# 1NR---DRR---Round 3

## Midterms

Concede no impact – none of this is offense and cross-applications should have happened in the 2AC

## Cap K

Concede the perm

Theory is a reason to reject the alt, not the team

Aff doesn’t solve sustainability – it was answered by ALL of the case defense in the 2NC

## Court PTX

### 2NC---O/V

#### Tariff-driven decline risks extinction.

#### 1. Recession causes political instability and undermines power projection, which ignites hotspots across the globe. Ukraine, Israel, and Taiwan are tinderboxes for conflicts that draw-in great powers.

#### 2. Price volatility overstretches resources and erodes adaptive capacity---increases the risk of existential risks like ecosystem collapse, resource wars, rogue AI, and terrorism. That’s Wishart.

#### Growth incentivizes long-termism and bolsters societal resilience---that caps existential black swans.

Aschenbrenner ’24 [Leopold and Phillip Trammell; June 9; B.A. in Mathematics, Statistics, and Economics from Columbia University, Research Affiliate at the Global Priorities Institute; Postdoctoral Researcher at Stanford Digital Economy Lab, B.A. in Economics and Mathematics from Brown University; Phillip Trammell, “Existential Risk and Growth,” https://philiptrammell.com/static/Existential\_Risk\_and\_Growth.pdf]

Technology brings prosperity. Its impact on existential risk—the risk of human extinction, or, equivalently for decision purposes, of an equally complete and permanent loss of human welfare—strikes many as ambiguous at best.1 Advances in vaccine technology render us less vulnerable to devastating plagues; advances in gain-of-function virology arguably make them more likely (Millett and Snyder-Beattie, 2017)

This raises the possibility of a tradeoff: concern for the survival of civilization may motivate slowing development, at least outside some narrow domains. Environmentalist sentiments along these lines go back at least to the Club of Rome’s 1972 report on the “Limits to Growth”, and have recently reemerged with calls to pause AI development (Future of Life Institute, 2023). Jones (2024) explores how to make the tradeoff between AI development and AI risk, assuming the tradeoff exists.

To shed light on this question, we begin in Section 2 with a simple model in which the hazard rate—the probability of catastrophe per period—is a positive function of the technology level. Here, an existential catastrophe must occur eventually unless in the long run higher technology levels carry hazard rates that fall toward zero.

This leaves two possibilities. If advanced technology does not eventually drive the hazard rate toward zero, then a catastrophe is inevitable, so accelerating technological development cannot increase its probability. Otherwise, however, a catastrophe is avoidable, and acceleration can lower its probability by hastening the arrival of safety.

This simple model formalizes two observations. The first is that if we believe that the hazard rate is currently high, our only hope for a long and valuable future is the hope that we are living through a temporary “time of perils”. This view was famously expressed by Sagan (1997), who coined the phrase, and its implications for those especially concerned about the long-term future are emphasized by Parfit (1984), Ord (2020), and others. The second is less widely appreciated: that if we are in a time of perils, with the hazard rate a positive function of the technology level, then, though technological development has increased the hazard rate so far, deceleration for the sake of long-term survival is misguided. Speeding technological development may be temporarily risky, but it is safer in the long run.

The model of Section 2 is not “economic”. It studies the impact on risk of quickly escaping risky states, not optimal policy under constraints. It thus leaves open the possibility that, when consumption–risk tradeoffs are navigated by a policymaker with little concern for long-term survival, technological acceleration can increase risk after all. Section 2 also offers no reason to believe that future states will be safe. If one believes that technology has historically increased the hazard rate, the hope that this relationship will reverse in the future may seem naive.

In Section 3, we therefore introduce an environment in which technology grows exogenously and its risks can be mitigated by policy. As new potentially dangerous technologies are introduced, a planner, discounting the future at an arbitrary rate, decides how much consumption to sacrifice to lower the hazard rate.

We illustrate that, even if technological advances in isolation always raise the hazard rate, optimal policy can generate an “existential risk Kuznets curve”, with the hazard rate rising and then falling as technology advances. Early, when the expected discounted value of the future of civilization is low and the marginal utility of consumption is high, it is worthwhile to adopt risky technologies as they arrive. Later, when the discounted future is more valuable and the marginal utility of consumption has fallen, substantial risk mitigation becomes worthwhile.

