**Bankruptcy DA**

**DA – 1NC**

**Corporate debt burdens are sustainable---unexpected deterioration in credit conditions triggers rapid systemic collapse, especially for chemicals.**

Sarah **Limbach et al. 12/3**, Limbach is Primary Contact at S&P Global Paris; Barbara Castellano is Primary Contact at S&P Global Milan; Roberto H Sifon-arevalo is Primary Contact at S&P Global New York, "Refinancing Risk: What If The Wind Changes?" S&P Global Ratings, 12/03/2025, https://www.spglobal.com/ratings/en/regulatory/article/refinancing-risk-what-if-the-wind-changes-s101660722

Corporates are already adjusting to higher refinancing costs, but unexpected increases could pose challenges for companies at the lower end of the rating scale. Sovereigns appear more resilient to potential significant shocks in financial markets.

How this will shape 2026

Maturities seem manageable amid higher refinancing costs. About $1.35 trillion of nonfinancial corporate debt will mature in 2026, as of Oct. 1, 2025, 10% higher than at the same time in 2025. That said, the weakening dollar during the first half of 2025 increased the value of non-dollar denominated debt, when converted into USD. A significant portion of upcoming maturities were issued in the low-interest rate environment of 2020/2021. Consequently, European and U.S. corporate issuers with fixed-rate 2026 maturities may face higher funding costs, of about 150 basis points across the board, if refinancing at current yields.

Pockets of risk exist among the weakest-rated issuers. Most issuers have been able to roll over their debt in recent years despite higher funding costs, but those with weaker financial or economic fundamentals could face increased pressure in 2026. Recent strong speculative-grade issuance has pushed back maturities, though refinancing risk among issuers rated in the 'CCC' to 'C' categories is evidenced by their 2026 maturities, which are more than double that of 'B-' rated issuers, as of Oct. 1, 2025. What's more, bond prices in the secondary market for bonds rated 'CCC+' to 'C' with upcoming maturities reflect a more bearish view from investors on that category.

Sovereign issuers will maintain access to financing. Even during periods of liquidity stress, such as after the global financial crisis and during/after the pandemic, sovereigns largely maintained access to funding, albeit with varying terms and conditions. Should 2026 prove turbulent, the critical role of sovereign debt as a relatively stable source of capital will once again come to the fore. We expect sovereign entities, often supported by central banks, to continue to be key players in financial markets, particularly if conditions deteriorate.

What we think and why

We anticipate that corporates will continue refinancing maturities, barring a triggering event. Potential catalysts for such an event include escalating geopolitical tensions, a marked deterioration in economic conditions, or disruptions coming from specific sectors that spread through financial markets.

Worsening credit metrics are likely to exacerbate refinancing pressure in some sectors. Excluding the financial sector, the automotive industry has the highest amount of debt maturing in 2026--over $170 billion, with nearly half stemming from European issuers. It is also the sector with the highest negative bias (issuers assigned a negative outlook or placed on CreditWatch negative). The sector's downgrade risk points to a deterioration in funding conditions going forward. Telecommunications and chemicals, packaging, and environmental services carry an elevated risk of future credit deterioration while also holding the highest amount of debt rated in the 'CCC' to 'C' categories that matures in 2026.

Beyond existing maturities, the substantial funding needs associated with AI data centers are expected to add volatility to the debt market in 2026. The scale of funding needed for these projects, coupled with uncertainty surrounding their valuations, is already generating some market volatility.

What could change

Continued geopolitical or economic tensions may lead to a moderate deterioration in financing conditions. If financing costs rise significantly, investors will likely be more selective in the lower end of the rating scale. Industries that are already facing challenges--such as automotive and basic chemicals--would likely be most affected. Conversely, sectors benefiting from AI and data center investments--including high-tech, automation, electrification, and parts of the real estate and construction sectors--could maintain better access to debt, even under less favorable conditions.

A more extreme scenario--driven by the exacerbation of existing tensions or a "black swan" event--is unlikely at this stage but could trigger a market shutdown. The most immediate risk would be a liquidity crunch, disproportionately affecting corporates with weaker credit ratings, imminent refinancing needs, or significant operating losses and cash burn. Investment-grade issuers typically have liquidity buffers and access to bank facilities and private loans. However, access to these funding channels may also be constrained in such a scenario, and a prolonged shutdown would challenge even the most resilient issuers' ability to refinance. Companies in non-essential goods and services sectors--such as leisure, durable goods, and autos--are most exposed to rapid contractions in demand. Business-to-business companies, such as auto suppliers or capital goods manufacturers, would also be indirectly exposed to a decline in end-demand, particularly those with high fixed costs, where a sharp drop in advance payments or a sudden reduction in accounts receivable would add pressure. Some sectors such as telecommunications and utilities have historically proven resilient, but idiosyncratic stresses could arise such as difficulties in reducing large investment programs or direct exposure to the disruptive event.

**The plan crashes corporate bond markets---increased union power in bankruptcy makes restructuring less efficient and more likely to fail.**

Murillo **Campello et al. 18**, Campello Johnson Graduate School of Management Cornell University, Jiaping Qiu DeGroote School of Business McMaster University, Janet Gao Kelley School of Business Indiana University, Yue Zhang Universite Catholique de Louvain, “Bankruptcy and the Cost of Organized Labor: Evidence from Union Elections,” The Review of Financial Studies, Volume 31, Issue 3, March 2018, Pages 980–1013, https://doi.org/10.1093/rfs/hhx117

Despite their declining prominence, labor unions still shape workers’ participation in corporate activity. Over eight million private-sector workers in the U.S. today are represented by unions and of the largest 100 industrial firms, 33 have a unionized work force. Unions are known to use collective bargaining power to protect workers’ interests such as wages, health care, and job security (Freeman (1980) and Lewis (1986)), but less is known about the role they play in bankruptcy. At the time when workers’ investment in firm-specific human capital is most threatened, the U.S. Bankruptcy Code only safeguards wages and benefits for work already performed.1 To protect their members’ long-term interests, unions must become active parties in bankruptcy states (Haggard (1983)).

Unions are able to protect their members’ interests in several ways in bankruptcy and this paper shows that worker unionization bears significant wealth consequences for other stakeholders of the firm. As recognized creditors, for example, unionized workers may be eligible to seats on unsecured creditors’ committees under Chapter 11.2 Those committees are favored by the courts and have broad powers to (1) formulate reorganization plans, (2) request the replacement of managers, (3) block asset sales, and (4) move to convert the case into Chapter 7. Non-unionized workers with separate, small claims are not eligible to seats on creditors’ committees.3

Beyond receiving debtor-like recognition under Chapter 11, unions resort to other tactics to empower workers in bankruptcy. They organize strikes, boycotts, and public denouncements with the goal of forcing managers to acquiesce to their demands, so as to avoid disruptions that invite creditor control (Atanassov and Kim (2009)). When convenient, unions use their leverage in court so that bankruptcy proceedings allow for disruption of absolute priority rules (APR), whereby unsecured creditors’ claims lose seniority (Adler (2010)). Unions can also make bankruptcies last longer, using the courts to force parties into repeated, costly negotiations over workers’ demands. In securing continued employment for their members, unions often favor inefficient reorganizations in lieu of liquidation (Korobin (1996)). This is a key concern since firms that emerge from reorganization often re-enter bankruptcy, as unions resist asset sales and worker layoffs.

We study the impact of worker unionization on corporate creditors by looking at the price reactions of publicly traded bonds to union elections. Bond prices represent a unique value metric with which to gauge the impact of unionization onto financial stakeholders of the firm. Unlike other creditors (e.g., banks and syndicated lenders), it is difficult for investors of diffusely held bonds to renegotiate with borrowers. Bond investors, instead, dispose of their securities in the market in response to innovations to the expected value of their claims. Given the concave structure of bond payoffs (capped at the issue face values in non-bankruptcy states), bond prices are sensitive to expected losses in bankruptcy states. In particular, as their claims are senior, yet unsecured, bondholders’ expected wealth declines sharply in the face of high bankruptcy costs.4 Deviations from an orderly bankruptcy process will increase expected bankruptcy costs and lead to declines in the secondary market price of corporate bonds.

Union elections are conducted through secret ballot voting. Once a union wins over 50% of the workers’ votes, it attains legal recognition. Union rights are protected by the National Labor Relations Act and a successful election significantly increases the bargaining power of workers. Naturally, both the occurrence and the results of union elections are influenced by a number of factors. As such, the average union-win firm might differ from its average union-loss counterpart on several dimensions (both observable and unobservable). To identify our tests, we resort to a regression discontinuity design (RDD) that exploits local variation in the vote share of elections that can lead to discrete shifts in union legal status. In short, our tests contrast bond price reactions to closely won union elections with bond price reactions to closely lost union elections. Workers in close-win elections gain legal representation status while those in close-loss elections do not; yet firm characteristics and workers’ support for unions are ex-ante similar across the two groups. Given the nature of the voting process, it is unlikely for individuals or firms to precisely anticipate or manipulate the outcome of close union elections. Under these regularity conditions (which we verify in the data), relative differences in bond price reactions to close union election results can be plausibly attributed to the effect of unionization.

We conduct our analysis on a sample of 721 bond issuers witnessing worker unionization attempts between 1977 and 2010 using records from the National Labor Relations Bureau (NLRB). In short, our tests show that worker unionization negatively affects the wealth of senior, unsecured creditors. Results from RDD estimations imply that closely won union elections lead to a negative 210 (470)-basis-point average cumulative abnormal return (CAR) over a 3-month (12-month) time window.5 Closely lost elections, in contrast, are associated with economically insignificant CARs.

From a pricing perspective, the decline in bond values that we report could arise from increases in default risk or in bankruptcy costs. We next look for evidence of those effects in our data. DiNardo and Lee (2004) find no relevant impact of worker unionization on firms’ profitability or survival rates, implying negligible changes in firms’ default risk following unionization. Consistent with those authors’ results, we find no evidence that close union winners perform worse, become more likely to enter distress, or are more likely to file for bankruptcy than close union losers for several years after the vote.

We then set out to investigate the effects of unionization on bankruptcy costs. This is a difficult task and our analysis is limited by the fact that we focus on explicit bankruptcy costs. The examination necessitates data from actual bankruptcy events and we first expand our dataset to include information from the UCLA-LoPucki bankruptcy database. In this investigation, we use non-local linear regressions to compare the duration, costs, and outcomes of court proceedings across bankrupt firms with unionized workers and those without. We find that unionized firms experience more prolonged court proceed ings and are also more likely to go through inefficient reorganizations, as evidenced by a higher likelihood of emerging from bankruptcy and refiling for bankruptcy shortly thereafter. Unionized firms are also more likely to reorganize under debtor-in-possession (DIP) financing.6 In addition, firms with labor unions incur significantly higher expenses and fees paid in bankruptcy court. The results we report are consistent with the notion that unionization is associated with higher in-court bankruptcy costs. Admittedly, nonetheless, these tests could allow for a non-causal interpretation.

We thus set out to more granularly identify the welfare costs of labor unions in bankruptcy court by exploiting statutory variation in the number of seats assigned to unions on unsecured creditors’ committees (UCCs). Section 1102(a) of the Bankruptcy Code charges the U.S. Trustee with the duty of organizing a committee composed of the largest unsecured creditors of the bankrupt firm (including both unionized workers and bondholders). Following this guideline, the Trustee shall assign union representatives to seats on UCCs if they represent labor claims whose amount ranks among the largest liabilities of the firm. It is difficult to ascertain and calculate the claims of various corporate creditors, and as a result there is considerable degree of variation regarding the number of UCC seats eventually assigned to unions — seats that come at the expense of other unsecured creditors. We use this source of variation to gauge the marginal effect of unions’ empowerment in bankruptcy court onto bondholders’ wealth in bankruptcy. We collect information on the composition of UCCs of firms filing for bankruptcy between 1988 and 2010 and combine it with Moody’s data on in-court loss given default (LGD) rates. Our tests show that bondholders’ losses monotonically increase with the assignment of seats to unions on unsecured creditors’ committees. Notably, the LGD rates of secured creditors on the same firms are found to be insensitive to the number of UCC seats assigned to unions.

We also exploit firm and union heterogeneity in our RDD framework to help characterize how unionization affects bond values through expected bankruptcy costs. First, we compare subsamples of financially distressed and financially healthy firms, expecting bond price reactions to news of unionization to be particularly pronounced for firms in distress. We consider several measures of financial distress, including Altman’s Z-Score, Ohlson’s O-Score, Merton’s distance to default, as well as Moody’s credit ratings. Consistently across all measures, RDD results show that unionization has a much greater impact on the bonds of distressed firms. We also look at the funding status of firms’ pension plans. Unionized workers’ pensions are entitled to the same (high) priority assigned to their wages in bankruptcy. As such, underfunded plans will aggravate bondholders’ expected bankruptcy costs. We partition our sample based on firms’ pension funding status and find the effect of unionization to be significantly stronger for firms with underfunded plans. Finally, we examine the argument that the value impact of unions is related to their bargaining powers. The adoption of right-to-work (RTW) laws by some state legislatures allows non-union workers to enjoy the benefits of collective bargaining without paying union dues. These laws constrain unions’ financial resources, diminishing their powers (Holmes (1998)). Partitioning our sample according to whether a union election is held in a state with RTW laws, we find that the negative impact of unionization on bond values is much weaker in states with RTW laws in place (where unions are weaker).

There is a growing literature on the interplay between human capital and corporate financing. Papers in this literature often focus on the effect of labor force bargaining power (e.g., union coverage) on firms’ leverage ratios. Studies such as Bronars and Deere (1991) and Matsa (2010) document a positive relation between labor power and leverage (see Dasgupta and Sengupta (1993) and Perotti and Spier (1993) for theoretical models). The underlying theme of this stream of work is that firms increase their leverage as a way to enhance shareholders’ bargaining power over the labor force.7 Other studies propose a different argument: firms may reduce leverage to preserve workers’ human capital. Berk et al. (2010) propose a theory in which firms’ leverage is influenced by the higher wages workers demand in exchange for exposure to job loss in default states. Along this view, Simintzi et al. (2015) show that firms in countries with higher union coverage have lower leverage (see also Ellul and Pagano (2017)).

Our analysis relates to the existing literature in that our results speak to conflicts between labor and suppliers of financial capital to the firm, creditors in particular. As unionization empowers workers by preserving their human capital in default states, “displaced creditors” (unsecured bondholders) observe a change in the value of their claims. Our paper on union voting and bond price dynamics differs from existing studies in important ways, nonetheless. While most previous studies build on contrasts between unionized and non-unionized firms (regardless of a vote occurring or its outcome), our contrasts focus on firms in which workers attempted to unionize. By the nature of its test design, our study may not rule in or rule out existing views on the relation between labor and leverage ratios, as the bankruptcy dynamics that we consider do not apply to the entire schedule of debt contracts in firms’ balance sheets. We can only speak to the pricing of bonds, the claims held by creditors that are displaced by unions under the U.S. Bankruptcy Code.

**Spiking yields set off a corporate debt bomb in 2026---causes systemic crisis, bank failures, and 60+% economic contraction.**

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Corporate Debt Wall and Impact on Margins

Over $2.5 trillion of U.S. corporate debt matures before the end of 2027. Seven hundred billion is due in 2025. More than $1 trillion is due in 2026. Global corporate debt maturities peak at $2.78 trillion in 2026, according to S&P Global.

The coupon shock is similar to Treasuries but more severe for lower-rated issuers. The median coupon for BBB-rated bonds maturing in 2025 was 3.8 percent. Refinancing will require yields of 5 to 6 percent. This is a 120-180 basis point spread increase on the coupon. For a company borrowing $1 billion, this translates to $12-18 million in annual incremental interest cost.

For S&P 500 companies, the result will be slightly tighter margins and probably a valuation reset. It is the smaller, unprofitable companies that are in big trouble, in my opinion.

U.S. high-yield debt trades with credit spreads at 315 basis points. Historically, this is a warning sign of credit stress during slowdowns. The recipe is set: higher refinancing costs, lower revenues, compressed margins, and rising defaults on new loans made at higher rates.

Profit margins already face headwinds. Consumers are squeezed. Delinquencies on auto loans are at 5.1 percent, the highest outside the Financial Crisis and COVID. When consumers default, they spend less. When they spend less, companies sell less. When companies sell less, margins compress even before the debt refinancing cost hits them.

Small companies without a strong private lending relationship face a massive problem refinancing in the next few years, in my opinion, again, unless there is enough QE fast enough. With the run-up in the Russell 2000 recently, it pays to be very careful of company-specific risk. And I say that as a very regular small-cap investor for the past 25 years.

I think IWM is heading towards lower support levels, perhaps all the way to the solid red line in the next year or three.

Can IWM break higher towards $300? Certainly, markets can be irrational for long fits of time. That is why I maintain some catalyst driven stock positions, but would not touch IWM with a ten-foot wallet.

Corporate debt trends are a harbinger of stock market volatility looming if history is a guide.

Tariffs Are Weird

Tariffs have not had the inflationary impact that many supposed. The idea about tariffs raising prices is not theoretically wrong; however, inventory and front-running offset potential price increases. As supply chains move, the inflationary impact would dissipate anyway, most likely.

Think "long and variable time lags." Atlanta Fed President Raphael Bostic said American firms reported that 40 percent of their unit cost growth in 2025 and 2026 comes from tariffs. How does that play out?

Where tariffs could cause a real problem, though, is if supply chains do not build fast enough and we instead see an economic slowdown for any number of reasons already discussed and other potential reasons.

Recessions are deflationary, and we are seeing a large part of the non-AI related economy suffering right now. I do not think we should dismiss the volatility in prices that could be coming, in both directions, sequentially and differently depending on sector, service and product. I think we are likely to have a very mixed bag the next several years.

Beyond tariffs, the Trump Administration has floated a number of policy ideas, edicts, and executive orders that are too many to cover today. But, I would simply say that certain ideas, while sounding good in populist messaging, might not have the intended impacts.

Japan Matters

I think the international macro to watch most is Japan. They are the 4th largest economy in the world, and they are facing fiscal and monetary issues similar to what the U.S. has coming as Boomers retire, but they start from a low resource position and growing competition for their manufacturing. If you think American issues are severe, Japan seems worse to me.

Japan's government budget for fiscal 2026 is expected to exceed 120 trillion yen, surpassing the current record of 115.2 trillion yen from fiscal 2025. Debt-servicing costs are expected to hit a fresh record, surpassing 28.2 trillion yen for the current fiscal year.

