survey found a similar concern among military-trained Americans: only a minority of troops and veterans (30 percent) believe that the US Commander-in-Chief should have the authority to launch a nuclear weapon whenever he or she deems it necessary. Nearly half (48 percent) say they would prefer a policy that nuclear weapons could only be used under “limited and extreme circumstances.” Twenty-one percent of military-trained respondents said nuclear weapons “should never be used under any circumstances.” (See figure 2.)

Here’s the interesting thing: Our research team, in collaboration with YouGov, was collecting this latest data when the recent crisis in Iran broke out. This enabled us to see how a real-world crisis might itself affect military attitudes toward nuclear use. Would it rally troops around a Commander-in-Chief or render them even more skeptical of Presidential launch authority?

In fact, military-trained Americans shifted even further away from a trust in Presidential launch authority over the course of the recent Iran crisis. Our survey was in the field between June 9 and June 23, spanning the period when first Israel and then the United States attacked Iran’s nuclear sites on June 13 and June 21 respectively. Looking at our data as a three-phase time-series, the percentage of survey respondents supporting the President’s discretionary authority over nuclear weapons dropped a full 10 points as the crisis unfolded. (See figure 3.)

This suggests that troops will err on the side of caution and restraint when it comes to nuclear escalation, especially in a context where launch authority resides in the hands of a single person. Those participants expressing an interest in limiting US nuclear posture to extreme situations were also asked to describe the kinds of limits they want placed on nuclear weapons. Forty-four percent said they supported nuclear use only if authorized by an additional oversight authority besides the President. (See figure 4.)

In addition, 62 percent said they would support nuclear use only in retaliation for a nuclear strike against Americans—a “no-first-use” policy that would represent a considerable shift from current US doctrine. Thirty-three percent said they supported nuclear use only if such weapons could be directed solely at military objectives; 29 percent said nuclear weapons should only be used if there would be no radiological effects on civilians or the environment; and 27 percent stated they would support nuclear use only against other nuclear powers.

Moreover, these numbers have jumped since President Trump took office in January, compared to a similar Human Security Lab / YouGov poll fielded in July 2024. That earlier survey took place during the height of the US general election season when the identity of the future Commander-in-Chief was an unknown. Across every category, the percentage of military-trained respondents arguing in favor of specific limitations on nuclear launch authority has risen since last year—suggesting that the current era of nuclear brinksmanship is actually strengthening the nuclear taboo, at least as regards the military. (See figure 5.)

We also invited respondents in both surveys to imagine a hypothetical scenario where they were in the military and were ordered to participate in a chain of events that would culminate in indiscriminately nuclear-bombing a civilian city—a scenario still envisioned by current US plans for general nuclear war.

In the most recent survey, fewer than half (44 percent) of current and former military personnel stated they would obey such an order. Forty-two percent stated openly they would refuse. In fact, the number of military-trained respondents who say they would obey an order to nuclear-bomb a civilian city has actually dropped by 5 percentage points since last year—slightly more than the margin of error for the survey.

Alejandro Perez 25. J.D. Candidate at Boston University, B.A. in political science and sociology from Boston College. “The Return of Schedule F and the Perils of Mandating Loyalty in the Civil Service.” *Boston University Law Review*, 104(7), 2233-2265.

#### 3. Democracy’s resilient. No risk of fascism in the US.

Barkan 25 – Political Commentator and Novelist, former Political Columnist at The Guardian, M.A. in Political Science from New York University.

Ross Barkan, “Can the United States resist fascism? Whether Elon Musk’s salute was intended or not, America is too big for authoritarianism to take hold,” The New Statesman, 01-21-2025, https://www.newstatesman.com/international-politics/2025/01/can-the-united-states-resist-fascism

Many commentators and analysts warn of the dark spectre of fascism that a second Trump term brings. With fewer guardrails, can the American republic survive? Is this like late Weimar, right as the Nazis took power? Should the UK, with their staid Labour government, fear the rise of a far-right tyrant across the ocean? Elon Musk, who many have quipped is Trump’s co-president, just performed what looked like a Nazi salute at a Trump inauguration event. No matter his intention, that alone is unnerving.

Fear, with Trump, is always warranted. He is unreliable and unpredictable. For now, he talks peace, and appears to have pressured Benjamin Netanyahu to accept a ceasefire deal in the war in Gaza. But violence is never far from his mind. The Western world has every right to be wary. An isolationist Trump is preferable to a classic neoconservative — if Trump had any of George W. Bush’s adventurism in him, it’d mean cataclysms across the globe – but one can never know where his id will take him.