The possibility of a policy response thus offers an economic justification for the view that we may indeed be living through a once-in-history time of perils. Safety is a luxury good, and technological development generates a wealth effect. If the wealth effect is strong enough, then optimal policy eventually lowers the hazard quickly enough that the probability of escaping the time of perils is positive.

This insight mirrors the logic of Stokey (1998) and Brock and Taylor (2005), on which environmental damages rise and then fall with economic development, and of Jones (2016, 2024), on which growth yields increases in the value of life relative to marginal consumption. Like the analysis presented here, these papers find that, given sufficiently concave utility functions, wealth increases motivate large reallocations from consumption to safety. None of these sources solve for the optimal path of a hazard rate over time, however, or characterize conditions under which the probability of a binary event (here, existential catastrophe) under optimal policy is less than 1.

Our model of catastrophic risk differs more significantly from those of Martin and Pindyck (2015, 2021) and Aurland-Bredesen (2019). That literature studies a society’s willingness to pay to reduce the risk of catastrophes that are, or are equivalent to, proportional consumption cuts. In such a context there are no wealth effects: the fraction of consumption one is willing to sacrifice to avoid a proportional consumption cut is, by definition, independent of one’s consumption.

For the reasons that policy facilitates survival on a given (increasing) technology path, optimal policy tends to magnify the extent to which technological acceleration decreases long-term risk. As in the policy-free model, acceleration decreases the time spent in any given risky state. Under optimal policy, however, the wealthier future states pulled forward by an acceleration are systematically inclined to be safer, due to the wealth effect. Furthermore, given an increase to the future growth rate, even before actual productive capacity has yet increased, the anticipation of a more valuable future motivates more stringent safety policy in the present.

This analysis might be compared with that of Baranzini and Bourguinion (1995). Baranzini and Bourguinion find conditions under which the growth path that maximizes expected discounted utility also minimizes the probability of existential catastrophe. In our model these objectives never perfectly align, but we explore how technological advances, when regulated with a view to maximizing expected discounted utility, can lower the probability of an existential catastrophe.

Sections 2 and 3 explore models in which the state of technology at a given time contributes to the hazard rate. Section 4 considers the possibility that risk is “transitional”, increasing in the rate of technological development.

Absent policy, the effect of acceleration on long-term transition risk is ambiguous. In particular, acceleration has no effect on long-term risk under the assumption that the “experiment” associated with developing a given technology poses a risk that is independent of how many experiments happen concurrently. This is the assumption of e.g. Jones’s (2016) “Russian roulette” model of risky technological development. If the future contains a sequence of experiments, each of which will induce some probability of existential catastrophe, then stagnation can lower risk by avoiding advanced experiments altogether, but a technological acceleration that only pulls forward their date leaves the probability of catastrophe unchanged.

As in Section 3, introducing an optimal policy response facilitates survival due to wealth effects, potentially replacing an ever-increasing hazard rate with a Kuznets curve. Also, though the effect of acceleration on long-term transition risk remains ambiguous given policy, policy can shift the conditions under which acceleration has a given effect on risk. At least in the particular model of transition risk studied in Section 4, the existence of a policy response significantly widens the conditions under which acceleration lowers transition risk.