Half of the new spending will be funded by new bond issuance. Japan's deficit-to-GDP ratio will worsen to 3.2 percent in 2026 and 3.7 percent in 2027, according to forecasts. They are trying to do that without being the global reserve currency.

The Bank of Japan is reducing its monthly purchases of government bonds. Beginning next quarter, purchases will fall from 3.705 trillion yen to 3.3 trillion yen. This is the central bank scaling back its support of the government bond market, QT, aka, Quantitative Tightening, precisely when the government is issuing more debt. Think about 2022 in the U.S., then add a multiplier.

CGTN reported that Japan's debt-servicing costs for interest payments have risen to 28.2 trillion yen annually, further widening fiscal imbalances and amplifying financial risks. With outstanding government debt exceeding 1,300 trillion yen, every one-percentage-point rise in interest rates raises annual interest payments by more than one trillion yen. Again, they are doing this without being the global reserve currency.

Worsening inflation from yen depreciation. Higher prices are reducing household purchasing power. The government was forced to issue even more debt to support households. Rising rates are crushing household finances with mortgage payments and forcing further rate hikes from the Bank of Japan to stabilize the yen.

It's a potentially devastating cycle that could have a global impact due to all the securities tied to Japan and Japanese-influenced financing.

The parallel to the U.S. is obvious. The U.S. is on a similar trajectory. The only advantage the U.S. has is reserve currency status. That advantage erodes if fiscal discipline is abandoned into the Boomer retirement, which comes with major societal expenses.

Japan teaches us how this ends: trapped in deflation, not inflation, with structurally unsustainable debt ratios.

Interestingly, I do think there is a specific fix for the United States that involves a "lockbox." I'll discuss that another time.

International Investors Will Impact Stocks Too

U.S. stocks have seen a massive surge of investment from international investors since Covid. Money printing, aka QE, has clearly been a catalyst for stock buying. I have posted Apollo Global data about that a few times.

The chart below, I think, looks nice on first glance, but I would suggest looking at the image I put below it.

I would suggest that international investors have a level of sophistication at least similar to U.S. accredited investors. And, we should remember, a lot of that money is institutional.

In an era where budgets and pensions (which a lot of the rest of the world still has) are facing crunches, a sell-off, or at least a flattening of international demand for U.S. assets, I think, is likely.

Again, I point to the midterms. You can rebel against the idea that there are political motivations for international investors to sell, but I think that is naive.

I think that international investors can be thought of as marginal pricing power in the stock market. Remember your lessons on economics. Marginal pricing pressure is the last dollars in or out. What if international demand for U.S. stocks flattens or falls? The answer is obvious in my mind.

Stock Market Scenarios

I'm going to cover my 3 potential scenarios for the stock market this year. And it really applies to the next few years since I think we have entered an overvalued period full of "unknown unknowns."

Valuations are high on the S&P 500 (VOO). By now everyone should know that.

Sure, there's an argument that corporate profits are high and valuations should be higher. But consider this: if debt has a problem, then corporate profits have a problem. There's a massive correlation between debt, corporate profits, and stock prices.

Understand that chart. As public debt increased, it flowed to corporations. Is that really in all of our best interests at those extremes?

That means there is a risk that the S&P 500 (SPY) could fall dramatically or have an extended period of low returns. I'm in both camps, though there are multiple ways things can play out, and nobody can tell you which ahead of time with any precision. The best we can do is be prepared to respond in real time and maintain the risk levels appropriate for our own finances.

In my scenarios to follow, I break each piece—bullish, base, and bearish—into 20% pie slices. The one I plan for is the one that is most likely, which I put at 60%, like a good poker player does. The others I try to be ready for and mitigate my exposure accordingly.

The Bullish Blowoff Top Scenario

If policy works well and liquidity does not fall, then GDP growth above 3% could happen. If it does, then I would expect bullish animal spirits to surge again.

In this scenario, credit conditions ease. Liquidity expands. Defaults remain contained. The S&P 500 rallies to $7,500 to $8,500 by year-end. Valuations expand further. This requires not just economic acceleration but deliberate policy choice to prioritize asset inflation over currency stability.

This scenario works if AI adoption is as transformative as expected and is quick about it. If the productivity gains are real and material. If management teams deploy capital efficiently. It is possible. But it requires execution and a benign policy environment. History shows both are rare.

I put the bullish blowoff top scenario at 20%.

The Base Scenario Bear Market Scenario

Economic growth meanders at 1.5 to 2.0 percent as AI slows and the rest of the economy is flattish.

In this scenario, the Fed delivers one or two 25-basis point rate cuts for a total of 50 basis points in H1 before the change in Federal Reserve Chairman. This is insufficient to materially ease financial conditions given the debt wall. It thwarts the effectiveness of the U.S. Treasury rolling debt in any attempt to meaningfully save interest expenses.

In this case, the Treasury maturity wall pressures long-term yields higher as foreign buyers remain flat to diminished. Corporate hiring slows due to uncertainty around tariffs and geopolitical risk. The stock market corrects 20 to 30 percent, testing the October 2023 lows near 4,500 to 5,500 on the S&P 500.

This is a base case because it fits historical precedent. Late-stage bull markets correct 20 to 30 percent when valuations are extreme and liquidity inflects. The correction flushes momentum speculators and resets valuations closer to historical norms of 18-20x earnings.

As I believe "all roads lead to QE" there is a rebound at some point. Unless the next scenario is playing out, I expect to be a heavy buyer of quality S&P 500 stocks in a "run-of-the-mill" 20-30% bear market.

I assign a 60% probability here.

The Bearish Scenario Financial Crisis

The convergence of Treasury refinancing pressure, CRE defaults, Fed leadership transition, and foreign capital exodus creates a credit event severe enough to break market confidence.

A major regional bank fails, or possibly even one of the large national banks if we see a full-blown crisis. I am on record as saying I do not trust Citibank's (C) underwriting. In this scenario we see REIT defaults as the CRE crisis accelerates.

The Fed cannot mount a credible rescue without announcing massive QE, which signals loss of independence and commitment to the currency. However, the administration, committed to fiscal responsibility, attempts regulatory forbearance rather than decisive intervention. A quasi-form of austerity with deferred debt emerges. Credit markets freeze, and we get a deflationary event.

The S&P 500 collapses 40 to 60 percent, falling to $3,000 to $4,000.

This scenario reflects genuine tail risk if policy errors accumulate faster than the Fed can respond. It happened in 2008. It almost happened in March 2020 before they overreacted. Either can happen again.

I have the odds of this at 20%. That is high for me. Usually, this scenario gets "almost zero chance." I have not seen the potential for this scenario so high since 2007.

#### Crash causes global nuclear war.

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NEW YORK – As we enter the second quarter of the twenty-first century, slow economic growth will remain the world’s most persistent challenge, transcending national borders and affecting developed and developing countries alike.

The economies of the United States, the European Union, and Japan are all projected to grow by less than 3% per year for the foreseeable future – the threshold needed to double per capita income within a generation (25 years). At the same time, large emerging economies like Brazil, Argentina, and South Africa are also expected to experience sluggish growth over the next decade.

While total global GDP has increased to $110 trillion, progress remains unevenly distributed, threatening to erode living standards. Worse, the world economy faces powerful headwinds that could stifle growth, innovation, and investment, triggering political and social instability.

Governments and business leaders must adjust their models and assumptions accordingly. In the face of significant policy shifts, investors will need to rethink their investment and allocation strategies to navigate an era defined by uncertainty and uneven growth.

Looking ahead, eight risks to global GDP growth stand out: geopolitical fissures; divisive domestic politics; technological disruption and the rise of artificial intelligence; demographic trends; rising inequality between and within countries; natural-resource scarcities; government debt and loose fiscal policies; and deglobalization. Taken together, these headwinds will be a persistent impediment to economic growth in the coming years.

No World Order

The first drag on global growth is the escalation in geopolitical tensions – particularly among the US, China, and Russia – compounded by additional threats from Iran and North Korea. As the rift between developed and developing economies widens, developing countries are increasingly joining economic alliances like the BRICS bloc, which expanded from five members at the start of 2024 to nine by the end of the year. In the near term, there is a growing risk that this geopolitical tug-of-war could escalate into an all-out military conflict.

Over the past 50 years, the world economy has gone from being a positive-sum game to a negative-sum game. The positive-sum era, driven by economic and global cooperation, reached its zenith during the Washington Consensus period, which was highlighted by the fall of the Berlin Wall in 1989 and China’s accession to the World Trade Organization in 2001. But following the 2008 financial crisis, the world entered a negative-sum period, marked by declining growth, intensifying competition, and rising international tensions, further heightened by the COVID-19 pandemic, Russia’s invasion of Ukraine, and the Gaza War.

Widening geopolitical fissures have laid bare deep vulnerabilities. China, for example, is one of America’s largest foreign creditors, holding more than $770 billion in US Treasuries. This gives it significant leverage over the US, whose policymakers increasingly regard it as a political and ideological rival. Against this backdrop, the intensifying race between China and the West for technological dominance in AI, quantum computing, and semiconductors has fractured the digital economy, giving rise to a balkanized “splinternet.”

As decades of multilateral cooperation give way to economic fragmentation, new cross-country alliances have weakened the US-led international order and the Bretton Woods institutions, such as the World Bank and the International Monetary Fund. The expanded BRICS bloc – led by Brazil, Russia, India, China, and South Africa – is the most significant of these alliances, representing more than 40% of the world’s population and 36% of global GDP.

Meanwhile, so-called “swing states” like Turkey, Saudi Arabia, and other Gulf Cooperation Council countries are reshaping global trade routes, reconfiguring supply chains, and redirecting investment flows, altering the distribution and pricing of key commodities such as foodstuffs and critical minerals.

Beyond stifling global GDP growth, these geopolitical rifts are hindering collective efforts to tackle climate risks, as developed and developing economies remain deeply divided over the urgency, scope, and aggressiveness of the regulatory and policy reforms required to combat climate change and advance the clean-energy transition.

Populism and Domestic Politics

Many advanced economies are also grappling with deepening political polarization at home. US President-elect Donald Trump’s return to the White House – much like Brexit and Trump’s first election victory in 2016 – heralds a period of widespread uncertainty and major political transformations.

Amid these populist gales, developed economies’ budgets are increasingly strained by expanded welfare programs. In 2022, for example, the EU spent €3.1 trillion ($3.3 trillion) – 19.5% of its GDP and nearly 40% of its total expenditures – on social protection.

As demands on government budgets grow, worsening fiscal positions will make it increasingly difficult for many countries to provide essential public goods like health care, education, and infrastructure. The resulting fiscal pressures will likely deepen polarization and lead to more policy volatility.

**Refinancing key to chemical sustainability---extinction!**

Fabiola **Schneider 24**, University College Dublin (UCD), Dublin, Ireland; Platform on Sustainable Finance, Brussels, Belgium, "A catalyst for change? How sustainable finance can support the transition of the chemical industry," Journal of Business Chemistry, February 2024, https://www.businesschemistry.org/article/a-catalyst-for-change-how-sustainable-finance-can-support-the-transition-of-the-chemical-industry-2/

Introduction

Chemistry is the study of matter – it is the study of everything. The periodic table contains the ingredients for making just about anything. This is also reflected in our economy: More than 95% of manufactured products rely on chemicals (European Commission, 2017). The European Union recognises the sector as an enabling industry which may play a “pivotal role” (European Commission, 2023a).

Yet at the same time, the chemical sector is the single biggest industrial energy consumer (IEA, 2023). The emissions stemming from the sector’s use of heat, steam, and power for compression and cooling account for roughly half of its total fossil fuel related emissions. The other half is linked to using fossil fuels as input to chemical reactions, for products such as plastic or fertilizer. Overall, the chemical sector takes third place in the ranking of industry subsectors when it comes to direct carbon dioxide emissions.

Given the urgent need to reach net zero and commitments such as the 2015 Paris Agreement and the EU Green Deal, the pressure for the chemical industry to decarbonise is mounting. In business terms, this means that so called transition risk, one form of climate risk, is building up. To demonstrate its materiality, looking at cost originating from the European Union Emission Trading System (EU ETS) is telling: Forecasts see costs quadrupling by 2030 (ICIS, 2021). Here, very obviously, reducing emissions is not only doing good for the planet, but also has direct financial benefits. Still, some chemical companies choose to further deepen their ties with fossil fuels by buying petrochemicals business from energy majors who are selling the assets as part of their transition efforts (Bousso, 2020; BBC, 2017) and continue to invest in them (Reuters, 2022; Ineos, 2018).The International Energy Agency’s (IEA) Fatih Birol has called the petrochemicals business a “key blind spot” while examining their future (IEA, 2018). The IEA sees the sector not on track, stating that carbon dioxide intensity has been stable over recent years for primary chemicals, yet the et Zero Emission by 2050 Scenario requires an 18% absolute emission reduction compared to 2022 by 2030, despite increasing production (IEA, 2023). This means decoupling emissions from production is urgently needed.

Sustainability and the chemical sector

“Chemistry is, well technically, chemistry is the study of matter. But I prefer to see it as the study of change” (IMDB, 2008)

And indeed, the chemical industry could be a key driver for transforming the real economy. In the TV show “Breaking Bad” Walter White goes one step further than portraying chemistry as the study of everything, by adding a forward-looking perspective to it. Given that chemical products are the basis for nearly all manufactured products, they need to be accounted for under so-called Scope 3 emissions for the respective manufacturers. The Greenhouse Gas Protocol, the most common emission classification system for corporate emission reporting, distinguish three scopes: Direct emissions (Scope 1), indirect emissions from purchased energy (Scope 2) and lastly emissions outside of a companies own boundaries, related to its value chain (Scope 3).

Up until today, most efforts and pledges revolve around Scope 1 and 2, often dubbed core emissions. Yet there is increasing attention shifting towards Scope 3[1] – not the least because they make up the majority share of all emissions and in fact the vast majority for most sectors (Hoepner & Schneider, 2022a). Indeed, Deloitte specifically lists sustainability as their number 1 trend and specifically mentions the carbon footprint of supply chains as their top 3 for the chemical sector (Deloitte, 2022). The chemical industry is in a unique position to drive major supply chain decarbonisation and thereby support Scope 3 emission reductions globally. Moreover, the transition involves a range of opportunities for chemistry, including batteries but also ammonia for shipping.

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Thus, it is little surprising that firms in the sector signal their sustainability ambitions via bold claims in their corporate reporting and public statements. Table 1 gives an overview of different sustainability statements made by senior executives of firms from the sector. It becomes obvious, that statements vary in their level of ambition but also scope and time perspective. It is important to recognise differences in forward-looking (plans and pledges) and backward-looking (actually achieved performance, that can be evidenced) claims. Some firms may choose to highlight their standing relative to their peers, others make absolute claims. The distinction between relative emission targets, in the form of intensities (ie emission reduction per revenue or unit of output) and absolute ones is likewise crucial.

Yet any claim needs to translate into tangible actions, otherwise firms run risk of engaging in greenwashing. The table above is part of the GreenWatch[2] database, which compares corporate claims across sectors with actual emission performance. For alignment with the Paris Agreement and the 1.5°C target absolute emissions must be reduced 7% year on year. Anyone making bold sustainability claims should at least meet this basic metric. At GreenWatch, Artificial Intelligence (AI) is used to classify sustainability claims in terms of their boldness and then compared to absolute core emission reductions. A differentiation between no claim, a moderate claim and a bold claim and between an emission reduction in line with the Paris Agreement, a weak emission reduction and an emission increase is made. Importantly, carbon offsets are not factored in[3]. Should a company make a strong sustainability claim while in fact increasing their absolute emissions, a high likelihood of greenwashing is assigned.

Today many forms of greenwashing have developed. Given the obvious commercial incentive to be perceived as green, sophisticated strategies to mislead customers and investors have evolved. PlanetTracker portrays greenwashing as a beast with many heads in their Hydra report. The analysis outlines six distinct types of greenwashing (PlanetTracker, 2023, p.3-8):

“Greencrowding is built on the belief that you can hide in a crowd to avoid discovery; it relies on safety in numbers. If sustainability policies are being developed, it is likely that the group will move at the speed of the slowest.

Greenlighting occurs when company communications (including advertisements) spotlight a particularly green feature of its operations or products, however small, in order to draw attention away from environmentally damaging activities being conducted elsewhere.

Greenshifting is when companies imply that the consumer is at fault and shift the blame on to them.

Greenlabelling is a practice where marketers call something green or sustainable, but a closer examination reveals that their words are misleading.

Greenrinsing refers to when a company regularly changes its ESG targets before they are achieved.

Greenhushing refers to the act of corporate management teams under-reporting or hiding their sustainability credentials in order to evade investor scrutiny.”

A lot of the greenwashing that is happening in the market is not explicitly illegal and hard to proof. But climate litigation is growing in momentum and posing a real risk to climate offenders. And these lawsuits have very material financial risk for the respective companies: Sato et al. (2023) find that climate litigation filings or unfavourable court decisions on average lead to reduction in firm value by -0.41%. These lawsuits can also result in transparency and climate action obligations (Weller and Tran, 2022).

While climate litigation for the moment focuses on energy firms and the carbon majors, the chemical industry is also subject to substantial pressure due to environmental concerns. Pollution prevention is an additional key environmental objective as recognised by the European Commission (European Commission, 2023b). Around 40 laws regulate chemicals in the EU, which reflects ongoing concern among EU Citizens: 90% of Europeans worry about the impact of chemicals in everyday products on the environment and 84% about its impact on their health (European Commission, 2023c).

One class of chemicals has recently received considerable amounts of attention[4]: Per- and polyfluoroalkyl substances (PFAS), commonly referred to as “Forever Chemicals” which are used when manufacturing fluoropolymer coatings and products that resist heat, oil, stains, grease, or water. The EU is taking actions to phase out their use where it is not essential (European Commission, 2023d). American multinational 3M announced the end of their PFAs production for 2025, which will incur initial cost of up to $1 billion and more later on. Yet longer-term legal liabilities are estimated to be over $30 billion This compares to the roughly $1.3 billion in annual sales generated from PFAs at 3M (Kary & Beene, 2022). Needless to say, PFAS litigation is not limited to 3M. DuPont and Chemours settled to pay $670 million in a lawsuit filed by thousands of people in Ohio (Maher & McWhirter, 2017) and $1.18 billion following complaints from drinking water providers (Flesher, 2023). In total, DuPont has been named in over 6000 PFAS related lawsuits (ChemSec, 2022). Other cases involve Tyco Fire Products LP and Chemguard Inc (SEC, 2020).