Here’s the truth of Trump, though, and the United States itself: the nation is simply too big for fascism. Many liberals in the US rarely acknowledge this, preferring to imagine their federated sprawl is the equivalent of a small European nation living under the yoke of a strongman like Viktor Orbán. The closest America ever came to fascism was on 12 September 2001, and even then – with the febrile conditions virtually perfect, never again to be repeated – democracy did not die. There’s a spectral American patriotism that flickers to life whenever there’s war on the horizon. Yet the United States remains a country of regions and counties and townships, of miniature republics and fiefdoms.

Yet experiencing America online, through Twitter or any other social media platform, allows us to believe otherwise, especially when Musk is there to pollute so much of it. If Musk represents oligarchy run amok – he was deeply intertwined with the American government through both SpaceX and Tesla even before Trump handed him the Department of Government Efficiency to run – he has no serious governing programme. He’d rather post 50 times a day than go through the effort to subdue the world’s richest nation.

Those who speak of American fascism tend to do so from the airy citadels of media and academia. They barely seem to understand how the US functions. Consider public education. Any American fascist worth his bright red tie would be able to subdue the schools and begin to teach MAGAdemics, or at least get all those pesky liberal books banned – all of them, because fascism doesn’t demand anything less. In the US, there are nearly 14,000 separate public school districts with more than 94,000 elected board members. Some of the larger counties, like the battleground of Loudoun in Virginia, have a single board. Others are carved up into so many segregated duchies that consensus can never be achieved. On New York’s Long Island, among just two counties, there are 125 public school districts. There is no such thing as a centralised educational system in America. The US’s educational sprawl is Hapsburgian, with no single monarch able to dictate its direction for very long.

How is Trump supposed to actually make the Democratic governors and legislatures listen to him? Most crucial American law-making is done at the local level. It is state and county governments setting tax rates, managing healthcare networks, and overseeing public transport. Presidents, certainly, can be a hindrance to governors, and there’s no doubt liberal New York and California will fare worse under another Trump presidency than they did under a Biden one. The governors could see their federal cash allotments dwindle and find communication with the White House mostly impossible. Any infrastructure project that does require federal approval could be dead on arrival.

But this doesn’t mean the democratic project is over. Trump, who loses focus easily and lacks managerial competence, will struggle to get much legislation passed in a Congress that Republicans only narrowly control. If he strains, like in 2020, to hold onto power illegally as his term winds down, the party will be newly incentivised to boot him aside. He’ll be in his eighties then, and other ambitious Republicans like Vance long for the Oval Office.

US democracy is more durable than it appears. It must be remembered that the Weimar republic, at the time of its dissolution, had barely lasted 14 years. Putin’s Russia toyed with democracy for ten. Xi’s China has never known anything approaching mass elections. The US, for all its absurdities and manias, has been a functioning republic for more than two centuries. It will take more than Donald Trump to break it.

### Whistleblowing---1NC

#### The OBBB crushes whistleblower protections. It makes civil servants at-will unless they give up 5% of their salary. That also crushes union participation.

Jamieson 25 – Labor Journalist at HuffPost.

Dave Jamieson, “A Sneaky Policy Buried In The GOP Tax Bill Could Blow Up The Civil Service,” HuffPost, 05-22-2025, https://www.huffpost.com/entry/house-gop-tax-bill-at-will-employment\_n\_682f8bcfe4b0e1fe96d65092

The One Big Beautiful Bill Act, which passed 215-214, cuts $1 trillion in federal health and food programs while adding nearly $4 trillion in tax cuts steered primarily to the wealthy. But it also includes a little-noticed provision that would force new federal employees to either give up traditional job protections or take a significant cut to their compensation.

If the measure survives in whatever package the GOP-controlled Senate passes, unions warn it could turn the federal workforce into an old-school spoils system.

“It’s a huge policy change masquerading as a small budget provision,” said Daniel Horowitz, legislative director at the American Federation of Government Employees, a union representing more than 800,000 workers.

“It torches the civil service.”

And it does so in a sneaky way.

Federal workers receive retirement benefits through what’s known as the Federal Employees Retirement System, or FERS. Retirees are paid an annuity based upon their length of service, funded through contributions from both employees and their agencies. Current workers chip in a certain percentage of their paycheck into FERS — either 0.8% or 4.4%, depending on when they were hired — and the government covers the rest.

The GOP measure would force new federal employees to pay a whopping 5% surcharge — bringing their FERS contribution to 9.4% of their pay — unless they agree to become an “at-will” employee. That means they would waive their right to appeal their termination except in particular cases like racial discrimination.

The average salary of a new federal worker entering the FERS system is around $71,000, according to the Congressional Budget Office, the agency inside Congress that analyzed the GOP bill. So the typical worker would have to give up $3,500 a year just to have job protections that have long been standard.

Steve Lenkart, executive director of the National Federation of Federal Employees, a union representing 100,000 workers, said the policy amounts to a “bribe.”

“Another way to look at it is criminal extortion,” he said. “They’re saying, ‘We will charge you more … if you choose to access the laws that are on the books.’”