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Section 5 summarizes these analyses and their limitations. 5 2 State risk without mitigation 2.1 Model The hazard rate — The “hazard rate” δt is the flow probability at t of anthropogenic existential catastrophe. Assume that it is a continuous function of the technology level At: δt = δ(At). Assume that At is exogenous and strictly increasing without bound in t. Fur ther assumptions on the technology path can be made without loss of generality, as they simply amount to re-indexing technology levels without changing their ordering. Assume therefore without loss of generality that A(·) is differentiable and that its derivative is everywhere positive. Finally, assume that δ(A) > 0 for all A. Survival — The probability that civilization survives to date t is given by St ≡ e− t 0δsds ⇐⇒ ˙ St = −δtSt, S0 = 1. The probability that human civilization avoids an [anthropogenic] existential catas trophe and, at least in expectation, enjoys a long and flourishing future3 is S∞ ≡ lim t→∞ St = e− ∞ 0 δsds. (1) We will refer to {δt}∞ t=0 as the hazard curve, to the area under the hazard curve ( ∞ 0 δtdt) as cumulative risk, and to S∞ as the probability of survival. Note that 3In the face of natural existential risk, this will entail succumbing to a natural existential catas trophe instead. From very-long-run historical data on large-scale natural catastrophes, and the typical survival rate of other mammalian species, Snyder-Beattie et al. (2019) estimate that human ity’s natural existential hazard rate is below one in 870,000 per year. Throughout this paper we ignore the possibility that technological advances may mitigate natural existential risks. Accounting for this possibility would only strengthen the headline results. 6 the probability of survival decreases in cumulative risk, and that survival is possible (S∞ > 0) iff cumulative risk is finite. 2.2 How does acceleration affect risk? Absent a negative shock severe enough to induce stagnation or recession, technology crosses every value from A0 to ∞ exactly once. So the area under the hazard curve can be defined by integrating with respect to technology instead of time: ∞ 0 ∞ δ(At)dt = A0 −1 δ(A) dA dt dA = ∞ A0 δ(A) ˙ A−1 A dA, (2) where, somewhat abusing notation, ˙ AA denotes the value of ˙ A when the technology level equals the subscripted A. This change of variables makes it easier to see how various shocks to the growth path affect cumulative risk. Instantaneous level effects — Consider a shock to the technology level for a short period beginning at t, so that the technology level over this period is approximately ˜ Arather than At (and the subsequent technology path is unchanged). The sign of the impact of this shock on cumulative risk depends on whether δ( ˜ A) is greater or less than δ(At). From the leftmost integral of (2), we see that the impact on cumulative A, equals risk per unit time of an instantaneous shock to the technology level at t, from At to ˜ δ( ˜ A) −δ(At). Instantaneous accelerations — Consider the impact on cumulative risk per unit time of an instantaneous shock to technology growth at t, so that the technology growth rate at t is ˙ ˜ A rather than ˙ At, and the subsequent technology growth rate at each level of technology is unchanged. From the rightmost integral of (2), we see that the impact of this shock on cumulative risk per unit of increase to the technology level during the acceleration is δ(At)( ˙ ˜ A−1 − ˙ A−1 t ). Multiplying this by the new rate of 7 technology growth per unit time, the impact on cumulative risk per unit time is −δ(At) ˙ ˜ A/ ˙ At − 1 . Accelerations — Choose technology level A > A. Since the baseline technology path increases continuously and without bound, A = AT for some T > t. Consider the effect of increasing the technology level at t from A to A, and sub sequently maintaining the technology path As = As+(T−t) (s ≥ t). This shock to the technology path amounts to a “leap forward in time”. The impact of this shock on cumulative risk is therefore to cut a slice cut out of the hazard curve. Cumulative risk falls from (2) to At A0 That is, it falls by ∞ δ(A) ˙ A−1 A dA+ A AT δ(A) ˙ A−1 δ(A) ˙ A−1 A dA. A dA. At More generally, define a temporary acceleration as an increase to ˙ A at some range of technology levels: say, from At to AT. Because the exponent on ˙ A in the integral is negative, the acceleration lowers the risk endured at the given range of technology levels. A discontinuous jump in the technology level amounts to raising ˙ AA to ∞, and thus lowering ˙ A−1 A to 0, from A = At to AT. A jump in the technology level from At to AT temporarily increases the hazard rate if δ(AT) > δ(At). Likewise, an acceleration to technology growth accelerates an increase to the hazard rate if δ(·) is increasing around At. It may therefore appear to contemporaries that a given permanent level effect decreases the probability of survival. Here, that would be incorrect. If (2) is infinite, the probability of survival is zero with or without the permanent level effect.4 If (2) is finite, the permanent level effect increases decreases cumulative risk and increases the probability of survival. 