Following the idea of a carbon footprint, NGO ChemSec published chemical footprint for the 54 biggest chemical firms. In 2022, only four of them published a strategy to phase out hazardous chemicals from their product portfolios (ChemSec, 2022).

This risk is not going unnoticed by investors. In November 2022, 47 asset managers with a combined $8 trillion assets under management issued a call to phase-out PFAS. Besides the financial and litigation risk, the call cites the danger it poses to future generations (ChemSec, 2022).

Given that the most recent update on planetary boundaries established that the safe boundary for chemical pollution, “novel entities”, has been crossed (Richardson, et al., 2023), the pressure can only be expected to increase going forward.

Defining a path to sustainability

While there are many challenges to be overcome, most solutions don’t require major breakthroughs. For example, it is already feasible to produce plastic bottles with emissions-free chemicals at a price increase of those bottles by 1% (Energy Transition Commission, 2020). Overall, Deloitte postulates that 15 technologies can abate 90% of industry emissions (Deloitte, 2022).

Still, developing solutions at the scale and speed we need require significant investments. While there is growing investor appetite, it creates the need to be able to distinguish credible transition plans from greenwashing to avoid capital misallocation.

The first step is defining what green or sustainable really means. That is exactly what the EU Taxonomy for Sustainable Activities sets out to do (European Commission, 2020). The EU Taxonomy focuses on environmental sustainability, covering six objectives: Climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems. By design, all environmental objectives are equally important. The EU Green Taxonomy is designed to act as a market transparency tool and transition enabler. It is rooted in EU law as part of the EU sustainable finance framework; the Taxonomy Regulation went into force in July 2020.

Technically, the EU Taxonomy allows to assess the sustainability of economic activities, which means that entities can be assessed as a sum of their often numerous activities. It is important to note, that Taxonomy reporting will be mandatory for a large number of firms, but that does not mean that companies must comply with the criteria nor that investors must invest in a specific manner. Taxonomy reporting is carried out in terms of revenue, operating expenses (opex,) and capital expenditure (capex). If an economic activity meets all the criteria set out in the regulation, it is considered “aligned”. A company may for example report that it generates X% of its revenue from taxonomy-aligned activities or that it spends Y% of its capex on taxonomy-aligned activities.

The first step to alignment is checking whether an activity is included in the Taxonomy regulation, termed “eligibility”. If an activity is not (yet) included in the EU Taxonomy, there are no criteria to compare against and an activity cannot be aligned. Activities not covered remain out of scope for now. Once eligibility is established for an activity, three levels must be passed in order to achieve alignment. First, substantial contribution to at least one of the six environmental criteria must be proven by complying with activity specific criteria. Next, “Do No Significant Harm” (DNSH) criteria must be passed for all the other environmental objectives of the EU Taxonomy. This is to ensure that while the activity may support progress in one area it does not jeopardize achieving the other. Lastly, even though the EU Taxonomy focuses on the environment, minimum social safeguards must be met. In total, the process therefore encompasses four stages that an activity must pass to demonstrate EU Taxonomy alignment: Eligibility, substantial contribution to at least one objective, no significant harm to the other objectives and meeting minimum social safeguards. It is noteworthy that “not aligned” does not mean harmful, it simply equals not meeting the criteria to be considered substantially contributing to environmental objectives.

The European Commission offers the EU Taxonomy Compass tool for easy access and navigation of criteria. For the chemical sector, a range of activities is eligible. Figure 1 shows the substantial contribution criteria for climate change mitigation from the EU Navigator for the manufacture of organic basic chemicals. Other examples include the manufacture of plastics in primary form, the manufacture of soda ash, chlorine, aluminium, or ammonia.

In advance of the pollution prevention delegated act for the EU Taxonomy being published in 2023, the Investor Initiative on Hazardous Chemicals (IIHC), representing some of the biggest institutional investors, published an open letter addressed to the European Commission calling for robust chemical criteria (IIHC, 2023). Lobbying to weaken policy is found across sectors. For example, in the UK, lobbying efforts have been noted on fracking and exempting the chemicals sector from climate taxes (ClientEarth, 2023). InfluenceMap compiles a lobbying scorecard by analysing engagement from corporations and industry associations on climate policy. Of the 25 assessed corporations none got the highest score A, only one firm was scored B (InfluenceMap, 2023). Naturally, the EU is not alone in creating a classification system for sustainability in this regard. Indeed, in 2022 around 20 countries were at different stages of developing their version of a taxonomy. These vary widely in scope, design, and level of ambition. A noteworthy exception among the 20 countries is the US. Other large players such as China, Russia, Brazil, Canada, and Australia as well as smaller players such as the Dominican Republic or Mongolia have been more proactive.

Facilitate transition: Sustainable Finance

Corporate net zero pledges for 2050 are becoming popular; globally around 70 chemical firms have set targets (Deloitte, 2022). The UN Race to Zero Data Explorer offers a concise platform to explore the net zero targets of 500 firms globally. The tool allows to view the year when a firm aims to reach net zero and distinguishes between absolute emissions and emission intensities. A net zero emission intensity target takes the form of a “per unit” pledge, for example revenue or product. This approach may lead to a firm’s absolute emissions increasing despite intensities decreasing if the company grows. From a climate science perspective, we need absolute net zero in order to halt global warming.

Besides the pledge, the tool also contains information on whether the firms that pledge do have a transition plan on how to achieve their goals. Additionally, it gives an indication of progress on proceeding with the plan by showing emission reduction trends for Scope 1 and Scope 2 emission, and how many Scope 3 emission subcategories are disclosed. Alignment numbers for revenue, capex and opex are available as well.

While transition plans are needed to understand how a company envisions to be part of the future net zero economy, forward looking plans are no guarantee. Greenrinsing (PlanetTracker, 2023), where a firm silently drops a target which it previously published, is unfortunately emerging as a greenwashing practice. Only relying at backwards- looking measures such as past emission reductions likewise is not optimal for gauging future performance.

A big concern for both, companies with robust transition plans is therefore how to credibly communicate these. On the flipside of the coin, investors looking to invest in firms that will be profitable in a net zero economy need a way to ensure investee firms indeed transition.

This is where sustainable finance can offer remedy. Different innovative financial instruments have evolved in the green and sustainable finance space. The general idea is instead of just publishing words and plans, to “put your money where your mouth is” and link financing to sustainability.

A more established instrument are green bonds, which are supposed to directly finance green activities. Academic research finds that these are considered a credible instrument to communicate commitment to the environment (Flammer, 2021). Flammer (2021) finds benefits both on the environmental side – lower emissions and higher environmental ratings – as well as on the financial side, in the form of a diversification of the investor base and more long-term ownership.

One particularly suitable instrument for transitioning is sustainability-linked debt. First it is noteworthy that the debt market has a key role to play in supporting the transition as primary market transactions occur periodically, according to refinancing cycles. This is not the case for equity, where the majority of transactions occur between investors on the secondary market. In this case, the corporate cash flow is not directly affected (Hoepner & Schneider, 2022b).

Sustainability-linked bonds (SLBs) are one type of sustainability-linked debt, which the International Finance Corporate (IFC, World Bank Group) recently called “one of the fastest-growing corners of finance” (IFC, 2023). Their unique feature is that future sustainability targets are directly linked to cost of capital through coupon step up (or down) payments. Effectively that means that a borrower commits to certain sustainability targets in the future and incurs a financial penalty when missing them. For the investor on the other hand, it means that in case the issuer does not follow through on their promise they get financially compensated. Table 2 shows an example of a sustainability-linked bond from the chemical industry.

SLBs are general purpose financial instruments and differ conceptually from green bonds, which are use-of-proceeds type of instruments. The difference in design allows sustainability-linked bonds to be applied more generally and to finance the transition of not yet green activities (forward looking Key Performance Indicators for sustainability performance). On the other hand, the proceeds of a green bond must be allocated to activities which are already green (backwards looking). This likewise means that while a SLB can be used for refinancing of any maturing security, a green bond can only refinance green activities. Overall, the hypothetical amount of issuance for SLBs is unlimited – any bond issued could be sustainability-linked – while the amount feasible to be issued as green bonds is limited to the volume of existing green activities. Other important differences include how the greenness is priced: While the Greenium for green bonds is determined in the market, SLBs have step up (or down) or penalty payments as legally enforceable covenants. Covenants are by no means a new concept in finance, predating their use in SLBs, and therefore easily applicable.

Still, in the nascent markets greenwashing concerns are not negligible. Unambitious or irrelevant targets may delay real progress. For climate change, especially in energy related sectors, all three emission scopes should be addressed. Absolute emission reductions should be prioritized over emission intensity improvements. In Signalling Theory (Spence, 1973), a signal must be costly to be credible.

Thus, imposing substantial penalties for missing targets are key. Here the devil may be in the detail: Do payments occur throughout the duration of the bond and accumulate when targets continue to be unmet or is there only a once off payment close to maturity? Ul Haq and Doumbia (2023) point out structural challenges while Erlandsson et al. (2022) offer a risk-neutral present value scenario approach for the pricing of step-down structures.

There are some support resources available to foster SLB uptake and ensure their integrity, though so far these are voluntary. For example, the International Capital Market Association (ICMA) has published Sustainability-Linked Bond Principles including an illustrative KPIs registry (ICMA, 2023). It is notable that the language around penalties for missing targets is soft and indicates optionality, despite being recognised as a key feature:

“The cornerstone of an SLB is that the bond’s financial and/or structural characteristics can vary depending on whether the selected KPI(s) reach (or not) the predefined [Sustainability Performance Target(s)], i.e. the SLB will need to include a financial and/or structural impact involving trigger event(s).“ The Climate Bonds Initiative (CBI) also issues guidance for sustainability-linked bonds as transition finance instruments (CBI, 2022a). These specifically stress the importance of strong structures around call dates and KPI observation dates.

Increased scrutiny can be observed as the sustainable debt market is maturing. This is for example evident in increasing amount of green bonds being rejected by CBI because of quality concerns (CBI, 2022b): 1 in 4 US Dollars did not meet their standards. The majority of the excluded bonds originated from China.

Yet the bond market is not the only place where sustainability metrics get linked to cost of capital. Sustainability- linked loans (SLLs) are similarly becoming popular. In 2019, specialty chemical firm Kemira agreed on three sustainability KPIs for its five year 400 mio EUR revolving credit: emission efficiency, generating half its revenue from products enhancing customers’ resource-efficiency and maintaining the highest rating from external rater EcoVadis (Kemira, 2019). Other examples of industrial firms taking SLLs include DSM, Indorama Ventures, Solvay, and Stora Enso.

The flexible design of linking capital cost to sustainability indicators naturally allows to factor in different facets of sustainability, beyond climate change mitigation. For the chemical industry, indicators revolving around recycling and pollution prevention seem sensible – a conceivable KPI could be the phase out of PFAS. The example of Lanxess’ 1 bn EUR revolving credit facility demonstrates that also social goals are feasible: Interest rates are not only linked to the successful reduction of its CO2e emissions (Scope 1) but also raising the share of women on the top three management levels (Lanxess, 2021). This case also highlights that multiple targets can easily be featured in the same sustainable debt instrument.

Even if a company does not participate in the sustainable finance market, the traditional corporate financing of a firm will also be affected by sustainability. “ESG” – the acronym for environmental, social, and governance factors – is considered by rating agencies when assessing credit worthiness (see for example Moody’s scorecard (Moody’s, 2022).

Conclusion

Overall, the chemical industry could play a key enabler role in the sustainable transition of our economy. While there are many challenges to be resolved, the chemistry underlying supply chains especially in the manufacturing industries could be the engine of innovation.

Greenwashing poses a real threat and must be managed as a risk. The underlying targets for sustainability-linked debt must be ambitious and relevant, and penalties for missing targets substantial. While the sector in the past had been “a blind spot” (Hawker, 2021) for investors, the increased interest will also bring more scrutiny. Additionally, changing regulation is adding to pressure in transition risk.

To unlock the power of the sector, significant investment is needed. Innovative sustainable finance instruments when applied appropriately could hereby be a catalyst for change. Sustainability-linked debt has successful been obtained by firms in the sector. It could be a key tool to both raise funds for the transition and credibly communicate transition plans to capital providers.

**Debt UQ---1NR**

**Spreads are low, indicating low perceived credit risk.**

*This card also conveniently explains what is going on with the DA in English*

Justin **Ho 12/2**, Markets/Wall Street reporter, "One positive economic indicator? Narrowing corporate bond spreads," Marketplace, 12/02/2025, https://www.marketplace.org/story/2025/12/02/one-positive-economic-indicator-narrowing-corporate-bond-spreads

Investors have been keeping track of falling government bond yields over the last few weeks, especially since bond markets have been sending signals that investors expect the Federal Reserve to cut interest rates later this month.

Meanwhile, corporate bond yields have been sending signals of their own — about interest rates, yes, but also about where the economy is headed.

Corporate bonds are generally considered to be riskier than government bonds, since companies are more likely to run into trouble and default than the U.S. government.

As a result? “Investors want to get additional compensation to take on that additional credit risk,” said Lawrence Gillum, chief fixed income strategist at LPL Financial.

The extra compensation that corporate bonds pay out compared to government bonds is called a spread, and those spreads can change.

“There’s been times when spreads are lower, and obviously times when spreads are higher as well, this time being one of those times that spreads are lower,” Gillum said.

In fact, spreads have been fairly low for most of this year. In other words, investors aren’t demanding much extra compensation from companies.

It’s a sign that investors think economic growth will stay strong and that companies will be in a good position to pay back their debt, according to John Canavan, lead market analyst at Oxford Economics.

“If that’s the case, then you are optimistic about getting your money back,” he said. “You are not going to demand as high a yield from these corporations because you believe your risk is a little bit less.”

That means corporations themselves will find it easier and cheaper to borrow money. “If you’re willing to give me $100 million at very friendly terms, then I can find ways to invest that, I can find ways to help build my company with that,” Canavan said.

And that kind of investment can help the economy.

**Efficient bankruptcy enables a soft landing from business cycle fluctuations---breakdown triggers the worst consequences of recession.**

Yair **Listokin &** Peter **Bassine 22**, Listokin is the Shibley Family Fund Professor of Law at Yale Law School; Bassine is an Associate at Latham & Watkins in Orange County, California, "Better Rules for Worse Economies: Efficient Legal Rules Over the Business Cycle," Harvard Business Law Review, vol. 12, Winter 2022, pp. 55-79, Lexis

Even if a time-invariant rule's performance in recessions cannot be ignored, how much weight should recessions receive in determining the efficient rule? Focusing exclusively on the relative likelihood of expansions (roughly 92% of the time) versus recessions (roughly 8% of the time), an efficient time-invariant "weighted average" legal rule should closely resemble the efficient legal rule in expansions. This section argues, however, that performance in recessions deserves more emphasis because:

1. Many legal rules assume heightened relevance in recessions.

2. People are poorer in recessions. As a result, the efficient rule in recessions maximizes income when it is most needed. It is worth sacrificing a bit of efficiency in growing economies to improve outcomes in recessions when every dollar matters more.

3. Deep recessions risk extraordinary harms, such as democratic failure and war.

4. Although expansions are more frequent than recessions, the aftermath of recessions often lingers. Unemployment stays well above its "natural" rate for an extended period, implying higher spending multipliers. As a result, the efficient legal rule for the early part of an expansion may be closer to the efficient rule in recessions than the efficient rule for more mature expansions. Accordingly, the efficient time-invariant rule should shift closer to the efficient rule in recessions.

1. Many Legal Rules Grow More Salient in Recessions

Many legal rules grow in importance during recessions because more people take advantage of their protections or benefits in recessions than in expansions. As a result, the relative likelihood of economic expansions versus recessions provides a misleading indicator of the appropriate weight to place on the performance of a legal rule in different phases of the business cycle. More accurate weightings require more weight to be placed on a rule's performance in recessions.

Unemployment insurance provides a signal example. In recessions, many more people claim UI benefits than in ordinary times. The recession induced by COVID-19 amplified this phenomenon. Between mid-2014 and March 2020, the number of new unemployment claims in a week never exceeded [\*92] 300,000. 113COVID-19 precautions triggered a tidal wave of new unemployment claims, with new claims peaking at almost 7 million (10 times the previous record number of weekly filings set in the Great Recession) in the last week of March 2020. 114New unemployment claims continued to exceed previous records though mid-July 2020. 115

This means that the distribution of individuals applying for unemployment in different phases of the business cycle is much less lopsided than the time distribution of different phases of the business cycle. If the economy is in recession 10% of the time but 10 times more workers per week apply for unemployment in recessions than in expansions, then just as many workers apply for unemployment in recessions as in good times. A UI eligibility rule's efficiency in recessions should therefore receive just as much weight as its efficiency in expansions, even if the size of inefficiencies in recessions is no larger than in expansions.

While UI applications are extremely skewed towards recessions, the same is true (to a lesser extent) of many other important legal programs. Bankruptcy filings 116and applications for welfare and disability programs 117rise during recessions, and foreclosures spiked during the 2007-2009 Great Recession. 118 119As a result, a time-invariant efficient legal rule in each of [\*93] these areas needs to place more emphasis on performance in recessions than might be expected from a simple analysis of recession frequency.

2. Higher Average Marginal Utility in Recessions

Reducing inefficiency when everyone is poorer is worth more than reducing inefficiency when money is plentiful. As a result, a rule's performance in recessions deserves disproportionate weight in the formation of the efficient time-invariant legal rule.

Much of economics, including the supply and demand curve analysis presented in Figures 1-3, presumes "diminishing marginal utility." 120Diminishing marginal utility means that the value of an incremental dollar goes down as people accumulate more income. 121For the poor, an additional dollar goes to meeting a basic necessity. For the rich, by contrast, an additional dollar likely gets saved or goes to a non-essential form of consumption. As such, the consumption the dollar buys means less to the rich than to the poor.

Diminishing marginal utility underpins UI. With UI, workers and firms pay a premium in good times to protect consumption in bad times. Even though UI interferes with the incentive to work, it is a worthwhile program because it transfers money from good times to bad.

What UI does for individual workers, legal rules in general should do for the economy at large. Legal rules that increase income in recessions but decrease it in expansions are worth a premium because additional income in recessions is worth more to the average worker than the same amount of lost income in recessions. When incomes are lower in recessions, 122marginal utility for the average worker is higher--justifying extra emphasis on a rule's performance in recessions.

[\*94] The disproportionate importance of recessions is further amplified by the unequal distribution of the burden of recessions. While average incomes are lower in recessions, the burden is distributed unequally. Some workers lose their jobs and experience a prolonged fall in income, health, and well-being, while others maintain their income. 123Because those who lose their jobs in recessions have extremely high marginal utility, a legal rule that performs well in recessions and reduces these unequal income declines is therefore particularly desirable from an efficiency perspective.