He suspects most workers would choose to have more money in their paychecks, even though “you’d lose all your protections to report waste, fraud and abuse.”

Indeed, the budget office estimates that only one-quarter of new hires would sacrifice 5% of their pay in order to keep their civil service rights. And therefore the budget savings from the measure — that is, the whole reason it’s supposedly in a tax bill — would end up being quite small.

CBO figures the policy would increase revenue by just $4.7 billion over 10 years. By comparison, the Republican bill cuts nearly $700 billion from Medicaid, the health care program for the poor, over the same period.

Horowitz said the meager savings betray the policy’s real intent: to turn the federal government into an at-will workforce in which employees can be fired for any reason at all.

“With a small provision here they’re basically undoing all of Title 5,” he said, referring to the part of U.S. code that outlines federal job protections. “It’s 150 years of civil service rules that are being thrown out here and nullified.”

While it may be tucked into a tax package, the policy fits neatly into the Trump administration’s broader attacks on federal workers and labor groups.

The White House has tried to unilaterally shut down federal agencies, terminate tens of thousands of probationary employees, carry out mass layoffs through “reductions in force” and strip collective-bargaining rights from up to a million workers. It is also hoping to reclassify thousands of civil servants as “at-will” political appointees through its Schedule F scheme.

Federal unions are an obstacle to all those goals, and the GOP tax measure could be one way to weaken them for good.

Unions in the federal sector cannot bargain directly over pay and benefits, but they can provide good job security by enabling workers to appeal what they believe are unfair terminations. If workers waive their right to such due process, there would be less reason for them to join a union in the first place. The at-will policy could therefore help with the long-sought GOP goal of shrinking the membership of federal unions.

Matt Biggs, president of the International Federation of Professional and Technical Engineers, said the Trump administration seems determined to “turn the federal sector into Walmart.”

#### No AI governance impact.

Sechser et al. 19 – Todd S. Sechser is the Pamela Feinour Edmonds and Franklin S. Edmonds, Jr. Discovery Professor of Politics and Public Policy at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs; Neil Narang is an Associate Professor of Political Science at the University of California, Santa Barbara, and Senior Research Scholar at the Institute for Global Conflict and Cooperation; Caitlin Talmadge is Associate Professor of Security Studies in the School of Foreign at Georgetown University, as well as Senior Non-Resident Fellow in Foreign Policy at the Brookings Institution

Todd S. Sechser, Neil Narang, Caitlin Talmadge, “Emerging technologies and strategic stability in peacetime, crisis, and war,” Journal of Strategic Studies, Vol 42, Iss 6, 8-22-19, https://www.tandfonline.com/doi/abs/10.1080/01402390.2019.1626725?journalCode=fjss20

There is growing consensus that emerging technologies have the potential to be ‘game-changers’ in military and strategic affairs.2 As a result, many defence experts view these coming technological disruptions with deep concern. In particular, it is widely believed that the proliferation of new technologies poses a threat to the long-term foundations of US military dominance. Weaker powers, according to this view, will be able to harness new technologies to make sudden and dramatic improvements to their capabilities, ultimately challenging US military superiority. A recent Center for Strategic and International Studies report, for example, forecasts ‘the gradual erosion of significant military advantages that the United States has long enjoyed.’ 3

This pessimism is broadly shared within the US defence establishment as well. During his term as Secretary of Defense, former US Senator Chuck Hagel warned that the diffusion of new technologies posed ‘a clear and growing challenge to our military power.’ 4 Fears about the effects of emerging technologies have driven significant changes in US defence planning, particularly the Obama administration’s so-called Third Offset Strategy, which aimed to harness advanced technologies to gain an edge over US adversaries. More recently, the Trump administration’s 2018 National Defense Strategy pointed to rapid technological change as one of the defining challenges of the future security environment.5

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

#### No meltdown impact--too little radiation.

Wald 11 – Former Energy reporter at the New York Times for 27 Years, Senior Communications Advisor at the Nuclear Energy Institute

Matthew L Wald, “N.R.C. Lowers Estimate of How Many Would Die in Meltdown,” The New York Times, July 29, 2011, https://archive.ph/s5eMP#selection-4379.0-4379.56.

ROCKVILLE, Md. — The Nuclear Regulatory Commission is approaching completion of an ambitious study that concludes that a meltdown at a typical American reactor would lead to far fewer deaths than previously assumed.

The conclusion, to be published in April after six years of work, is based largely on a radical revision of projections of how much and how quickly cesium 137, a radioactive material that is created when uranium is split, could escape from a nuclear plant after a core meltdown. In past studies, researchers estimated that 60 percent of a reactor core’s cesium inventory could escape; the new estimate is only 1 to 2 percent.