4 AT At δ(At)dt is finite by the continuity of δ in A and of A in t. 8 Define a permanent acceleration to be a permanent increase to ˙ A from some time t— or, equivalently, some technology level At—onward. As is plain from (2), a permanent acceleration, like a temporary acceleration, must lower cumulative risk if cumulative risk is finite on the baseline technology path. Unlike temporary accelerations, however, permanent accelerations can render sur vival possible when it would otherwise be impossible. Shrinking a heavy-tailed curve with an infinite integral can yield a thin-tailed curve with a finite integral. To state this lesson in reverse, consider stagnation: a permanent “negative accel eration” setting As = At for all s ≥ t. The hazard rate is then permanently positive, and survival impossible, even if it might have been possible at any positive technology growth rate. More concretely, consider the implications of a large negative technology shock today which returned the world to a state of ignorance about every technol ogy developed since 1924. Perhaps the hazard rate was much lower in 1924 than today, but even if so, this reset would largely doom us to relive the nuclear standoffs, emissions-intensive industrializations, and biotechnological hazards of the past. With enough replays of the past century, a catastrophe would presumably be inevitable. 3 State risk with mitigation 3.1 Motivation If technological progress has historically increased the hazard rate, the message of the previous section is that those who wish to reduce existential risk should accelerate technological progress in the hope that the relationship between risk and technology eventually reverses. This may seem naive. Perhaps the more natural assumption is that, all else equal, technological progress will only increase the hazard rate, bringing the inevitable catastrophe sooner. But the hazard rate presumably depends also on policy. If the hazard rate has increased historically, this represents a failure of policy to keep up with new risks as 9 they have arisen. In light of the interaction between technology and policy, could existential risk be lowered by developing technology more slowly? If the path of policy is not optimal, yes. E.g. if policy is exogenous, cumulative risk is lower when periods of especially risky technology are timed to coincide with periods of especially stringent policy. For illustration, suppose that δt = Atxt, xt = (1+t)−2, where x denotes a policy variable. Then consider an acceleration from the technology path At = (1 + t)k to the technology path At = (1 + t)˜ k, where k < 1 < ˜ k. This acceleration increases cumulative risk from ∞ 0 (1 +t)k−2dt to ∞ 0 (1 +t)˜ k−2dt. The former is finite, because k − 2 < −1. The latter is infinite, because ˜ k − 2 > −1. In this case, acceleration lowers the probability of survival to zero. Less obvious is whether acceleration can increase cumulative risk when the policy re sponse is optimal, within a plausible model of the feasible policy set. One might worry that, during an interval in which more advanced technology carries higher hazard, a planner will adapt policy to the degree of risk, but too weakly for acceleration to lower cumulative risk on balance—perhaps in part because she cares too little about the future to sacrifice much present consumption for safety. To evaluate this possibility, this section introduces a policy channel through which a planner, discounting the future at an arbitrary rate, can sacrifice consumption to lower the hazard rate. As we will see, when policy is set optimally—with respect to any discount rate—the conclusion that acceleration lowers cumulative risk is generally not only maintained but strengthened. As in the tech-only model of Section 2, survival can only be achieved by pulling forward a future that asymptotically approaches perfect safety. Whereas the earlier 10 model is agnostic about whether more advanced technology will in fact carry a lower hazard rate, however, a policy response introduces a tendency for faster technological development to carry lower risk in the long run. This is because technology increases consumption, which both decreases the utility cost of a marginal consumption sacrifice and increases the value of life. Furthermore, the prospect of a future acceleration now lowers the present hazard rate, because when the value of the future is greater, it is worth sacrificing more today to prevent its ruin. These dynamics are illustrated in a simple model of technology and optimal policy in the rest of this section. Generalized results are given in Appendix A.3. 