This unequal distribution of the burdens of recessions exacerbates preexisting inequality along educational, racial, and ethnic lines. As one paper summarized, "the impacts of the Great Recession have been felt most strongly for men, black and Hispanic workers, youth, and low-education workers." 124Not only are average incomes lower and the fall distributed unequally, but much of the burden of recessions is concentrated on those least able to bear falls in income at any time. As a result, marginal utility in recessions is much higher than in expansions, by an amount that greatly exceeds the difference in average incomes over the business cycle.

A rule that increases income to already poor people at their most needy times is more efficient than a rule that yields the same average production over the business cycle but prioritizes income in expansions. As a result, a rule's performance in recessions deserves more weight than the time distribution of recessions and expansions would imply.

3. Extraordinary Harms Caused by Deep Recessions

The harms caused by deep recessions extend beyond the straightforwardly economic. Recessions undermine the social and political orders of industrialized democracies, risking permanent harm. Because the value of avoiding these extraordinary non-pecuniary harms is so high, a rule's performance in recessions deserves extra weight.

The Great Recession of the late 2000s and first half of the 2010s is illustrative. Social upheavals such as the election of Donald Trump in the United States, Brexit in the United Kingdom, and the rise of right-wing populism in many other countries were enabled by the Great Recession. While it would be hard to argue that the Great Recession was the only, or even primary, cause of this populist wave, deep recessions and financial crises have a history of boosting the populist right in particular. The Great Depression, for example, helped to undermine Germany's Weimar Republic and lay the groundwork for Nazism, as well as fascism in many other countries. Indeed, a recent empirical study of Europe between 1870 and 2014 found that after [\*95] an economic crisis, "polarization rises ... voters seem to be particularly attracted to the political rhetoric of the extreme right, which often attributes blame to minorities or foreigners. On average, far-right parties increase their vote share by 30% after a financial crisis." 125

If deep recessions cause harms of this magnitude, threatening the fabric of the social order, then rules that reduce these risks have great value. As a result, a rule's performance in recessions deserves more weight than the time distribution of recessions and expansions would suggest.

4. Aggregate Demand Shortfalls Outside of Recessions

To this point, we have emphasized a highly stylized model of the economy. Either the "restaurant" economy is full and the economy is expanding, in which case aggregate demand is irrelevant, or the restaurant has spare capacity and the economy is in recession, in which case aggregate demand determines output. In reality, aggregate demand may help determine output even though the economy is expanding. As a result, legal rules that increase aggregate demand deserve more weight than the frequency of recessions would suggest.

Suppose that the restaurant economy suffers a recession in which unemployment increases from a long run average of 5% of the population to 20% of the population. In the following year, demand for meals partially recovers. The restaurant rehires some of the laid-off workers, and unemployment falls by half to 10%. The restaurant economy is enjoying an expansion, using more of the labor force to produce a greater number of meals than the previous year. Our analysis so far assumes that an expanding economy is one in which rules that enhance aggregate demand are inefficient.

Not so. Even though the restaurant economy has expanded relative to the previous year, aggregate demand continues to limit output. Unemployment, at 10%, lingers above its long-run rate of 5%. The restaurant has substantial spare capacity. Legal rules that promote aggregate demand raise output and lower unemployment, even though the economy is expanding relative to the previous year. Until the economy returns to production consistent with a 5% unemployment rate, the best legal rule for recessions will be more efficient than the best legal rule in expansions--even though the economy is growing.

One measure of an economy operating at full capacity, with no shortage of aggregate demand, is the natural rate of unemployment. 126The natural rate of unemployment is not zero. At any time, there will be people in between jobs. 127Aside from these workers in transition, however, everyone who [\*96] wants a job has one. If the government stimulates demand by purchasing meals when the restaurant is already full, for example, then unemployment is unlikely to fall. Instead, prices will rise. There is no way to accommodate the increase in demand without an increase in wages that may induce some reluctant workers to stay in the labor force. When unemployment is above the natural rate, by contrast, increased meal spending by the government raises output by providing jobs for previously unemployed workers. Thus, the natural rate of unemployment provides a rough proxy for an economy operating at or near capacity. 128

Research by the Federal Reserve Bank of San Francisco indicates that "the natural rate [in the United States] has been remarkably stable, ranging between 4.5 and 5.5%." 129We can therefore measure the economy's performance relative to capacity by comparing the observed unemployment rate with the natural rate of approximately 5%. If the unemployment rate significantly exceeds 5% (e.g., hits 7.5% or greater), then the economy is producing below capacity, indicating a shortage of aggregate demand. In such environments, legal rules that promote aggregate demand raise efficiency.

Table 2 presents U.S. unemployment rates and estimates of the natural rate of unemployment from 1990 to the present. 130From 1980-2007, a period known as the "Great Moderation," the economy experienced very short recessions and very few periods of prolonged high unemployment. 131

In this macroeconomic environment, time-invariant legal rules emphasizing optimal performance in expanding economies look defensible (though the efficient rule in recessions deserves some extra weight as described in Sections III.B.1 and III.B.2). A tight unemployment insurance eligibility regime, for example, raises output during the prevailing periods of growth and low unemployment. The tight regime's weaknesses during periods of slack demand are rarely encountered. As a result, strict UI regimes may have been a reasonable proxy for the efficient time-invariant UI rule during the Great Moderation.

Since 2008, however, periods of deficient aggregate demand have become much more pervasive (Table 2). Between January 2008 and June 2013, the economy was either in recession, experiencing unemployment rates over [\*97] 7.5%--significantly above the natural rate of approximately 5%--or both. 132Unemployment again soared well above 7.5% in 2020 because of the recession caused by COVID-19 and looks likely to stay above 7.5% through 2021. 133Thus, aggregate demand has constrained output in the U.S. for just under 50% of the time since the beginning of 2008. Rather than an extraordinary case, deficient aggregate demand now looks like a regular occurrence. Indeed, some economists are concerned that we have entered a period of "secular stagnation" characterized by persistently inadequate aggregate demand causing slow growth, high unemployment, and extraordinarily low interest rates. 134Secular stagnation can persist for decades, as it has in Japan since the late 1980s. 135

In this context, legal rules need to change. If aggregate demand is persistently too low, then the demand-depressing features of a tight UI eligibility regime (or any other legal rule that depresses aggregate demand) persistently reduce output and increase the suffering of the jobless. The efficient time-invariant UI eligibility rule is therefore more expansive today than it was during the Great Moderation.

[\*98]

Table 2: Natural v. Actual Rate of Unemployment

Because the economy appears to have entered a prolonged period of secular stagnation with persistently deficient aggregate demand, time-invariant rules need to place greater emphasis on efficiency in recessions. When economic conditions shift, efficient legal rules need to shift accordingly. Indeed, the combined effects of secular stagnation and higher marginal utility in recessions necessitate time-invariant rules that place more weight on efficiency in recessions than in expansions. The prioritization of performance in recessions should be even more pronounced for legal regimes such as unemployment insurance and bankruptcy that are disproportionately accessed during recessions.

Data and theory thus demand a radical reorientation of law and economics. Time-invariant legal rules that promote aggregate demand in recessions are likely to outperform time-invariant legal rules that perform best when the economy is at capacity. Rather than ignoring macroeconomics and prescribing rules that perform optimally in expansions, law and economics needs to prioritize efficiency in periods of slack aggregate demand. Economic efficiency requires nothing less.

IV. Further Applications

The argument in Sections I-III have explained the efficacy of time-invariant legal rules that account for macroeconomic efficiencies, as well as the familiar microeconomic ones. They have demonstrated the application of [\*99] this argument to the specific area of unemployment eligibility. However, this concept is applicable to numerous domains of legal rule-setting with macroeconomic impacts beyond UI benefits. In this section, we provide another specific example of its applicability in the context of the legal rules governing foreclosure and then briefly touch on two other areas of similar potential--bankruptcy and contract.

A. Foreclosure Law

The economic effects of foreclosure rules vary within the economic cycle, just as the economic effects of unemployment insurance eligibility rules do. In expansions, legal rules that make it harder for creditors to foreclose on a property have higher moral hazard costs. The more difficult the foreclosure, the longer the borrower may enjoy their property rent-free, making the prospect of defaulting on their loan more attractive. Indeed, states with higher bars to foreclosure in the period before the 2007-08 financial crisis had more defaults on mortgages than those without, likely a result of the incentives protracted and difficult foreclosure process create. 136If a difficult and expensive foreclosure process leads to more defaults, then interest rates on mortgages may rise and the local economy may suffer a loss of potential output.

However, in a recession, the narrative shifts. The moral hazard losses associated with allowing debtors to hold onto property after they have defaulted decline because the recession makes it less likely that another person has a higher-value use for the property. In recessions, property values are often in decline and the wealth of equity-holders in real property (and consequently their consumption) is decreasing. In this scenario, the macroeconomic value of a stimulative legal rule becomes increasingly salient. The marginal value of protecting home prices by restricting the supply of foreclosed homes increases in a downturn, while the microeconomic costs of additional defaults remain the same or perhaps even decline. Indeed, the stimulative impact of tighter foreclosure restrictions is borne out empirically. States with looser foreclosure rules between 2007 and 2009 (the peak of the housing crisis in the United States) had smaller declines in housing prices, more new residential construction, and smaller declines in auto sales. 137In other words, their economies performed better.

While the economic effects of foreclosure rules vary cyclically, they are universally time-invariant in statute, meaning they are drafted to remain the same in expansion and recession. 138Practically, however, foreclosure rules [\*100] are not perfectly time-invariant. In recessions, legislatures often enact a temporary softening of foreclosure rules through emergency relief legislation. In response to COVID-19, numerous states altered their regimes to protect homeowners, creating various degrees of foreclosure restrictions and/or moratoria, usually for a few months at most. 139In response to depressed housing market conditions in the aftermath of 2008, various states enacted similar foreclosure moratoria and foreclosure reduction laws. 140Indeed, this tradition of enacting some form of foreclosure protection was evident as early as the Great Depression. 141

The COVID-19 moratoria, rather than tying the duration of the altered legal standard to economic conditions, generally chose to sunset the provisions arbitrarily at the end of the summer of 2020. This decision reflects a view that complete moratoria are not sustainable over the long run because creditors will balk at such an important long-run limitation on their rights.

An efficient time-invariant rule, by contrast, imposes more limited restrictions on foreclosures throughout the business cycle. In recessions, these restrictions stimulate the economy and reduce unemployment, as shown by Mian and Sufi. In expansions, the restrictions limit access to credit--but only marginally. 142On balance, the Mian and Sufi results indicate that foreclosure restrictions are justified throughout the business cycle--they are the efficient time-invariant rule. Such time-invariant restrictions are likely to be more effective--and less anxiety-provoking for borrowers--than reliance on short-term foreclosure moratoria. While foreclosure moratoria have a role as [\*101] a response to extreme economic upheaval, they can only offer temporary respite.

B. Bankruptcy Law and Contract

A more robust definition of efficiency can also improve bankruptcy law.

Efficient bankruptcy law balances two competing interests. 143Discharge of debt in bankruptcy provides borrowers with a fresh start, enabling them to improve their employment prospects, income, and even health. 144But discharge in bankruptcy promotes moral hazard; some borrowers with legitimate capacity to pay will seek bankruptcy protection as a preferred alternative, raising the cost of credit. A similar balance applies to rules that make it difficult for firms to reorganize and restructure and instead force liquidations. Allowing reorganization enables firms to retrench and increase productivity. At the same time, avoiding raises the cost of credit by reducing the penalty of debt default to a firm.

Bankruptcy law balances these competing interests. But the efficient balance likely differs over the business cycle. In expansions, even debt-constrained debtors are likely to have access to employment, reducing the social value of a fresh start. Likewise, the assets of corporations that are liquidated are likely to find alternative uses in expansions. As a result, bankruptcy law in expansions needs to pay considerable attention to the risks associated with too much debt discharge.

The calculus changes in recessions. Bankruptcy liquidations cause devastating spillover effects to local economies, raising unemployment and reducing spending. 145When these effects are exacerbated by the high spending multipliers characteristic of recessions, the costs of liquidation become prohibitive. In recessions, liquidations should be avoided because they are inefficient, reducing employment and output.

Bankruptcy rules should place particularly strong emphasis on their effects in recessions relative to expansions. Bankruptcy filings, like unemployment claims and foreclosures, skyrocket in recessions, meaning that bankruptcy rules are applied disproportionately frequently when the economy is struggling. 146

[\*102] One solution to this variation in efficient bankruptcy law is law that varies with the business cycle. 147As noted above, however, changing law with the business cycle may simply be too complex to manage.

Efficient time-invariant bankruptcy rules offer another solution. Rather than setting bankruptcy rules to optimize the tradeoff between the value of a fresh start and the cost of moral hazard in ordinary economic conditions, bankruptcy discharge and liquidation rules should be more favorable to debtors at all times. Pro-debtor bankruptcy laws decrease efficiency in expansions. But they significantly increase efficiency in downturns. With the stakes in recessions so high, this is a tradeoff worth making.

C. Contract Law: Impracticability

Bankruptcy law and foreclosure law have obvious relevance to recessions. But time-invariant legal rules that account for downturns should prevail in many areas of law. Indeed, some otherwise problematic legal doctrines look more defensible when viewed through the lens of a fluctuating business cycle. Consider, for example, the contract law doctrine of impracticability. This doctrine, sometimes known as impossibility, excuses contractual performance when, for unexpected reasons, performance is impossible or impracticable for the promisor. In the seminal case of Taylor v. Caldwell, for example, a theater owner was excused from a contract to let the theater when the theater burned down before the rental date. 148

Even when performance is difficult or impossible, the promisor can pay damages. The defendant theater owner in Taylor could not reasonably have rented an intact theater to the plaintiff, but it could have paid the plaintiff damages. As a result, impracticability is not an inevitable component of contract law.

From a purely microeconomic perspective, impracticability looks problematic, though not indefensible. 149Impracticability adds complexity to the law. It raises the prospect of inefficient litigation in otherwise straightforward breach of contract cases. Even if a promisor fails to perform a clear contractual obligation, they can often argue that performance was impractical. In some cases (such as Taylor), unexpected difficulties in performance discharge a promisor's obligation. 150In others, they do not. 151

[\*103] Law and economics would prefer to shift the analysis from the muddled impracticability doctrine to a focus on risk bearing. 152If the promisor is a better risk bearer of an unforeseen risk than the promisee, then the promisor should bear the risk. 153In Taylor, the court should have asked which party was better able to bear the risk that the theater would be unusable, the theater owner or the plaintiff. That party should bear the risk, independent of performance's feasibility.

In expansions, the "superior" risk bearer standard appears to outperform impracticability. It is likely easier to ask about a party's risk bearing capacity (access to insurance, capital, etc. .), then to determine whether performance has become merely difficult vs. truly impossible or impracticable. In Taylor, the theater owner might well have had access to fire insurance and therefore be better placed to bear the risk of fire than the plaintiff. 154Contract law would be easier to predict without impracticability.

In recessions, by contrast, the superior risk bearer standard loses traction. Recessions are often caused by events for which no insurance is available. Even businesses with business interruption insurance, for example, lacked coverage for the COVID-19 pandemic, as pandemics were excluded from most types of coverage. 155Companies or individuals with higher net worth may be more exposed to COVID-19 losses than those with fewer contracts, making access to capital another poor measure of COVID-19 risk bearing capacity. Searching for the best risk-bearer of COVID-19 (or the Financial Crisis of 2008 or the Euro Crisis of 2012) therefore looks like an exercise in futility.

Impracticability fares better in recessions. COVID-19 made many contracts impossible to perform. The doctrine of impracticability excuses the promisor from performance. If the promisor has made many such promises, then impracticability may be the only thing standing between the promisor and business devastation. If impracticability mitigated widespread business disruption and litigation in the aftermath of COVID-19's arrival, 156then it enhanced efficiency--at an incredibly fraught time in the U.S. economy.

[\*104] We can therefore understand impracticability as an efficient time-invariant legal rule. Impracticability may impede efficiency during expansions but provide an invaluable "circuit breaker" during recessions. If contract law must apply a single rule over the course of the business cycle, then impracticability plausibly outperforms (on average) the "superior risk bearer" standard offered by law and economics.

V. Conclusion

Since its inception, law and economics has aimed to characterize the legal rules that maximize efficiency. But it has ignored macroeconomics. During the Great Moderation (late 1980s-2007), assuming away macroeconomics was a defensible strategy. Recessions in developed economies (with the important exception of Japan) were rare, short, and relatively light. Legal scholars interested in economics could justifiably focus on designing legal rules that maximized efficiency in economies operating at full capacity.

The last twelve years have changed this calculus. The Great Recession, its prolonged aftermath, and the unprecedented economic collapse caused by COVID-19 suggest we live in a radically different economic environment. Aggregate demand shortfalls, as measured by unemployment rates well above the natural rate, are now more frequent, and the harm they cause much greater. In addition to these explicitly macroeconomic considerations, microeconomic incentives also change substantially during recessions. As a result, legal rules that perform poorly in recessions--as do many of the rules emphasized by law and economics--cannot be characterized as "efficient" any longer.

Indeed, just as the COVID-19 economic era has exposed the importance of robust supply chains capable of functioning during infrequent but intense periods of disruption, 157the longer periods of recession in the 21st century reveal the importance of legal rules which are capable of buttressing periods of economic downturn. In normal logistical periods, extra ICU beds or lower-margin domestic medical manufacturing facilities are a drag on the efficiency of a healthcare system. But in unusual periods of crisis, those resources are incredibly valuable to preserve continuity in social systems [\*105] and healthcare operations. On net, the drag of carrying minor inefficiency is far less important than the utility in emergencies. The overhanging periods of unemployment and reduced aggregate demand resulting from increasingly frequent recessions call for an analogous view of legal rulemaking, one that explicitly considers preserving stimulative capacity for emergencies even during periods of economic growth.

**Supply and demand for corporate debt are still deep.**

Nicholas **Elfner 1/6**, Co-Head of Research, Breckinridge Capital Advisors, "Q1 2026 Corporate Bond Market Outlook," Corporate Commentary, 01/06/2026, https://www.breckinridge.com/insights/details/q1-2026-corporate-bond-market-outlook/

We expect stable credit fundamentals in 2026. Agency rating actions have continued with positive bias.11 Credit is supported by solid revenue growth and cost discipline, driving margin improvement and steady debt metrics. However, mergers and acquisitions (M&A) and capital expenditures (cap ex) are each rising notably and may strain credit metrics if debt funding is used prodigiously. Idiosyncratic events in sub-prime and private credit are risks.