A draft version of the report was provided to The New York Times by the Union of Concerned Scientists, a nuclear watchdog group that has long been critical of the commission’s risk assessments and obtained it through a Freedom of Information Act request. Since the recent triple meltdown at the Fukushima Daiichi nuclear plant in Japan, such groups have been arguing that the commission urgently needs to tighten safeguards for new and aging plants in the United States.

The report is a synthesis of 20 years of computer studies and engineering analyses, stated in complex mathematical terms. In essence, it states that if a prolonged loss of electric power caused a typical American reactor core to melt down, the great bulk of the radioactive material released would remain inside the building even when the reactor’s containment shell was breached.

Big releases of radioactive material would not be immediate, and people within a 10-mile radius would have enough time to evacuate, the study found. The chance of a death from acute radiation exposure within 10 miles is therefore near zero, the study projects, although some people would receive doses high enough to cause fatal cancers in decades to come.

#### No impact to cyberattacks. Empirics.

Mueller 21 – Member of the political science department and senior research scientist with the Mershon Center for International Security Studies at the Ohio State University. Visiting fellow at the Brookings Institution, the Hoover Institution at Stanford University, and the Norwegian Nobel Institute in Oslo.

John Mueller, 2021, “The Stupidity of War,” Chapter 7: Proliferation, Terrorism, Humanitarian Intervention, and Other Problems 1.

There is also great concern about an impending, if presumably viral, invasion by cybergeeks to commit sabotage, to steal intelligence, or to spread propaganda. Any military disruptions are likely to be more nearly instrumental or tactical than existential, and they call far more for a small army of countercybergeeks than for a large standing military force. In 2003, Defense Secretary Leon Panetta proclaimed cyber to be “without question, the battlefield for the future,” but, as Micah Zenko pointedly observed, the Pentagon was spending less than 1 percent of its budget on cybersecurity.70 If that proves adequate to deal with the problem, it would seem, intuitively, to be something of a bargain. Cyber, even more than terrorism, is the weapon of the weak. In fact, suggests Jon Lindsay, it seems entirely possible that “chronic cyber friction is a sign that more dangerous threats have been constrained.”71 Cyber, unlike terrorism, has yet to kill anybody.72 Nonetheless, we and our possessions are increasingly becoming interconnected, and the internet, key to this process, is vulnerable. For example, the brake pedal on cars is no longer actually connected to the brakes as in days of old, but rather to a potentially hackable computer that tells the brakes what to do. In a recent book, rather cheerlessly entitled Click Here to Kill Everybody, Bruce Schneier warns that “everything is becoming vulnerable ... because everything is becoming a computer,” and, “more specifically, a computer on the Internet,” and warns of “hackers remotely crashing airplanes, disabling cars, and tinkering with medical devices to murder people.”73 Although it may be possible to commit sabotage using such methods, the record thus far is not very impressive. The United States, apparently in league with Israel, does seem to have explored the offensive use of cyber. Most famously, it managed to hamper Iran’s progress toward developing a nuclear weapon. However, the hampering proved to be only temporary, and the effort was ultimately counterproductive in that it encouraged Iran to accelerate its nuclear program at the time.74 There have also been cyber efforts by the United States to interfere with missile launches in North Korea, but there seems to be no proof that such interference was successful. There were multiple explanations for the failures, and eventually the North Koreans did solve whatever the problem was. As one official warns, “You have to be cautious whenever the enthusiasts of cyberattacks come in and claim victory.”75 There is some concern about disruptive cyberattacks on infrastructure, and, indeed, Russian hackers have caused a couple of power outages in Ukraine. However, they are much outclassed by squirrels who are credited with causing well over a thousand outages – and even jellyfish, who managed to take down a nuclear reactor in Sweden in 2013. 76 It was in 2002 that the Washington Post was relaying on its front page the views of “government experts” that “terrorists are at the threshold of using the Internet as a direct instrument of bloodshed.”77 And a few years later an article in Forbes was solemnly assuring us that, while “four years ago al Qaeda operatives were taking flying lessons,” they were now “honing a new skill: hacking.”78 Nonetheless, despite such warnings, no terrorist has ever launched a successful cyber-attack – that is, while cyber has vastly expanded during this century, terrorists do not seem yet to have gotten the hang of it. As Michael Kenney has observed, although the United States has experienced “hundreds of thousands of cyber-attacks” in the ensuing years, none rose to the level of cyber-terrorism,” which he defines as “politically motivated computer attacks against other computer systems that cause enough physical harm or violence to generate fear and intimidation beyond the immediate victims of the attacks.”79 And even under the worst-case scenarios, cyberattacks are likely to be of limited physical effect.80 Moreover, if terrorists want to express their concerns through violence, there are much easier methods for committing it than by hacking. Even if it becomes possible for a hacker to kill somebody, shootings and bombings are likely to accomplish the same goal far more reliably.81