3.2 The economic environment 3.2.1 Technology Themaximumfeasible level of consumption at t equals the technology level At. Actual consumption is At multiplied by a policy choice xt ∈ [0,1]: Ct = Atxt. (3) The tradeoff at the heart of this section is that a technologically advanced civilization can risk self-destruction, but that this risk can be lowered at some cost to consump tion, as represented here by a choice of x below 1. (We denote the choice variable x to remind the reader that higher choices of x come with higher existential risk.) Choices of x below 1 may constitute bans on the adoption of consumption-increasing but risky production processes and/or allocations of resources to the production of safety-increasing goods and services like pandemic monitoring. The technology frontier A grows at a constant rate g: ˙ At = Atg, g >0,A0 >1. (4) 11 3.2.2 Hazard rate The hazard rate δt is now a function of the technology level At and the policy choice xt ∈ [0,1], and is increasing in xt. In this simple model, the elasticities of the hazard rate in A and in x are constant, so that δ(At,xt) = ¯ δAα txβ t, ¯ δ > 0, β > α > 0, β > 1. We impose the three inequalities of β > α > 0, β > 1 to satisfy three desiderata.5 (5) The first is that, fixing xt > 0, δt increase in At. This imposes α > 0. The assumption that δt increase in At is necessary if we are to concede that technological development has rendered existential catastrophe more likely now than it was long ago, and that this trend would continue absent a change in policy. The proportion 1 −x of potential consumption sacrificed for the sake of existential safety has only increased alongside technological development: having once been zero, it is a small but positive share today.6 If it had remained fixed, the hazard rate would presumably have followed a weakly higher path. Second, the elasticity of δt with respect to xt is assumed to exceed the elasticity of δt with respect to At; i.e., β > α. This is equivalent to the condition that, when technology advances, it is always feasible to lower the risk level by retaining the former consumption level, allocating all marginal productive capacity to existential 5Hazard function (5) is closely analogous to the environmental damage function of Stokey (1998). While Stokey focuses on the implications of the damage function for the chosen path of x (or “z” in her notation), we will study how accelerations to the path of A affect the probability of a binary event: the occurrence of an anthropogenic existential catastrophe at any time. 6Ord (2020, p. 313) estimates that, as of 2020, approximately $100M/year was spent specifically on reducing existential risk. This is likely a great underestimate of existential safety expenditures in the sense relevant here, for two reasons. First, explicit expenditures do not include foregone con sumption due to regulatory barriers. Second, many catastrophic risk reduction efforts are motivated both by the desire to reduce existential risks and by the desire to reduce smaller-scale damages. By contrast, Moynihan (2020) argues that the very concept of an anthropogenic existential catastrophe essentially did not exist 300 years ago; it appears there were then no efforts taken to prevent one. 12 safety measures. This may be seen by substituting xt = Ct/At (from (3)) into the hazard function (5), yielding δt = ¯ δAα−β t Cβ t . Fixing C, the hazard rate falls over time iff β > α. If it is (indefinitely) infeasible to lower the hazard rate while fixing consumption, as it is in this model if β ≤ α, then an existential catastrophe is unavoidable unless consumption falls to zero. This degrowth would amount to the destruction of advanced civilization by other means. If β ≤ α, therefore, speeding or slowing growth can have no impact on the probability of an existential catastrophe broadly construed. Third, fixing At > 0, δt is assumed to be strictly convex in xt. This imposes β > 1. The convexity implies diminishing returns to existential risk mitigation efforts. We take this to be a reasonable assumption both from first principles and from Shulman and Thornley’s (2024) recent estimates of the cost-effectiveness of existential risk mitigation efforts (Appendix A.1). The relationship between a hazard curve and the corresponding probability of survival S∞ is described in Section 2.1. 