Our macro-outlook for 2026 is for moderate real economic growth. Growth has been driven by spending from high income households and a boost in productivity from AI related cap ex. The Breckinridge Investment Committee anticipates one additional rate cut in 2026, with the 10-year Treasury yield expected to trade between 4.0 percent and 4.5 percent. Payroll growth slowed down in the fourth quarter of 2025, and the Federal Reserve’s (Fed’s) view is clear that the labor market has softened sufficiently to warrant additional monetary accommodation to stimulate demand.

We see tactical opportunities in short--to-intermediate-term corporates on reasonable credit curves and breakeven spreads.12 We expect more 30-year issuance, which may present opportunities. Relative value should emerge across capital structures in Banks, Insurers, and Utilities as these sectors may see an increase in hybrid capital supply. Above-average yields, steady investor demand, and stable credit fundamentals are counterbalanced by tight spreads, rising new issue supply, cap ex, and M&A, driving a modest overweight to the corporate sector with a defensive posture.

Valuations: Sector Dispersion and Opportunities

IG corporate bond spreads, as measured by the Index, tightened by two basis points (bps) during the year, ending the fourth quarter at an option-adjusted spread (OAS) of 78bps.13 Spreads are rich, in the 2nd percentile over a 20-year lookback. Compressed valuations argue for a defensive stance entering 2026. The yield-to-worst (YTW) for the Index was 4.81 percent on December 31st. An IG YTW in the 66th percentile, since 2005, may support investor demand via domestic and foreign funds flows.14

Long corporates (-4bps) modestly outperformed intermediate corporates (-2bps) on a spread basis, as credit curves flattened slightly. There was dispersion across industries, with tighter spreads in sectors such as Healthcare (-13bps), Banking (-9bps) and Capital Goods (-8bps), partially offset by wider spreads in Finance (+30bps), Technology (+11bps), and Utilities (+2bps) for the full year.

Quality spreads widened slightly during the year, with the A Index (+64bps) 4bps tighter and the BBB Index (+97bps) unchanged on the year. The spread differential of 33bps is tight relative to recent history with a Z-Score15 of negative 1.5 compared to the average over the last five years.16 The spread/yield conundrum reminds us of prior periods (1995-1997 and 2004-2006), with relatively high risk-free rates and tight spreads that lasted for a few years. This relationship can persist until a financial shock and/or a sharply weakening economy prompts a material drop in the fed funds rate and Treasury yields that correspond with a higher credit risk premium.

Technicals: Supply Rising, Demand Still Deep

Entering 2026, we think bond supply may accelerate on rising cap ex and M&A activity. IG gross bond supply was $321 billion in the fourth quarter, and $1.82 trillion in 2025. On a net basis, after redemptions, issuance was $86 billion and $548 billion, respectively.17

We expect to see more supply in longer-maturity corporate bonds this year, which may present opportunities, particularly for yield-oriented buyers. One investment bank is estimating gross and net issuance of $2.25 trillion and $1.0 trillion in 2026, respectively, which would eclipse the previous gross record of $2.1 trillion in 2020.18

We think fund flows can remain healthy while IG supply may accelerate on rising cap ex and M&A activity. Inflows into taxable bond funds and exchange-traded funds (ETFs) were $156 billion in the fourth quarter and $490 billion in 2025.19 Foreign investor net corporate purchases were $83 billion for the three months and $304 billion for the 12 months through October.20

On the supply side, we expect large issuance from the Technology and Utility sectors to be somewhat counterbalanced by less supply from the Banking sector.

Utilities may also materially increase their borrowing in the corporate bond market in 2026. Utility cap ex grew from $104 billion in 2015 to $208 billion in 2025 and may reach $248 billion in 2029.21 Cap ex will bring a wave of new debt issuance.22

In the fourth quarter, U.S. Bank regulators issued a final rule to modify certain regulatory capital standards including changes to the Supplementary Leverage Ratio (SLR) that will likely reduce holding company long-term debt (LTD) issuance needs.23 These regulatory changes could reduce external LTD requirement by over $150 billion and Total Loss Absorbing Capital (TLAC) needs by nearly $100 billion.24 Higher surplus LTD suggests reduced refinancing and U.S. Bank net supply may be sharply lower, potentially down 40 percent in 2026.25 We view lower supply as a supportive technical for Bank bond spreads.

Fundamentals: Stable, With Pockets to Watch

We see stable credit fundamentals for Industrials in 2026. Non-financial credit metrics were stable in the last quarter and indeed over the past few years.26 Credit is supported by solid revenue growth and cost discipline, which are driving margin improvement and steady debt metrics.

**Link---1NR**

**4. The effect is HUGE---in just the year after the plan, bondholders expect to lose $50 million per firm!**

Murillo **Campello et al. 18**, Campello Johnson Graduate School of Management Cornell University, Jiaping Qiu DeGroote School of Business McMaster University, Janet Gao Kelley School of Business Indiana University, Yue Zhang Universite Catholique de Louvain, “Bankruptcy and the Cost of Organized Labor: Evidence from Union Elections,” The Review of Financial Studies, Volume 31, Issue 3, March 2018, Pages 980–1013, https://doi.org/10.1093/rfs/hhx117

6 A Discussion of Economic Effects

We end our analysis with an assessment of the economic magnitudes implied in bondholders’ reactions to news of worker unionization. We have shown that worker unionization leads to increased costs from in-court bankruptcy proceedings for unsecured creditors. It is important to put those costs (total bond losses and court costs) into perspective, fleshing out magnitudes and assessing the consequences they bring to workers and credi tors. Notably, the bankruptcy process allows — even if only temporarily — for workers to continue receiving wages and enjoying benefits. Continuation of employment can be seen as a wealth transfer amongst corporate insiders. This welfare effect stands in contrast to transfers from firm insiders to outside parties, such as attorneys, financial advisors, and other professionals involved in court litigation. While it is difficult to measure all of these wealth effects, our setting allows us to perform a back-of-the-envelope calculation regarding a “partial” equilibrium based on our localized estimations. This helps us tease out some of the magnitudes involved.

We start by calculating the total value loss to bondholders induced by unionization. From our estimates, a close union winner experiences a 470-basis-point decline in bond CARs over the 12-month post-election period following the union election (see Table 4). Given that the average firm in our sample has $1,087 million in bonds outstanding, this estimate translates to an average of $51 million total value loss for bondholders.

Next, we estimate bondholders’ losses that arise directly from the increases in court costs attributable to unionization. Estimates of direct bankruptcy costs range from as low as 2.8% (Weiss (1990)) to 6% (Altman (1984)) of firms’ total asset values. We choose the conservative figure of 2.8%. The estimates in column (5) of Table 7 suggest that unionization is associated with 57% higher bankruptcy costs. Accordingly, we take that unionization is associated with a higher bankruptcy cost equivalent to 1.6% of a firm’s total asset value (= 57% × 2.8%). The average firm in our sample has a total asset value of $21.5 billion; thus, we estimate that bankruptcy is likely to cost $343 million more for unionized firms (= 1.6% × $21.5 billion).

**1. RISK-NEUTRALITY. Bond prices give greater weight to costs occurred in bankruptcy than the probability of bankruptcy occurring in the first place. That trumps the turn, even if they are correct.**

*The market doesn't price bonds using actuarial tables. It prices them assuming defaults happen in the worst possible states—recessions, credit crunches, systemic crises. That's why risk-neutral default probability is 12% when historical default probability is only 1.6%. Any increase in what happens during bankruptcy gets multiplied by that inflated weight. Their productivity argument operates on the wrong margin: shaving points off an already-small default probability matters less than what happens in the states where defaults actually occur.*

*Nora note:bond assessments based on magnitude not probability. you're a diversified investor. if company experiences idiosyncratic risk, if rest of holdings fine, no care much about it. care more about--"assuming there's broader econ downturn, how bad would it be within this company."*

*if aff = we reduce probably if default.*

Murillo **Campello et al. 18**, Campello Johnson Graduate School of Management Cornell University, Jiaping Qiu DeGroote School of Business McMaster University, Janet Gao Kelley School of Business Indiana University, Yue Zhang Universite Catholique de Louvain, “Bankruptcy and the Cost of Organized Labor: Evidence from Union Elections,” The Review of Financial Studies, Volume 31, Issue 3, March 2018, Pages 980–1013, https://doi.org/10.1093/rfs/hhx117

The last element we need to consider is the probability that firms default. We estimate default probabilities according to firms’ credit ratings, and we employ two measures of default. We first use historical default probabilities from Moody’s (Moody’s (2007)), which are simple statistics of past observed default events. We also use risk-neutral default probabilities, which account for investors’ risk preferences and are higher than historical occurrences. Our sample firms have an average credit rating of A3. These firms have a historical default probability of 1.6% and a risk-neutral default probability of 12%.

With these default probability statistics, we estimate an expected explicit bankruptcy cost of around $5.5 million for our sample firms under the historical default probability (= 1.6% × $343 million), a negligible portion of the $51 million total bondholder loss. Under the risk-neutral default probability, however, we expect bankruptcy costs to be $41 million (= 12% × $343 million), which accounts for a large proportion of total losses.

The estimates above point to two possible channels through which bondholders’ wealth is dissipated in bankruptcy. Modern asset pricing theory suggests that risk-neutrality underlies the calculation of bond prices (Duffie and Singleton (1999) and Elton et al. (2001)). If bond investors price their claims using risk-neutral probabilities, then our results imply that over 80% of observed losses to bond values stem from expected court costs (wealth that is in great part transferred to professionals involved in the litigation process). If one relies on historical default probabilities, on the other hand, then a plausible conclusion is that only a small percentage of bondholder losses are due to in-court expenses, and the rest of the losses are likely to be captured by unionized workers, potentially due to improved job security and preserved wages and benefits (Abowd (1989)).

7 Concluding Remarks

Using a sample of union elections spanning four decades, we find that union election victories are associated with increased bankruptcy costs, which lead to declines in bond values. As we investigate channels through which unionized labor affects bond values, we find that unionization is associated with increases in bankruptcy costs, yet no apparent changes in the probability of bankruptcy. The impact of unionization on bond values are stronger for financially distressed firms, for firms with underfunded pension plans, and in jurisdictions where unions are deemed to be better funded (non-RTW states).

Overall, our paper sheds new light into how organized labor interacts with financial stakeholders of the firm, unsecured creditors in particular. We show that unions can make bankruptcy more costly, prolonged, and convoluted through the way unionized workers’ rights are assigned under Chapter 11 proceedings. Our study shows that these dynamics are recognized by creditors, who in turn price it into firms’ funding costs. The analysis we put forth may provide new insights for researchers and policymakers in better understanding how firm–labor relations shape corporate access to credit.

### AT: Unions Decrease Debt – 1NR

**1. HOLD UP---union power motivates managers to increase debt as leverage against workers.**

Naercio **Menezes-Filho &** John **Van Reenen 3**, "Unions and innovation: A survey of the theory and empirical evidence" In: Addison, J., Schnabel, C. (eds). International Handbook of Trade Unions. Cheltenham: Edward Elgar, 2003.

Grout (1 984) built on Simons' ( 1 944) model of the negative impact of unions on investment because of their appropriation of quasi-rents from investment. The mechanism is quite simple when extended to R&D as a specific form of investment. R&D has a large element of sunk cost (about 90 per cent of R&D is current expenses on staff costs and materials). Once an R&D investment is in place and an innovation has successfully been introduced, it is possible for a union to 'hold up' the shareholders by demanding higher wages. 7

Figure 9. 1 gives the extensive form of a simple game to show this possibility. In stage I the firm chooses R&D ('high' or 'low') and in stage II the union chooses the wage ('high' or low'). The union would like to commit to a low wage strategy conditional on the firm choosing high R&D. This way the pie is bigger (10 compared to 8) and both parties can gain (both get a pay-off of 5 as opposed to 4). However, the union cannot credibly commit to a low wage strategy in advance; because once the R&D investment is sunk there exists a strong temptation to deviate from any agreement. It is clear that the union's best response at stage II is always to play a high wage strategy. The firm knows this to be the case in stage I, and will always choose a low R&D policy. The only sub-game perfect equilibrium therefore is the (low R&D, high wage) outcome.

[Figure 9.1 omitted]

This game has the form of a prisoner's dilemma and, as usual, there may be many ways 'out' of the dilemma by changing the structure of the game. Grout himself suggested that the first best could be achieved if unions and firms could get together and bargain over investment as well as wages. This is a common and intuitive result. It is symmetrical to the contrast between the 'right to manage' union model (where there is bargaining only over the wage) and the efficient bargaining model (where there is bargaining over both wages and employment). The latter is Pareto efficient and the former is not (e.g. Leontief, 1 946).

Unfortunately this 'solution' to the Grout model faces a similar problem to the 'efficient bargaining over employment' model. Explicit union bargaining over employment is seldom empirically observed. Bargaining over the introduction of new technology or investment is still rarer, and bargaining over R&D itself is almost never seen. One response to this criticism is the argument that some kind of 'implicit' bargaining takes place over other instruments. It is difficult to see how this would practically come about. With employment, one could imagine that effort bargaining (e.g. over manning levels) gets us some way towards the efficient solution,8 but there seems little analogous mechanism for an implicit bargain over R&D.9

A version of the implicit contract argument is that the long-term labour contracts, such as those in large Japanese companies, act as a kind of commitment device. Japanese workers can effectively commit themselves not to appropriate the rents from innovation. Unfortunately, this is certainly not the case in Britain and the United States where contracts are more short term (three years generally being the maximum). Ulph and Ulph (1 989) have suggested that this may be a reason for the differential effects of unions on innovation across different countries. Even when contracts are more durable, however, commitments are likely to be difficult to sustain when there is uncertainty and significant informational asymmetries between the players.

Another related 'escape route' from the hold-up problem is to notice that the game between unions and firms is repeated over time rather than being a one-shot game. Van der Ploeg (1 987), for example, stressed the damage to a union's reputation in seeking to expropriate a firm's quasi-rents from innovation.

An important element of these models will be the degree to which unions discount the future. It is quite likely that the time horizons for unions are lower than the time horizons for firms, because unions do not hold property rights in jobs. High turnover or the control of the union by senior members who are looking to retirement will lower the discount factor of the union vis-a-vis the firm. This is one of the insights of Baldwin (1983). She also shows that, in the presence of union demands for sharing the returns from long-lived capital investment, investors may choose a selfenforcing counter-strategy of investing in less efficient plant and equipment or, alternatively, to try and extend the union's time horizon.

Addison and Chilton ( 1 998) focus on the possibility of efficient investment and employment outcomes in explicitly repeated games. They first follow Espinosa and Rhee ( 1 989), assuming the following structure: first the firm chooses capital which then remains fixed. There follows a repeated game where union chooses wages and the firm sets employment, conditionally on the wage chosen. In this framework, Espinosa and Rhee ( 1 989) show that, so long as the discount factor is sufficiently close to one, there exist equilibria where neither the firm nor the union will be tempted to deviate, because they would find the punishment too harsh. The resulting equilibria will encompass the monopoly union and the fully efficient bargaining models as particular cases that result from certain discount rates.

Addison and Chilton (1 998) also extend this model to allow the firm to choose capital at the beginning of each sub-game. Capital flexibility, besides raising the punishment the firm can impose on a deviating union (as in Baldwin, 1 983), also weakens the union's punishment of the firm that cheats, introducing the possibility of opportunistic behaviour on the part of the firm as well and making the efficient outcome depend crucially on the firm's discount factor.

In some cases (e.g. US shipbuilding) the assumption that the repeated game will go on forever'° breaks down when unions are clearly in an 'endgame' situation of a sector in terminal decline (e.g. Lawrence and Lawrence, 1 985). In this case, the firm knows that the union will pay noncooperatively in the final sub-game and this will unravel the incentive to cooperate in previous sub-games.

Another implication of the hold-up model is that firms may take action to mitigate the degree to which they can be expropriated in other ways. Bronars and Deere (1991) suggest that firms may alter their financial structure (e.g. leveraging up the debt-equity ratio to increase the risk of bankruptcy) to reduce the incentive of unions to expropriate the innovative rents. Bronars et al. ( 1 994) emphasize the incentive to license out technology rather than develop it in-house.

### Link – Spillover – 1NR

**That systemically disrupts the bankruptcy court system, affecting credit risk in every other sector.**

Scott **Clarkson et al. 25**, Bankruptcy Judge Scott C. Clarkson, Central District of California; Taylor Brown-Duncan, Law Clerk and the Chamber's Spring 2025 externs; Sophie Jeltema, Chapman University, Fowler School of Law 3L; Courtney Karp, Chapman University, Fowler School of Law 2L, "The World of Interlocutory Bankruptcy Appeals: A Response to 'Inconvenient Bankruptcy Appeals' appearing in the HLS Bankruptcy Roundtable," https://bankruptcyroundtable.law.harvard.edu/wp-content/uploads/2025/06/SCC-REVISIONS-to-Interlocutory-Appeals.pdf

Contrary to Mr. Cook’s view that bankruptcy courts have ‘devised a test for their discretion’ to hear interlocutory appeals ‘that effectively makes their review a matter of their own convenience,’ judges consistently apply the appropriate statutory and decisional standards for hearing such interlocutory appeals. Although meeting the high bar set by statute and precedent may at times frustrate litigants, these standards balance the ‘safety valve’ role that such appeals can play with the federal interests served by a general rule of waiting for final judgments to avoid piecemeal litigation that clogs the courts.

It would be a mistake to simply believe that an interlocutory appeal is analogous to the child who, dissatisfied with the direction of parent #1, runs to parent #2, seeking to play them off against each other. Appropriately exercised, they may resolve litigation effectively and efficiently.1

[Footnote 1] Let us remember that simply filing an interlocutory appeal doesn’t mean that the disappointed party is correct or that the bankruptcy court was in error. Some might believe (and have witnessed) the occasional filing of an interlocutory appeal as a litigation strategy, rent seeking from an opponent. These are filed when the goal is not to achieve justice or correct a legal error, but to delay proceedings, exhaust the other party’s resources, or extract a settlement. The costs (court time, legal fees, delays) are largely borne by the opposing party and the public (via clogged courts), while the rent seeker potentially benefits from delay or nuisance value. [End]

However, the underlying problem with all interlocutory appeals is that they introduce delay by interfering with the activity in the trial court before the trial court can enter a “final order” that triggers an appeal as of right.

While the prior BRT article suggested that district courts and bankruptcy appellate panels (BAP) often find it “inconvenient” to undertake interlocutory appeals (thus the title), much good comes from a discussion, and the opportunity to explore the nature of interlocutory appeals should not be missed. Thus, in response to the prior article, some history, standards of analysis on the decisions to take up interlocutory appeals, and finally a demonstration that district courts and BAPs are doing their work quite well, is in order.

**4. Amplifying competing interests increases the rate of bankruptcy appeals---that's specifically harmful.**

John A. **Peterson III &** Joshua A. **Esses 21**, "The Future of Bankruptcy Appeals: Appellate Standing After Lexmark Considered," Emory Bankruptcy Developments Journal, vol. 37, 2021, pp. 285

Beyond and above any historical arguments, courts consistently justify the application of the prudential person-aggrieved standard as a wise rule of judicial economy. It is consistently presented as necessary “to dissuade umpteen appeals raising umpteen issues.”56 Because bankruptcy cases often “involve numerous parties with conflicting and overlapping interests[,] . . . [a]llowing each and every party to appeal each and every order would clog up the system and bog down the courts.”57 Therefore, it is common wisdom that prudence dictates that “[t]he ‘person aggrieved’ test is an even more exacting standard than traditional constitutional standing.”58 The test, as often applied, “demands a higher causal nexus between act and injury; appellant[s] must show that [they were] directly and adversely affected pecuniarily by the order of the bankruptcy court in order to have standing to appeal.”59 As the Eleventh Circuit explained:

The person aggrieved standard was developed as an answer to the argument that the failure to limit who can appeal a bankruptcy court’s order would cause “bankruptcy litigation [to] become mired in endless appeals brought by the myriad of parties who are indirectly affected by every bankruptcy court order.” Since the purpose of adopting this heightened standard was to ensure that the goals of bankruptcy were not derailed by a flood of appeals, it only makes sense to exclude appeals from those parties who do not suffer a direct harm to interests the Bankruptcy Code seeks to protect or regulate—that is, appeals that do not further the goals of bankruptcy. Allowing appeals from parties who have suffered only an indirect harm or who hold interests outside the scope of the Bankruptcy Code would defeat the very purpose underlying our person aggrieved standard.60

**Unionization has differential effect on bond prices based on bargaining power. Link is not union yes/no.**

Murillo **Campello et al. 18**, Campello Johnson Graduate School of Management Cornell University, Jiaping Qiu DeGroote School of Business McMaster University, Janet Gao Kelley School of Business Indiana University, Yue Zhang Universite Catholique de Louvain, “Bankruptcy and the Cost of Organized Labor: Evidence from Union Elections,” The Review of Financial Studies, Volume 31, Issue 3, March 2018, Pages 980–1013, https://doi.org/10.1093/rfs/hhx117

4.3.3 Union Representative Power

Our story suggests that unionization increases the bargaining power of workers, ultimately affecting bondholders. We exploit regional variation in the power of the union movement to further this conclusion. In particular, we take advantage of state-level rightto-work (RTW) laws that alter unions’ bargaining position. RTW laws allow employees who are not union members to enjoy the benefits of unions without paying dues. This induces a “free-rider” problem, one that labor advocates claim would weaken unions’ bargaining position both in and out of bankruptcy.21 Research also shows that RTW laws reduce unions’ resources, limiting their powers and ability to litigate (see, e.g., Ellwood and Fine (1987), Holmes (1998), and Matsa (2010)). We use this wrinkle to test if unionization has differential effects on bond prices according to whether the state in which the union election takes place has passed an RTW law.

Table 12 shows the results of our tests. In states with no RTW laws (455 election events), unionization has a large and significant impact on bond CARs. Relative to near losers, bond CARs of near winners drop 220 (670) basis points over the 3 (12)-month window following union elections. In states with RTW laws, in contrast, the impact of unionization on bond values is small and insignificantly different from zero. In all, the impact of unionization on unsecured creditors’ wealth seems to be weakened in states where the legislature has passed laws that undermine the power of unions.

**Link – Spillover – AT: No Cover Churches**

**Bankruptcy law covers religious organizations.**

David A. **Skeel, Jr. 3**, Professor of Law, University of Pennsylvania Law School, "Avoiding Moral Bankruptcy," Boston College Law Review, vol. 49, 2003, p. 1181, bclawreview.bc.edu/articles/1184/files/63bd6a968273e.pdf

I. GOOD OR BAD FAITH?

The first question is whether churches or other religious organizations are even permitted to file for bankruptcy. If American bankruptcy law excluded religious organizations, the debate as to whether bankruptcy is an appropriate solution would never get off the ground. But bankruptcy law itself is easily capacious enough to encompass churches and other religious organizations. As we shall see, this does not necessarily mean that any church could file for bankruptcy if it wished to do so. The point is simply that religious organizations meet the literal requirements for filing a bankruptcy petition, the "letter" of the bankruptcy law.

**Distinguish**

### Conceded – 1AR

**Exemptions from CBR are ripe for exploitation AND inflict maximal damage.**

Charlotte **Garden 18**, JD, Associate Professor, Law, Seattle University School of Law, "Religious Accommodation at Work: Lessons from Labor Law," Connecticut Law Review, Vol. 50, No. 4, pg. 855-876, December 2018, HeinOnline. [italics in original]

Cases involving exemptions from NLRA coverage also help demonstrate one way in which certain religious accommodations for employers differ from one another: some are likely to make the employer more competitive in the secular marketplace.7 1 This distinction implicates both employers' incentives to claim exemptions and the list of third parties who are burdened by accommodations.

An accommodation in the form of an exemption from federal labor law is a considerable deregulatory concession. It means not only freedom from the obligation to bargain collectively with an elected labor union, but also freedom to ignore statutory protections for employees' concerted activity, which apply whether or not those employees have voted to unionize.72 Thus, unlike an employer who is subject to NLRB jurisdiction, an employer who is exempt is free to punish or even fire employees who discuss their own pay or other working conditions amongst themselves; who distribute union literature in nonworking areas during nonworking time; who use their work-issued email addresses to discuss working conditions or union organizing; or who go out on strike. Finally, there is the union wage premium to consider-unionized employees tend to make more than their nonunion counterparts,73 so the exemption from the obligation to bargain collectively can mean cost savings for an employer. In light of these consequences, it is easy to see why a hypothetical employer-particularly a for-profit employer or one that operates in a competitive marketplace-might be inclined to seek a religious exemption from the NLRA.

This is one way an exemption from the NLRA is arguably different than some of the other religious exemptions or accommodations discussed in the Introduction to this Article. For the reasons listed in the previous paragraph, employers have clearer financial incentives to seek an exemption from NLRB jurisdiction than to seek other common types of accommodations or exemptions. For example, an exemption from the contraceptive mandate has an uncertain effect on employers' or insurers' costs, 74 and refusing to include contraceptive coverage in employees' benefits packages may prompt some consumers to boycott and others to go out of their way to patronize an establishment.75 Likewise, an employer that does not offer contraceptive coverage may have a more difficult time recruiting qualified employees than the many employers that do offer coverage.

In contrast, only a small minority of private sector employers are unionized, and it is common for employers to overtly oppose employees' collective action. That means an employer's religious objection to NLRB jurisdiction seems unlikely to place it at a competitive disadvantage vis-a-vis many potential employees, even as it provides a competitive advantage vis-a-vis other employers. As further evidence that at least some employers would view an NLRA exemption as valuable, one need only look to states in the southeastern United States, which sometimes tout their relatively "union free" status as a basis to attract new business.7 6 Similarly, the ministerial exception may be valuable to employers, even though it applies only to a limited class of "ministerial" employees. That is, religious employers can be sure that a decision to demote or fire a ministerial employee will not lead to an expensive trial or an award of damages7-a significant concession, as the Court seemed to recognize in its discussion of litigation risk in *Amos*.

This means there are two groups that are potentially affected by employer religious exemptions: employees, who lose the benefits of statutory rights that they would otherwise have; and market competitors that must comply with laws from which one or more religious competitors are exempt. Although the latter group has not received much attention in recent cases, potential effects on market competitors were part of the reason the Court rejected the employer's religious defense to its noncompliance with the Federal Labor Standards Act (FLSA) in *Alamo Foundation*.78 There, the petitioner was a religiously affiliated nonprofit organization that operated several commercial establishments for the purpose of funding its own religious activities.79 It employed "associates," whom the Court described as "drug addicts, derelicts, or criminals before their conversion and rehabilitation by the Foundation."8 In lieu of any wage or salary, the Foundation provided these employees "food, clothing, shelter, and other benefits."8 Although the employees disavowed any desire to be paid-they "considered themselves volunteers who were working only for religious and evangelical reasons" 82-the Court held that the Foundation had violated the FLSA, rejecting its argument for an exemption based on its religious character. 83

Affirming the lower court's rejection of the Foundation's argument that its "businesses function as 'churches in disguise,"' the Court cited the effect of an FLSA exemption on the Foundation's competitors:

[T]he Foundation's businesses serve the general public in competition with ordinary commercial enterprises ... and the payment of substandard wages would undoubtedly give petitioners and similar organizations an advantage over their competitors. It is exactly this kind of 'unfair method of competition' that the [FLSA] was intended to prevent... and the admixture of religious motivations does not alter a business's effect on commerce. 84

The statutory context and the fact that *Alamo Foundation* was an enforcement action brought by the government made this case a particularly good vehicle to highlight effects on competitors. That explains why the *Amos* Court rejected a similar argument, observing that "[i]t is not clear why appellees should have standing to represent the interests of secular employers," and that in any event, the religious employer exemption in Title VII did not violate the Equal Protection Clause.85 However, the *Amos* Court did not deny that the scope of Title Vii's religious exemption could have implications for competitors--rather, it simply found that those implications did not make a legal difference, given the case's statutory context and procedural posture.

As these cases show, courts considering the scope of accommodations for religious employers at least sometimes take into account competitors' interests. Moreover, as I have argued, where employers are entitled to religious exemptions or accommodations, they should be (and may be legally required to be) structured narrowly in order to minimize the burdens imposed on employees.86

In this regard, the NLRB cases show that at least some employers' religious accommodation claims are amenable to solutions that partially compensate employees for the costs they incur as a result of the accommodation. This is ironic because, as discussed above, *Catholic Bishop* does not require religious employers to compensate employees for the loss of their NLRA rights at all-it is an example of what Henry Chambers Jr. has characterized as the Supreme Court's persistent failure to "seriously consider employee rights as a counterbalance to the extension of the employer's free exercise rights" in recent employer free exercise cases. 87

I have previously argued that collective bargaining under the NLRA provides a built-in structure for unions and employers to negotiate religious accommodations in a way that both protects employers' free exercise and compensates employees for the loss of their statutory rights.88 That discussion focused mainly on employers that objected to particular collective bargaining outcomes, such as the possibility that a union would call for the employer to provide contraceptive coverage. But a real-world example shows that it can even be possible for unions and religious employers to come together to negotiate an entire unionization and collective bargaining structure that protects employers' religious commitments while also ensuring that employees have the option to unionize and bargain collectively in a fashion that is reasonably similar to-and in some ways more employee-friendly than-the NLRA.

In 2009, the United States Conference of Catholic Bishops and a group of labor leaders produced a document entitled *Respecting the Just Rights of Workers: Guidance and Options for Catholic Health Care and Unions*.89 The document, which was the product of lengthy discussions that took place over the course of years, sets out a framework for union drives that includes both broad statements of shared values and much more specific expectations about acceptable and unacceptable employer and union tactics during an organizing campaign. 9 As former SEIU General Counsel Judith Scott put it:

[The] document underscores the importance of respect for both parties. It emphasizes that a code of conduct should be worked out beyond the requirements of the National Labor Relations Act to reflect the Catholic social teachings and to promote a fair way in which workers can choose a union that goes beyond the basic protections you get under current labor law. 91

This document reflects the sort of compromise that the Court seemed to hope might ultimately resolve the disputes that gave rise to both *Zubik* and *Hobby Lobby*, and for which some commentators have also expressed support.92 It may seem surprising that it arose in the context of labor law, where the *Catholic Bishop* approach leads to all-or-nothing exemptions from NLRB jurisdiction and does not require religious employers to attempt compromise with employees and their unions.9 3 But it is unlikely that *Catholic Bishop* would apply to religious hospitals, and moreover, labor law is structured so that two entities that are relatively equal in their understanding of labor law and organizing strategies can sit across the table from each other and hammer out an agreement. Importantly, the Catholic hospital framework had only institutional signatories--employers and unions--rather than individual employees, who likely would have lacked the necessary legal and practical knowledge necessary to negotiate meaningfully, and also would have been too numerous for negotiations to be useful. That is, a degree of institutional longevity and expertise is necessary to iron out a bargain regarding employer religious accommodations. These conditions are not likely to be present where individual employees or consumers will pay the price for a corporate religious accommodation-a state of affairs that the Supreme Court implicitly recognized in *Zubik* and *Hobby Lobby* by treating the government (rather than affected employees) as the potential negotiating partner of religious employers.

**RF Turn**

**Turn---1NC**

**The aff causes a religious war. They encroach on religious rights to vaccine and other exemptions hy placing bargaining agreements above religious claims, which causes backlash by fervent evangelicals---those are the people who would start the war!**

Timothy J. **Aspinwall 97**, Academic Fellow, MacLean Center for Clinical Medical Ethics, University of Chicago, “Religious Exemptions to Childhood Immunization Statutes: Reaching for a More Optimal Balance Between Religious Freedom and Public Health,” *Loyola University Chicago Law Journal*, 29 Loy. U. Chi. L. J. 109

The central interests in religious freedom and public health in the vaccination context are, respectively, the freedom to practice religion without interference or penalty, and that no person should suffer illness unnecessarily. The task of this section is to identify a method and examine practical alternatives by which these interests can be more optimally balanced.

Theoretically, one can approach an optimal balance between competing interests by advancing each to a point where any additional benefit to one will cause a greater burden for the other.'28 A significant difficulty in applying this theory to religious freedom and public health is that it often will involve a comparison of incommensurables. Religious and public health interests have very different guiding principles and refer to different standards to measure marginal benefit. Although each particular religion focuses on some ultimate authority to receive or develop guiding principles, public health policy refers to physical health and contingent political authority. Although it is true that religion may influence public policy, it is not contained within public policy. Stated differently, government may take into account the positions advanced by religious advocates, but public policy cannot adopt all of the policies advanced by religious and secular interests on a particular point. This leads to a tension between interest groups that cannot be resolved without a common moral understanding.

One response to this tension between religious and secular interests is an accommodationist approach as modeled in Sherbert and Yoder." Though a Court majority now holds that the Sherbert-Yoder compelling interest test no longer extends to First Amendment challenges to generally applicable laws, the cases do provide a helpful method of analysis. Under a principle of accommodation, the state remains attentive to the impact of generally applicable laws such as vaccination requirements, and it makes conscious efforts to avoid imposing burdens on religious freedom. 130 This arrangement gives religious believers maximum freedom to optimize their own interests on their own terms, permitting state interference only when necessary to advance or protect a very important state interest. Although in many cases a policy of accommodation may prevent conflict by giving conditional deference to religion, it does not resolve the problem of balancing incommensurables. Accommodation raises the question, but it does not determine whether a given secular interest is sufficiently important to justify burdening religious interests that may be at stake.

The fact that both religion and public health acknowledge different sources of authority makes it difficult to determine precisely how much weight to give a secular interest as compared to a religious claim. 3 But, a conscientious effort to balance the interests at stake gives advocates from all perspectives on a particular issue a fair opportunity to advance their objectives in terms that best express their values. The approach suggested here is necessarily a democratic process, where policy decisions are made publicly, and no position enjoys an inherent advantage. 32 A commitment to a democratic balancing process implies a willingness to respect the resulting decision, even if contrary to one's own point of view. 133 This commitment is acceptable because the balancing process permits choice between competing interests while respecting the legitimacy of both. To the extent that religious and secular interests are committed to deciding by a public balancing of interests, the commitment to the process becomes the common moral language. It is a language of mutual respect that advocates for either position are willing to listen to and accommodate the other if reason and respect suggest that they should.134 In this sense, there can be a common morality of interaction that goes beyond mere procedure. By respecting one's own position and the positions of others, religious and secular interests may be able to balance the otherwise incommensurable interests at stake.

The strongest objection to a democratic balancing of interests is that it has obvious majoritarian implications. The concerns of a small minority religion, regardless of the openness of the balancing process, may be consistently subordinated to more widely held claims. The strongest response to this is that the alternatives to democracy tend either toward anarchy or tyranny.135 But this fact provides no absolute assurance of fairness; it simply points out that an accommodationist democracy is the best of an imperfect set of alternatives. However, a balancing process based upon mutual respect suggests that a majority may, or perhaps should, defer to a minority on a point of great importance to that minority, even if the minority position is slightly offensive to the majority, and even though the Free Exercise Clause does not require accommodation. The choice of forty-eight states to provide religious exemptions to vaccination requirements reflects this sort of choice by the majority to defer to a minority. This is a laudable effort by the states to optimize the balance between religious freedom and public health. However, accommodation alone will not generate a more optimal balance if either public health or religious interests are unnecessarily compromised.

The remaining part of this section is directed toward an assessment of alternatives to optimize the balance between religious freedom and public health in the context of immunization policy, taking into account the concerns of the parties most affected: individual children, parents, and the general public. The guiding principle here is that neither religious freedom nor public health gets absolute priority. There are occasions when religious freedom must yield to the exigencies of organized society, and there are times when organized society's commitment to religious freedom requires accommodation of minority religions. With this understanding, an optimal balance is one in which religious freedom is taken as seriously and given as much respect as other important interests and fundamental rights.' 3

The first, and perhaps most likely, legislative alternative is to maintain the status quo that exists in the majority of states: a general requirement that all children receive a standard series of vaccinations before entering school, from which persons with religious objections can apply for exemption. As suggested above, this alternative causes problems for both religious freedom and public health. Public health may be poorly served if exempt children become infected and spread disease among exempt and otherwise underimmunized persons.' 37 Conversely, religious freedom may be poorly served if parents whose beliefs fail to qualify them for exemption can be subject to criminal prosecution. 3 8 The most obvious way to relieve the burden on one interest results in increasing the burden on the other interest. That is, broadening exemption eligibility to include all sincere objections minimizes the possibility that a religious objection will be incorrectly denied, but it increases the burden on public health. Conversely, repeal of religious exemptions might advance the public health, but not without increasing the burden on religious freedom. As a result, neither of these solutions improves the suboptimal status quo-they merely reallocate the burdens.