3.2.3 Preferences A planner seeks to maximize ∞ 0 e−ρtSt u(Ct)dt; u(Ct) = C1−γ t −1 1 −γ , γ>1. (6) That is, flow utility u(·) is CRRA in consumption for some coefficient of relative risk aversion γ > 1. Flow utility is discounted at exponential rate ρ > 0, representing the sum of some rate of pure time preference, if any, and some rate of natural and unavoidable existential risk.7 7One valid interpretation of these preferences would be that the population is fixed and (6) is the expected utility of a representative household. Another would be that population grows 13 The utility of death is implicitly normalized to 0 and the death-equivalent con sumption level to 1. Equivalently, we are normalizing to 1 the technology level at which, when consumption is maximized, flow utility equals 0. The planner chooses the path of x to maximize (6) subject to (3)–(5). Like Martin and Pindyck (2015, 2021), we assume that γ > 1 throughout the rest of the paper, except in Section 3.3.4. We assume this in part because it appears to be true, as documented by Hall (1988), Lucas (1994), Chetty (2006), and others. Also, however, the results are otherwise relatively uninteresting. This is for two reasons. First, observe that when γ > 1, flow utility is upper-bounded by 1 γ−1 > 0. Acceler ating consumption growth, from a baseline of positive consumption growth, therefore yields a stream of utility benefits that eventually shrinks over time. This dynamic produces the key tradeoff: concern for the future may cast doubt on the value of speeding technological development, because the consumption benefits of doing so primarily accrue in the short run, whereas the costs of an existential catastrophe are everlasting. By contrast, when γ ≤ 1, flow utility can grow without bound, so acceler ations to consumption growth and reductions in existential risk can have comparable long-term benefits. Second and relatedly, when γ ≤ 1, the marginal utility of consumption does not decline quickly enough (relative to the rising value of civilization) to motivate rapid increases in consumption sacrifices for the sake of safety. As a result, the probability of long-term survival is always zero on the planner’s chosen path, and accelerations or decelerations to technological development have no impact on the probability. This is detailed in Section 3.3.4. exponentially at rate n < ρ, that the rate of pure time preference and exogenous risk is in fact ρ+n, and that the planner uses the total utilitarian social welfare function. 14 3.3 The existential risk Kuznets curve 3.3.1 Optimality Summarizing the environment of Section 3.2, the planner chooses {xt}∞ ∞ e−ρtSt u(Ct)dt, 0 u(Ct) ≡ C1−γ t −1 1 −γ , γ>1 subject to A0 >1, ˙ At = gAt (g > 0), Ct = Atxt, S0 = 1, ˙ St = −δtSt, δt = ¯ δAα txβ t (¯ δ > 0, β > α > 0, β > 1). t=0 to maximize (7) (8) (9) This section finds the path of the hazard rate in the planner’s solution, observing that it rises and then falls with time. In the next section we will explore what this implies for the impact of acceleration on cumulative risk. The planner faces one choice variable, xt, and one state variable, St. Her (expected) f low payoff at t is Stu(Ct). Her problem can be represented by the following current value Lagrangian: Lt = Stu(Ct) +vt ˙ St + µt(1 −xt) =St (Atxt)1−γ − 1 1 −γ −vt ¯ δAα txβ tSt +µt(1−xt). µt is the Lagrange multiplier on x, positive iff the xt ≤ 1 constraint binds. ∞ vt = e−ρ(s−t)Ss St u(Cs)ds t is the costate variable on survival: the expected value of civilization as of t.8 (10) (11) 8The fact that the costate variable on survival must equal (11) can be seen immediately by reflecting on the fact that, in effect, the value of saving the world must equal the value of the world. It is also derived formally in Appendix B.1. 15 On an optimal path, the first-order condition on (10) with respect to the choice variable xt is satisfied. Differentiating (10) with respect to xt, we have StA1−γ t x−γ t −¯ δAα tβxβ−1 t vtSt ≥ 0, (12) with inequality iff the left-hand side is positive at xt = 1, in which case xt = 1 is optimal.9 Thus, • As long as (12) is nonnegative at xt = 1, the optimal xt ∈ [0,1] equals 1. Any consumption sacrifices would carry greater flow costs than expected benefits. • When (12) is negative at xt = 1, the optimal choice of xt is interior. It sets (12) equal to zero, maintaining the condition that the marginal loss of flow utility from lowering consumption equals the expected benefit via risk reduction.10 In fact there is a unique11 optimal path, characterized by first-order condition (12), a first-order condition corresponding to the state variable St, and identity (11). This is shown in Appendix B.1. For now, our discussion will rely only on the observations that (12) is satisfied on any optimal path, and that vt is upper-bounded by ¯ v ≡ 1 ρ(γ −1) . 3.3.2 Initial risk increases (13) The condition that (12) is nonnegative at xt = 1 is equivalent to the condition that A−(α+γ−1) t ≥ ¯ δβvt. (14) The continuation value of civilization at t given survival to t, vt, always strictly rises over time. This follows from the fact that, given the optimal paths {Cs}s≥t and 9The second derivative with respect to xt is negative by the assumption that β > 1. 