A second alternative is to repeal religious exemptions and all punitive measures for parental noncompliance with vaccination requirements. Under this alternative, the public health authorities would vaccinate school children, with or without parental consent. 39 This alternative has two benefits. First, it protects the public health by eliminating the pockets of disease vulnerability that exist among exempt populations. Second, it reduces the burden on parents who otherwise would be penalized for refusing consent for their child's vaccination. Because their consent becomes unnecessary, parents would not be forced to choose between their religious beliefs and legal interests. However, even if parental consent is not required, significant burdens remain. First, parents who anticipate a religiously objectionable vaccination might keep their child from attending school where the vaccinations most likely would be imposed. In such a case, parents could be criminally prosecuted for causing their child's truancy, thereby suffering an indirect burden on their religious practice." However, a very direct burden on religious freedom is eliminated in that parents would not be prosecuted as a direct consequence of refusing to consent. Second, and the more onerous burden, is the fact that some religions may consider vaccination to be so offensive that a vaccinated child is no longer acceptable to the parents and thus may be abandoned.' 4' Such cases are unusual; while the beliefs that precipitate such a response may be extreme, the burden imposed is also extreme. These burdens must be taken seriously in any effort to reach an optimal balance, but in the absence of a better alternative, they do not preclude a policy of vaccinating children without parental consent.

A third alternative is to permit exemption for children who engage in home-schooling or attend private schools that explicitly permit unvaccinated children. This policy would give religious parents an option to maintain their religious integrity without imposing a significant burden on them.'42 There are two significant problems with this alternative. First, it would create underimmunized subpopulations by giving parents an incentive to put their children into schools with a high proportion of unimmunized students. Children in home-schooling also would be at risk to the extent that they associate with unimmunized persons, most likely in worship or other religious gatherings. A provision permitting the public health authorities to vaccinate in the event of an epidemic would be of limited utility because the disease already has spread by the time symptoms appear.' 43 Another significant problem is that it is divisive and stigmatizing to give parents a clear incentive to segregate. When parents are forced to choose between consenting to a religiously prohibited vaccination and segregating their child, those who can afford to segregate are likely to do so. Segregationist incentives fail to optimize the public well-being, either socially or epidemiologically.

Although each of these alternatives to the status quo offer to protect one interest and mitigate the burdens on the other, neither is entirely successful. Both impose burdens upon either religious freedom or public health that are unacceptable if they can be reasonably avoided. A more optimal solution would enhance both sets of interests while imposing minimal burdens.

A legislative and executive policy that vigorously promotes voluntary vaccinations is an alternative that offers to enhance both religious freedom and public health without burdening either. This is perhaps the most obvious way to reduce the tension between religious freedom and public health because it improves one without imposing on the other. However, this solution has proven difficult to implement. This can be seen in the development of federal legislation providing free distribution of pediatric vaccines to qualifying primary care providers who may charge a fee only to cover the cost of administering the vaccine." Children qualify for these low-cost vaccines if they are on Medicaid, have no insurance coverage for vaccinations, or if they are American Indian. 4 5

There are a number of problems with the program that may explain its incomplete success. First, although a participating provider may not refuse to vaccinate a child who is unable to pay the cost of administration,6' not all financially needy parents necessarily will know this; and, even if they do know it, the prospect of asking for a fee waiver may be a deterrent itself. Another possible hindrance to the program's success is that physicians may be discouraged from participating because of the requirements that they determine whether the child qualifies for the vaccination program by inquiring with the child's parent or guardian, and that they keep records of each child's qualifying status.'47 If qualifying children are discouraged by administrative fees, and if physicians are disenchanted with administrative requirements, many children may be pushed back to the often inconvenient and overcrowded public clinics. For these and other reasons, the initiative that was intended to have increased the vaccination rate among two-year-old children to ninety percent by the year 19968 remains unfinished.

Given the incomplete success of this ambitious plan, a practical question remains as to whether voluntary vaccination programs can be reasonably expected to meet the established public health goals. The successes of earlier vaccination programs, such as the campaign against polio, shows that an adequately mobilized public can achieve remarkable results. 149 Such prior success suggests that a more efficient voluntary vaccination program could significantly improve the population immunity.

In light of this assessment, how should religious freedom and public health be balanced? A public health advocate might suggest that it would be most prudent to repeal vaccination exemptions, at least until the goal of vaccinating ninety percent of the nation's two-yearolds has been met. Although such a proposal shows admirable impulses, it permits political and administrative ineptitude to displace important religious interests."5 It is one thing to suggest that religious interests should defer to public health interests when all reasonable efforts have been made to advance the public health. It is quite another to claim that religious freedom should be subordinated to administrative and political shortcomings. A fairer policy would be to permit the exemptions to remain while public health advocates unify around the cause of voluntary vaccination. If, despite such efforts, an appreciable risk of disease remains, then the state may have a morally defensible claim to vaccinate over religious objection.

**Only our offense---tinkering with balancing tests does nothing to solve religious conflict since it’s a deeply held and political fight---there’s only a risk the aff triggers conflict**

Marc O. **DeGirolami 17**, Professor of Law and Associate Academic Dean, St. John's University School of Law, “Religious Accommodation, Religious Tradition, and Political Polarization, Lewis and Clark Law Review, 20(4), 2017, https://law.lclark.edu/live/files/23325-204degirolamiarticle2pdf

Might the answer then be to encourage courts to inquire more deeply into the nature of the burden on religion when adjudicating accommodation cases? Unfortunately, that is extremely unlikely to cure what now ails religious accommodation. Indeed, it is a sign of just how polarized the religious accommodation question has become that no tinkering with the applicable test is likely to help.

Consider, for example, the recent and ongoing nonprofit litigation against the federal government’s contraception mandate. Under the existing, abjectly deferential standard for assessing the quality of the burden, the vast majority of courts to address the issue found that the contraception mandate did not impose a substantial burden on the several nonprofits’ religious exercise.133 The question of the burden on the nonprofits, however, is not difficult when evaluated under a standard that would require the claimants to explain how their religious objection fits within an established religious tradition and system of belief and practice. They have explained, over and again, their view that a legally binding designation to provide contraceptive products and services implicates them in sinful behavior, the theological sources of their beliefs, and the importance of those beliefs within their own religious system and tradition of belief.134 The claimants may yet lose, but if they do it should not be because courts reject or refuse to defer to their explanation of the government’s interference with their religious exercise.

Yet they did lose on that very issue, before nearly every court of appeals to consider it and according to a standard that is said to be extremely deferential to their beliefs.135 That remarkable losing streak, when compared against the ostensible deference that courts purport to apply and generally have applied in most other contexts, strongly suggests that the standard may be a secondary consideration altogether. Courts defer when the nature of the political and cultural challenge represented by the religious exemption is unthreatening—when they don’t take the religion seriously anyway. Accommodation, as I have said, is for unserious religion. When it is threatening, and the challenge is substantial, they do not defer. We accommodate when we don’t really care as a political or cultural matter, and we find reasons not to accommodate when we do. Perhaps this also suggests that political polarization is to some extent inevitable when some religious beliefs and exercises are accommodated and some are not, and that, as in so many other contexts implicating the religion clauses, the aspiration to neutrality is a fantasy. An alternative possibility is that adopting a more stringent inquiry may be unwise and possibly counterproductive, since religious accommodation and religious liberty more broadly, particularly when it is felt to threaten or even to stand athwart vital gains in sexual liberty and equality, is at present so controversial.136 A tighter standard will not restore religion as a coherent legal category. It will more plausibly be used to defeat coherent religious claims of substantial burden.

**Turn---2NC**

**Think of all the deranged militants who showed up at state houses to protest COVID vaccine mandates. The plan galvanizes organized resistance to collective bargaining rights.**

Johan C. **Bester 15**, Department for Ethics, Humanities & Spiritual Care, Cleveland Clinic, and Centre for Applied Ethics, University of Stellenbosch, Stellenbosch, South Africa, “Vaccine Refusal and Trust: The Trouble With Coercion and Education and Suggestions for a Cure,” *Bioethical Inquiry*, Volume 12, 2015, pp. 555-559

Option 1 seems problematic, as it would introduce substantial costs to families and, consequently, society (Ross and Aspinwall 1997). Prosecution would fall on parents who fail to vaccinate their children, incurring harm to these parents, harm to the family, and eventually harm to the child. Thus, in an attempt to protect the best interests of the child, the child ends up being harmed. Since families are the building blocks of society, harming families in this way also would harm society.

Yet, this approach can be justified when the costs to individual children and to society are very high should vaccination be refused. If it were so that Ebola was endemic in the United States, and it were so that there was a safe and effective vaccine, it would follow that mandated vaccination would be reasonable despite the costs of state power. This was the background of Jacobson v. Massachusetts: the city of Cambridge (in Massachusetts) faced a smallpox epidemic and a vaccine was available. The U.S. Supreme Court decided that the state, as part of its Bpolice power,^ has the authority to mandate vaccination in these circumstances to protect the public’s health (Ross and Aspinwall 1997). Endemic Ebola would be a similar situation. The state should have the power to intervene through various coercive ways to protect the public against a public health disaster. Justifying the use of such power is less clear if the risk from the disease is very low (for example, an illness that is not really that serious or is not endemic in society) or if the protecting vaccine has substantial harms associated with it. Additionally, in a highly vaccinated society, when it comes to diseases such as measles and polio, the risk to society and to an individual child from sporadic vaccine refusal is low (Ross and Aspinwall 1997). For example, within a population where 99 per cent of children are vaccinated with the measles, mumps, and rubella (MMR) vaccine, the risk that an unvaccinated child would acquire measles is extremely low. Therefore, punishing parents who fail to vaccinate in such a situation seems to incur unduly high levels of harm for minimal benefit (Ross and Aspinwall 1997).

The history of mandatory policies shows us that coercion can sometimes have the unintended effect of galvanizing resistance to vaccination. As noted above, Britain introduced a mandatory vaccination policy in 1871, with rather harsh penalties for refusal (Allen 2007). It eventually abandoned this policy in 1948 in the face of organized resistance (Allen 2007). In the United States, the introduction of compulsory vaccination laws also changed the anti-vaccine movement from one of passive resistance to more organized, active resistance (Allen 2007). An aspect that is present in some sectors of the contemporary anti-vaccine movement is the idea that parents should take responsibility for their own child, resisting those who would coerce them to act against the best interests of their child (Kata 2010). Some types of coercion may therefore paradoxically strengthen resistance to vaccination; using too strong a hand may hinder the goal of ensuring vaccination uptake.

**The plan explicitly makes religion a second-class right when compared to collective bargaining rights---that undermines special protection of religion and draws the ire of every deranged religious fanatic who currently run our constitutional system**

John **Witte 16**, Robert W. Woodruff University Professor of Law, McDonald Distinguished Professor, and Director of the Center for the Study of Law and Religion at Emory University, “"Come Now Let Us Reason Together": Restoring Religious Freedom in America and Abroad,” *Notre Dame Law Review*, 92 Notre Dame L. Rev. 427

So matters stood a generation ago. But in the ensuing years, these special legislative protections of religious freedom have come under increasing attack. Several states of late, including relatively conservative bastions like Georgia8 and Indiana,9 have buckled under massive lobbying and media pressure, and have scrapped or vetoed their new or revised RFRA plans; other states have started to limit the application of their existing RFRAs.10

There are many causes for this change of legislative heart. First, highly publicized religious pathologies have made it more difficult to sympathize with the cause of religion and religious freedom. Particularly, the rise of Islamicism, and the horrors of 9/11, London’s 7/7, Fort Hood, Madrid, Paris, San Bernardino, Brussels, Orlando, Nice, and more have renewed traditional warnings about the dangers of religion in general and triggered fresh waves of “anti-Shari’a statutes”11 and harsh treatment of Muslims by regulators and courts.12 Leading political figures now advocate a “‘total and complete’ ban” on Muslims entering the United States 13 and urge that the United States should “test every person here who is of a Muslim background, and if they believe in sharia, they should be deported.”14 Second, the media narrative has turned more against legislative protections. For example, in 2006, The New York Times ran a sensational six-part expose describing the ´ “hundreds” of special statutory and regulatory protections, entitlements, and exemptions that religious individuals and groups quietly enjoy under federal, state, and local laws, despite all the loud lamentations about the Smith case’s truncation of religious freedom.15 Third, the Catholic Church was rocked by an avalanche of news reports and lawsuits about the pedophilia of delinquent priests and cover-ups by complicit bishops—all committed under the thick constitutional veil of religious autonomy.16 Fourth, Evangelical megachurches faced withering attacks for their massive embezzlement of funds, and the lush and luxurious lifestyles of their pastors—all the while enjoying tax exemptions for their incomes, properties, and parsonages.17

But even bigger challenges of late have come with the new culture wars between religious freedom and sexual freedom.18 The legal questions for religious freedom are mounting. Must a religious official with conscientious scruples marry a same-sex or interreligious couple? How about a justice of the peace or a military chaplain? Or a county clerk asked to give them a marriage license?19 Must devout medical doctors or religiously chartered hospitals perform abortions, or give assisted-reproduction procedures to unwed mothers, contrary to their deeply held religious beliefs about marriage and family life? How about if they are receiving government funding? Or if they are the only medical service available to the patient for miles around? Must a conscientiously opposed pharmacist fill a prescription for a contraceptive or abortifacient?20 Or a private employer carry medical insurance for the same prescriptions? What if these are franchises of bigger pharmacies or employers that insist on these services? May a religious organization dismiss or discipline its officials or members because of their sexual orientation or sexual practices, or because they had a divorce, abortion, or same-sex marriage? May private religious citizens refuse to photograph or cater a wedding, rent an apartment, or offer a general service to a same-sex couple whose relationship they find religiously or morally improper21—especially when state non-discrimination laws command otherwise?22

These are only a few of the headline issues today, which officials and citizens are struggling mightily to address. Two recent 5-4 Supreme Court cases on point have only exacerbated the tension. In Christian Legal Society v. Martinez (2010),23 sexual non-discrimination rights trumped religious freedom claims; in Burwell v. Hobby Lobby (2014),24 religious freedom trumped reproductive freedom claims.25 The culture wars have only escalated as a consequence. “Each side is intolerant of the other; each side wants a total win,” Douglas Laycock writes, after a thorough study of these new culture wars.26 “This mutual insistence on total wins is very bad for religious liberty.”27 And with easy political talk afoot about repealing unpopular statutes—not just the Affordable Care Act—legislative protections for religious freedom appear vulnerable. Add the fact that both the Free Exercise and Establishment Clauses are now much weaker protections than they were before the 1980s, and it is hard to resist the judgment of leading jurist Mary Ann Glendon that religious freedom is in danger of becoming “a second-class right.”28

**Conceded---1AR**

#### Conceded CBR exemptions regime is terminally unsustainable.

Richard **Schragger et al. 25**, JD, Professor, Law, University of Virginia School of Law; Dr. Micah J. Schwartzman, DPhil, JD, Professor, Law, University of Virginia School of Law. Director, Karsh Center for Law & Democracy University of Virginia; Dr. Nelson Tebbe, PhD, JD, Professor, Law, Cornell Law School, "Reestablishing Religion," University of Chicago Law Review, Vol. 92, No. 1, pg. 199-284, 01/01/2025, HeinOnline.

The features of preferentialism that support its entrenchment may eventually contribute to its demise. A classic principle of church-state separation holds that the fusion of religion and politics corrupts both the church and the state. 542 The problem of corruption animates the idea of the "wall of separation," which protects the garden from the wilderness, in Roger Williams's famous vision.543 But corruption can also be useful when thinking about the persistence of a conjoined regime. Historically, corruption of religion has induced reformist movements within churches, but corruption of politics has also led to campaigns aimed at extricating the state from matters of religious and theological controversy. 544

An intriguing possibility is that structural preferentialism will induce further alienation from organized religion, increasing the numbers of the disaffiliated and accelerating the country's secularist trend. Some have already attributed the rapid rise of disaffiliation to the politicization of religion in the United States, and specifically to the identification of religion with the political right.545 If this is correct, then preferentialism may, ironically, contribute to a shrinking religious sphere. State funding and exemptions may buttress that sphere in the short term but nevertheless undermine it in the long term.546

Another possibility is institutional collapse. Churches have already faced ideological and theological battles, along with formal schisms, over the treatment of women's equality, reproductive rights, same-sex marriage, and LGBTQ rights.547 As denominations fracture along political lines, some congregants may decide to withdraw from the political sphere or to create countermovements that reject the close identification of religion with a particular partisan construction of the state.548 Those movements could reinvigorate a separationist politics, especially if the benefits and burdens of citizenship increasingly seem to be distributed along religious lines.

### Conceded---2AC

**Lack of bargaining enables market consolidation. That’s deletes reproductive care.**

Elizabeth **Sepper 18**, JD, Associate Professor, Law, Washington University, "Zombie Religious Institutions," Northwestern University Law Review, Vol. 112, No. 5, pg. 929-988, 2018, HeinOnline. [italics in original]

The experience of religious institutions in healthcare flies in the face of pluralism as a justification for religious institutionalism. Contracting religion can result in hegemony. The most powerful business can use its market position to propagate its faith to the detriment of institutional pluralism. Institutions-both religious and secular-can converge toward religious doctrine through commerce, not conversion. Unlike churches that actively and authoritatively interpret moral values, these institutions may passively comply with contract.

Like religious institutionalists, some healthcare scholars have expressed concerns that state regulation and market forces are totalizing with regard to religious institutions. Exploring isomorphism in the healthcare industry, scholars have long noted that for-profit and nonprofit hospitals come to adopt similar missions and characteristics. 2 13 And ownership changes through mergers and acquisitions can drive such convergence.2 14 The scholarly literature frequently notes that religious nonprofits might lose their special nature as they become like secular for-profits.2 15 Professor Kathleen Boozang, for example, has argued that cost control mechanisms, competition, regulation, and affiliation pressures "threaten[ed] to diminish, if not completely erode, the ability of sectarian hospitals and nursing homes to maintain control over the kinds of medical care that they provide.",1 Convergence, scholars have assumed, runs only in one direction.

But, as Part I suggested, Catholic healthcare has enjoyed considerable financial success in a consolidating market. Between 2001 and 2016, as the number of acute care hospitals dropped by 6%, the number of Catholicowned or -affiliated acute care hospitals increased by 22%.217 In buying and selling, Catholic healthcare systems have populated the market with secular healthcare entities subject to Catholic restrictions.

For other religious healthcare providers, affiliations with Catholic healthcare frequently prove totalizing, even when they initially purport not to be. For example, in 2005, in what was heralded as "a rare union of Catholic and Jewish healthcare providers," Caritas Health Services and Jewish Hospital HealthCare Services formed a joint venture whose terms, drafted by a Jewish rabbi and a Catholic theologian, purported to maintain the religious traditions of each. 2 18 The Catholic hospitals would remain Catholic and subject to the ERDs, and the Jewish hospitals would retain their religious values. 2 19 Subsequently, the new entity merged again, forming KentuckyOne Health, which agreed to continue the facilities' respective religious identities in a way that "honors the rich Jewish and Catholic heritages of its two sponsors." 2 2 0 Immediately, however, the Jewish facilities and the many affiliated physician groups (including some of Louisville's largest obstetrics and gynecology (OB-GYN) practices) received a memo that, on "Day One" of the merger, they must cease providing contraception, tubal ligations, vasectomies, and techniques commonly used for abortion and miscarriage management, unless permissible under Catholic doctrine. 2 2 1

Like other religious perspectives, secular options may be excluded from the market. In Lane County, Oregon, for example, the Catholic health system holds 70% of the hospital market and has affiliations with a large but unknown percentage of physician groups that restrict care in accordance with doctrine. 2 2 2 In Bartlesville, Oklahoma, when Ascension acquired the one hospital in the city, it required its affiliated physicians (all but one OB-GYN) to cease prescribing contraceptives-a policy it walked back substantially after public outcry. 223

Negotiated agreements for religiously restricted care may have had a significant but unappreciated effect on access to healthcare-reproductive and end-of-life care in particular. Granted, exemption of officially designated Catholic hospitals already decreases access to care. But the perpetuity of restrictions and their application to nonobjecting partner institutions suggest that access to contested care (abortion in particular) may be more severely limited than previously thought. Indeed, a recent empirical study found that when a secular hospital affiliates with a Catholic entity (whether it remains secular or not), the provision of reproductive healthcare is significantly affected. 2 24 Looking at inpatient discharge data in six highpopulation states, researchers found that Catholic affiliation reduced tubal ligations by 31%.225 If we only look at Catholic institutions-though they are many-we may dramatically undercount the reach of religious restrictions.

Admittedly, for some religious institutionalists, the ideal is a dominant Church. But they predict a Church that dominates by virtue of conviction or at least tradition. 2 26 With regard to secular affiliates and zombie religious institutions, the religious entity does not persuade. Compliance results from the institution's economic strength.

Contracting for religion also challenges the second sense of pluralism urged by religious institutionalism-that is, of juridical authority separate from the state. Affiliates of Catholic healthcare and zombie Catholic hospitals do not represent the exercise of autonomous lawmaking that religious institutionalism celebrates. They simply follow rules in order to avoid breach of contract. Compliance with contract terms offers little ability to evolve and to interpret and apply religious authority in context. While officially designated, traditional Catholic hospitals have experts to answer ethical dilemmas or advocate for enhanced charitable care, affiliates and zombie hospitals adhere to contract in a formalistic way.

Indeed, the authority of established religious churches may even be undermined by zombie hospitals in ways that religious institutionalists would find troubling. Dignity Health, for example, denominates itself as Catholic even though the institutional Church disagrees.2 2 7 Its St. Joseph hospital in Phoenix asserts Catholic identity despite revocation of Catholic status by the local bishop.228

In sum, the dominance of Catholic doctrine manifests not success in convincing people of its vision of the good life, but financial inducement to religious adherence. The result is a religiously homogenous market in which the flourishing of diverse alternative sources of authority goes unrealized.

*C. Involuntary Associations*

Contract, of course, can be a way of recognizing and affirming common beliefs and shared commitments. Scholars regularly point to contract as a mark of voluntarism in relationships between commercial religious entities and employees.229 Sometimes, they further argue that commercial firms function like traditional voluntary organizations, allowing employees to associate around a common goal-religious or not.23 0

Contract backed by threat of civil action, however, is not the hallmark of people united by shared religious belief. It again indicates problems for institutional autonomy in the commercial realm, where an entity can purchase compliance with its authority instead of winning over constituents. The role of the dead hand in institutions to which ties have been cut proves particularly disturbing from the perspective of voluntarism. Sales contracts precommit a whole range of people to religious doctrine. Even if we were to assume that the original signatories shared the seller's religious beliefs, future providers, administrators, owners, and patients are unlikely to do so.

Contracts requiring adherence to religious doctrine affect three groups: business entities, individual healthcare providers, and patients. As to the first, administrators of Catholic health systems describe transactions with other healthcare entities with the rhetoric of voluntary choice and value alignment. From their perspective, buyers of Catholic hospitals are "groups who agree with us and wish to continue the type of care and types of policies" that Catholic systems require. 23 1 As the former president of the Catholic Health Association put it, "When you choose us, you choose who we are." 2 3 2

Deals between sophisticated corporate healthcare chains, however, bear little resemblance to an association based on shared values. As a conceptual matter, thinking of corporate consolidations as voluntary associations requires a move from aggregates of individuals to aggregates of entities. Ties between institutions are not affective, but detached, requiring "external coercion or inducement"-that is, legal enforcement and financial payment.2 33 As a pragmatic matter, as an executive of Tenet Healthcare said, buyers of Catholic-run hospitals have no choice but to accept the directives. 2 3 4 Catholic sellers will not consider their offers without such commitment. 2 3 5

Moreover, exit is constrained by threat of legal enforcement in a way that belies comparisons to voluntary associations. Recall, for example, the Caritas-Cerberus deal and its $25 million liquidated damages clause meant to keep the for-profit owner of the formerly Catholic chain compliant with doctrine. 2 36 The difficulty of exit also is apparent from transactions between Catholic and non-Catholic healthcare that went sour. For example, the unwinding of the consortium of city-affiliated Bayfront Hospital with Catholic partners led to multiple lawsuits.23 7 In another instance, Catholic and Lutheran hospitals in Denver formed the Exempla system pursuant to a joint operating agreement. Neither could exit unless all parties agreed to dissolution of the corporate structure.238 Ten years later, an intractable conflict occurred. As the agreement allowed, Lutheran was not compliant with Catholic doctrine and provided a full range of end-of-life and reproductive care,239 but as a result the Catholic partner refused to invest in facilities upgrades for the system.2 4 0 After years of litigation, Lutheran finally succumbed, and Exempla became a fully Catholic system.2 4 1

At the provider level, contract similarly substitutes for shared faith as the primary mechanism of compliance. Through leases, admitting privilege agreements, employment contracts, and purchase agreements, healthcare systems require physicians, nurses, and other healthcare providers to restrict the care they provide patients based on religious positions they may not share.2 42 Restrictions affect a large percentage of physicians.2 43

The use of contract seems to reflect a particular lack of alignment between providers and institutions. Twenty percent of physicians who practice at religious hospitals2 44 and a full fifty-two percent of OB-GYNs who work in officially designated Catholic hospitals report conflicts over religion-based policies for patient care. 2 4 5 Empirical studies show that such disagreement persists irrespective of shared faith.2 46 That is, the rates of conflict of a Catholic physician and a non-Catholic physician with a Catholic hospital were approximately the same.

Frequently, providers do not knowingly or voluntarily seek work in Catholic healthcare settings. In interviews in a 2010 study, OB-GYNs reported that practice restrictions on the provision of abortion were not made clear to them at the time of their hiring.247 Myriad examples of physicians leading protests against Catholic acquisitions show providers encountering religious restrictions in the context of consolidation. 2 48

Lack of transparency in transactions between Catholic and nonCatholic entities undermines the notion that providers voluntarily embrace Catholic restrictions. In many deals between Catholic hospitals and secular corporations, terms went undisclosed. 2 49 In some cases, administrators proved unwilling to clarify which services were affected, even after a sale.2 5 0 In numerous instances, institutions assured providers and the public that services would continue only to subsequently limit them in accordance with religious doctrine. 2 5 1 Even where the terms of the agreement were made clear, the Catholic contracting party (at least theoretically) could change the religious terms unilaterally, because agreements typically call for adherence to future amendments to, or new interpretations of, the directives. 2 52

Likewise, in converting pensions to ERISA-exempt church plans, hospitals and healthcare systems failed to notify the estimated tens of thousands of workers who thereby lost federal protections.2 53 They did not seek employee ratification of the decisions. For example, the Hospital Center at Orange-the last remaining hospital in a New Jersey city that once had three-served as a secular community hospital for over 100 years.2 5 4 In 1998, it became an affiliate of Catholic Cathedral Health System.2 5 5 In 2002, the system applied for and received an IRS ruling converting the employee pension plan to a church plan. 2 56 It thus frustrated long-established expectations, including those of workers who likely accepted lower wages in return for a pension only to see it disappear. 2 5 7

With regard to patients, theories of voluntarism prove particularly strained. An assumption of religious exemption (and indeed of religious institutionalism generally) has been that one had to choose to encounter religious institutions. As Professor Robert Vischer summarizes, "Churches, when viewed from the perch of state agnosticism, are optional pursuits. They do not govern access to wide swaths of employment or essential goods and services . . . ."258 From the liberal perspective as well, as Professors Richard Schragger and Micah Schwartzman explain, "it is the very inconsequentiality of the church for the political and social status of its members that allows it to be so fully autonomous and free from state regulation." 2 59

By contrast to churches, healthcare institutions-religiously affiliated or not-serve to meet urgent and emergent human needs and operate in a field flush with federal and state funds. Hospital markets in particular lack competitiveness. As a result of mergers and the formation of massive healthcare systems, nearly half of hospital markets are highly concentrated (uncompetitive) and none is highly competitive. 26 0 While religious institutionalists frequently describe the state as monopolistic and unavoidable, the "church," too, may become so, especially in a market like healthcare that is largely local.

Given the market share of official and unofficial Catholic institutions, it is virtually inevitable that a patient will encounter major medical institutions with religiously restricted care. Almost one-third of officially designated Catholic hospitals serve rural populations. 26 1 Some enjoy "a practical, but not state-enforced, monopoly in obstetrical services." 26 2 Even in urban areas, a religiously restricted hospital may be the only provider for a large population. 26 3 Especially where public-private partnerships are involved, the hospital may be the only option for nonemergency care for indigent or uninsured populations. 26 4

Would-be patients likely do not seek out religiously affiliated hospitals even where competitors exist. Patients tend to choose hospitals based primarily on where their physicians practice, a choice more reflective of geography than religion. 26 5 Insurance plans often constrain patients' options 26 6 and can be expected to continue to do so as the Affordable Care Act's exchange plans adopt narrow networks of providers. 26 7

Moreover, public polling shows that women do not expect even Catholic-designated hospitals to refuse care for religious reasons; the majority anticipates finding a full range of reproductive health services regardless of religious affiliation, and 45% believe they would be able to obtain medical services that go against Catholic religious teachings.2 6 8 A smaller study found that a majority of women "expected that their gynecologist would provide the range of family planning care surveyed" regardless of the religious or secular nature of the institution: "[o]ver 90% of participants expected to receive short- and long-acting reversible contraceptive methods" at a Catholic facility.2 69

As hospitals merge and affiliate with one another, potential patients or employees may not even recognize that a facility is religiously affiliated.2 7 0 Catholic restrictions must be followed in "St. Luke's Episcopal Health System" and "Jewish Hospital."2 7 1 While hospitals linked to the Catholic Church through sponsorship agreements appear on official rosters of Catholic hospitals, hospitals that comply with restrictions through partnerships or following sales go unidentified. Once sold to a secular buyer, formerly Catholic hospitals may no longer retain any outward sign of religiosity. Across categories of institutions (whether officially religiously designated or zombie hospitals), hospitals do not advertise the services they do not provide. Yet the vast majority of women want to know this information.2 72 Determining whether a hospital (or physicians' group or other facility) adheres to religious doctrine proves no easy feat, even for the most informed observers of religious healthcare.

Concerns over the creation of monopolies, lack of voluntarism, and absence of transparency and choice exist even with regard to officially designated Catholic hospitals. But when institutions adopt religion for commercial gain, countervailing values of institutional exemption-such as the religious liberty of any particular individuals or the autonomy of any identifiable church-are absent.

*D. The End of Religious Exemption in Commerce?*

The spread of religion in commerce poses a crisis for the religious institutionalism that seemed triumphant post-*Hosanna Tabor*. The Supreme Court's decision in *Burwell v. Hobby Lobby* began to expose the cracks in the foundation of religious institutionalism. In that case, a multibilliondollar, for-profit corporation with tens of thousands of employees gained a right to the free exercise of religion and, indeed, to exemption from otherwise-applicable laws under RFRA, equal to other religious institutions. 2 73 Dismissing the possibility that religious identity might spread through the corporate world, the Court opined that "the idea that unrelated shareholders-including institutional investors with their own set of stakeholders-would agree to run a corporation under the same religious beliefs seems improbable." 2 7 4 The healthcare industry shows that the Court was mistaken.

Through contract, for-profit and nonprofit, commercial and noncommercial, and sacred and secular institutions can become newly religious. Defined so broadly, the religious institution seems to lose whatever special character it once had. Several proponents of robust institutional exemptions have themselves begun to warn that "the expansion of autonomy to include for-profits threatens to dilute the entire doctrine, which could result in the loss of protections for churches on core matters of identity and mission." 2 7 5 Across institutions, courts may renounce their historical disengagement from definitional questions with regard to religion. They may inquire more deeply into the character of institutions and limit constitutional and statutory exemptions.

**Access prevents extinction.**

Erin **Brown 23**, Millennium Alliance for Humanity and the Biosphere, holds a master’s degree from the University of Florida, “A Brief on Overpopulation – Why it Matters and What You Can Do About It”, https://mahb.stanford.edu/blog/a-brief-on-overpopulation-why-it-matters-and-what-you-can-do-about-it/

What is overpopulation?

Overpopulation is a human population in numbers high enough to cause environmental deterioration, impaired quality of life, or population crash.

Why is overpopulation an issue?

Overrun natural resources can only lead to death by starvation, conflict, and disease, and the only viable alternative is voluntary restraint on human births.

What is carrying capacity?

Carrying capacity is defined as the maximum population of a species that an area will support without undergoing deterioration.

Paul R. Ehrlich and other scientists estimate the world’s optimum population for carrying capacity (at a comfortable standard of living – editor’s note) to be less than two billion people – 6 billion fewer than on the planet today. “But the longer humanity pursues business as usual, the smaller the sustainable society is likely to prove to be. We’re continuously harvesting the low-hanging fruit, for example by driving fisheries stocks to extinction” – Paul Ehrlich says.

How do we revert population overshoot to a sustainable population level?

Geologist Art Berman explains population overshoot this way: “Overshoot means that humans are using natural resources and polluting at rates beyond the planet’s capacity to recover. The main cause of overshoot is the extraordinary growth of the human population made possible by fossil energy. Concerns about overshoot and population raised more than 40 years ago were dismissed. Climate change has captured public awareness more recently although many doubt that it is an emergency. Overshoot is more difficult to dispute; it destroys rainforests, leads to the extinction of other species, the pollution of land, rivers, and seas, the acidification of the oceans, and the loss of fisheries and coral reefs. People understandably want to know the solutions. Overshoot is the problem we must address. Any plan that includes continued growth is doomed to fail.”

What can we do? Jane O’Sullivan outlines the two options for addressing population overshoot – increase the Earth’s carrying capacity or decrease population.

Increasing Earth’s carrying capacity

We are already doing this by (a) using fewer natural resources per person, or (b) increasing productivity by finding more ways to use resources. This only defers the problem and creates collateral damage.

Decreasing population numbers

If we talk about this now, the hope is to increase our options for solutions. One of the biggest challenges to facing overpopulation head-on and discussing a decreasing population are the stigmas and myths associated with reducing human population numbers. An elaborate set of myths has emerged in opposition to reducing population levels. These myths may prevent even environmentalists from viewing overpopulation as an issue. Jane O’Sullivan elucidates on the following six myths that make inaction a virtue.

Myth 1 – The human population is stabilizing, and birth rates are decreasing

Truth – Birth rates started declining in the 1970s-90s due to family planning, but not low enough. The number of mothers is still increasing faster than family planning is decreasing the birth rate. We are still having more births per year than ever before. The total fertility rate has decreased, but as fertility decline has slowed to a trickle, the number of total births has continued to increase.

Myth 2 – China is the only one with the problem and they used cruel methods (one-child policy)

Truth – Family planning programs have helped many countries successfully reduce births through voluntary means, including China, before the one-child policy.

Myth 3 – Poverty causes population growth, therefore development is the best contraceptive

I.e., family planning is unnecessary and inefficient as long as there is development.

Truth – If this was true, we would see the population decline as development increases. However, it is the decrease in fertility rates that drove economic development, not the other way around. This myth is therefore “correlation implying causation” in the wrong direction. The poorest countries could lower their population by family planning just as quickly as rich countries if they choose to prioritize it.

Countries of families with four or more children, on average, have the lowest level of development; in families with 3 children or fewer the level goes up by some degree, and with two or fewer children development soars. The current focus should be on expanding provisions for teachers, doctors, equality, etc. instead of just giving people what they need.

Myth 4 – Educating girls is the key to ending population growth

Truth – Another indirect approach that excludes a discussion on the benefit of small families and ending population growth. Educating girls helps but not much unless it is also flanked by family planning efforts. Family planning has a stronger effect on women regulating their fertility, decreasing the fertility gap between the educated and uneducated, and with family planning, girls are more likely to stay in school.

Myth 5 – Population growth is good for the economy

Truth –This makes people poorer as shown under Myth #3.

Myth 6 – Population growth in poor nations does not matter because of their “tiny carbon footprint”

Truth – Population growth is a greater threat than climate change. The best way for anyone to decrease their carbon footprint is to have one less kid.

Therefore, family planning is the most economical way to a sustainable future.

What action can each of us take?

1. Discuss smaller family sizes with your partner, family, and friends – how do we aim for birth rates lower than two children per couple?

2. Share information about the environmental impacts of population growth with friends and family. Advocate for action to reduce and reverse population growth.

3. Reassess concerns about aging – how can we shift away from worshipping eternal youth, to accepting and valuing the entire life cycle?

4. Celebrate population decline – what are possible depopulation dividends?

5. Support organizations and efforts that support family planning and women’s education.

Damien Carrington, an environmental editor at The Guardian, interviewed Prof. Paul Ehrlich about the solutions:

“The solutions are tough,” Ehrlich says. “To start, make modern contraception and backup abortion available to all and give women full equal rights, pay, and opportunities with men. Focus on overconsumption and equity issues. Specifically women’s rights and the explicit countering of racism.”