10We can ignore the possibility that optimal xt equals 0 because this yields infinite flow disutility. 11Given piecewise continuity. If path x is optimal, measure-zero deviations from x are of course also optimal. 16 {δs}s≥t achievable at a given initial technology level At, a higher initial technology level allows for a path with an equal hazard rate but more consumption at each future period, by the assumption that β > α. A higher initial technology level always enables the planner to implement a preferred future. Suppose inequality (14) is satisfied strictly at t = 0. Then early in time, when At is low, the optimal policy choice is x = 1, and the hazard rate rises at rate gδt = αg. 3.3.3 Eventual risk declines and survival As the left-hand side of (14) falls exponentially with At and the right-hand side rises, there is a unique time t∗ at which (14) holds with equality. After t∗, the optimal choice of xt is interior and sets (12) equal to zero. Setting (12) equal to zero and rearranging, we have the optimal choice of xt after t∗, and thus the optimal choice of xt in general:    xt =   1, ¯ δβAα+γ−1 β+γ−1 t vt − 1 t ≤t∗; , t >t∗. (15) Taking the growth rate of each side, we can find the growth rate of the policy choice variable after t∗: gxt = −α+γ−1 β +γ−1g− 1 β +γ−1gvt, (16) where, given a time-dependent variable y, gyt ≡ ˙ yt/yt denotes its proportional growth rate at t. The hazard rate in turn grows as gδt = αg +βgxt = −(β −α)(γ −1) β +γ−1 g− β β +γ−1gvt. Because β > α and γ > 1, (17) is negative. (17) Furthermore, though gvt is always positive, gvt → 0. This roughly follows from 17 the fact that the expected value of the future vt is bounded above by ¯ v.12 This gives us the asymptotic long-run negative growth rates gx and gδ. Finally, since Ct = Atxt, we have gCt = g +gxt = β−α β +γ−1g− 1 β +γ−1gvt. Because β > α, long-run consumption growth is positive: x declines to 0, but A grows more quickly than x declines. Indeed, the growth of consumption is key to the growth in sacrifices for safety. With decreasing marginal utility to consumption and decreasing marginal returns to sacrifices for safety, potential consumption is split between the former and latter so that the marginal value of each stays equal. To summarize: Proposition 1. The existential risk Kuznets curve On the path defined by (7)–(9), there is a time t∗ ≥ 0 such that for t < t∗, xt = 1, gCt =g >0, gδt =αg >0 and for t ≥ t∗, lim t→∞ gxt = −α+γ −1 β +γ−1g 0, lim t→∞ gδt = −(β −α)(γ −1) β +γ−1 g 0. (18) (19) (20) The corollary follows from (20) and the definition of S∞. Because δt ultimately falls exponentially, ∞ 0 δtdt < ∞, so S∞ ≡e− ∞ 0 δtdt > 0. Note that δt → 0 is insufficient for survival. If δt fell to 0 too slowly, the integral would diverge, and we would have S∞ = 0. 12The gvt → 0 limit is shown formally in Appendix B.2. 18 3.3.4 No survival with γ ≤ 1 As noted in Section 3.2.3, one reason for assuming γ > 1 is that, when the marginal utility of consumption declines too slowly, a rapid shift from consumption to safety effort is not implemented, and the probability of long-term survival is always zero. This result recalls the “Russian roulette” model of Jones (2016). There, it is found that a planner will choose to sacrifice enough consumption for safety that a technologically induced catastrophe is not inevitable iff γ ≥ 1. In that model, however, risk is posed by the development, rather than the existence, of advanced technologies. It is thus more closely analogous to (indeed, essentially a special case of) our “transition risk” model of Section 4, and is discussed further there. The result also recalls, and sharpens, Jones’s (2024) observation about the impor tance of the coefficient of relative risk aversion for the willingness to avoid existential risk. Jones finds in a single-period setting that when γ is low, the planner is willing to tolerate a high risk of existential catastrophe in exchange for a spurt to consumption growth. In a single-period setting, the tolerated risk is continuous in γ; no disconti nuity is observed at γ = 1. In the dynamic setting studied here, however, a planner effectively chooses how much risk to tolerate period after period. When γ ≤ 1, enough risk is tolerated each period that an eventual catastrophe is guaranteed. Proposition 2. Policy choice and risk with γ ≤ 1 Suppose a planner faces problem (7)–(9), but with utility function (8) replaced by    u(Ct) =   log(Ct), γ = 1; C1−γ t −1 1−γ , γ ρ≡ (β−α)(1−γ) β Then there is a time t∗ ≥ 0 such that for t < t∗, g. xt = 1, gCt =g >0, gδt =αg >0 (21) (22) 19 and for t ≥ t∗, lim t→∞ gxt = −α βg < 0, lim t→∞ gCt = β −α β g>0, lim t→∞ δtt = δ∗ ≡ lim ρ (β −α)g > 0, γ =1; t→∞ δt = (ρ−ρ)(1−γ) β +γ−1 >0, γ< 1. This is essentially because, when γ < 1, consumption and thus flow utility grow at a higher exponential rate in the long run when g is higher, so the effect of raising g is similar to the effect of decreasing the discount rate ρ. Understanding the path of policy choice and risk is somewhat more complex when γ ≤1 than when γ > 1, because we do not have the result that vt is asymptotically constant, but a sketch is as follows. As in the γ > 1 setting, early in time inequality (14) holds and it is optimal to 20 set xt = 1. Likewise, later in time, optimality requires setting xt < 1 to maintain Atu′(Ct) = ∂δ =⇒ AtxtC−γ t ∂x ·vt = ¯ δAα tβxβ tvt =⇒ δt = C1−γ t βvt . (26) Observe from (11) that vt grows roughly with flow utility u(Ct). Flow utility, for large Ct, then grows approximately like C1−γ when γ < 1. So, though consumption grows t exponentially in the long run for any γ, δ is asymptotically constant when γ < 1. Intuitively, for the policy path to be optimal, it must maintain a) the flow utility to proportionally increasing consumption, Ct · C−γ t = b) the damage done via proportionally raising the hazard rate, which equals the hazard rate × the value of civilization. When the value of civilization also grows like C1−γ , as it does when γ < 1, the hazard t rate must be constant for (a) and (b) to grow at the same rate. When γ > 1, the value of civilization is asymptotically constant, so the hazard rate falls like C1−γ . t When γ = 1, given that consumption grows exponentially, log(Ct) and thus vt grow linearly. The hazard rate then falls proportionally to 1/t. 3.3.5 Simulation The paths of policy choice and the hazard rate are simulated below, for the parameter values listed in Table 1. The values of ρ, γ, and g have been chosen as central estimates ρ 0.02 γ 1.5 g 0.02 A0 2 α 1 β 2 δ 0.00012 Table 1: Simulation parameters for Figure 1 from the macroeconomics literature. A0 = 2 is chosen so that the value of a statistical life-year at t = 75 is four times consumption per capita, roughly matching estimates 21 from Klenow et al. (2023).13 That is, the first year of the simulation might be taken to denote 1949, when a nuclear war between superpowers first became possible, in which case the 75th year denotes the present. ¯ δ, α, and β are chosen so that the hazard rate today is approximately 0.1%, matching Stern’s (2007) oft-cited figure; so that the hazard rate begins to fall at approximately t = 100; and so that the growth rate and then the decay rate of the hazard rate are non-negligible, for clarity in illustration. The probability of survival S∞ under these parameters, from t = 75 onward, is approximately 65%. 1 0.8 Policy choice x 0.6 0.4 0.2 0 0 50 100 150 200 250 300 350 0.2 0.15 0.1 0.05 0 400 Time (%) Hazard rate Figure 1: Evolution of the policy choice and the hazard rate along the optimal path Calculations and code for replicating the simulation and corresponding probability of survival may be found in Appendix C. As Figure 1 illustrates, one potentially unappealing feature of this simple model 13They estimate that this ratio was roughly 5 in the United States in 2019. The figure must be adjusted upward for economic growth since 2019, but downward insofar as we are considering optimal policy across all countries advanced enough to be deploying existentially hazardous technology. 22 is that it implies that, on the optimal path, the hazard rate only rises while no sacrifices whatsoever are made for existential safety. In this it resembles Stokey’s (1998) “environmental Kuznets curve”, whose damages also rise exponentially with growth and then fall sharply once it becomes optimal to take action. As in Stokey (1998), this dynamic is driven by the lack of a lower Inada condition on 1−x. If marginal “safety expenditures” lower the hazard rate infinitely per unit spent at x = 1, then as long as vt > 0 it is optimal to set xt < 1, even if at first the hazard rate is allowed to rise. Rising δ can thus be found alongside falling x by tweaking the hazard function around x = 1. Such tweaks do not affect the long-run behavior of policy or risk as given by (18)–(20), which are set by the shape of the hazard function around x = 0. This is discussed further in Appendix A.4.1. 3.4 Acceleration and state risk As in the tech-only model of Section 2, the impact on cumulative risk of a temporary shock is ambiguous, but the impact of an acceleration—e.g. a permanent level or growth effect—is always to lower cumulative risk. 3.4.1 Preliminaries Let A(·) denote the baseline technology path, given by (4). Let A∗ ≡ At∗, where t∗ is defined as in Proposition 1. Absent a negative shock severe enough to induce stagnation or recession, A crosses every value from A0 to ∞ exactly once, so the area under the hazard curve can be defined by integrating with respect to A instead of t. We will let X denote cumulative risk given that the technology path is A(·) and the policy path x is optimal given A(·): ∞ X ≡ 0 ∞ ¯ δAα txβ tdt = = A0 ∞ A0 −1 ¯ δ Aαxβ A dA ¯ δ Aαxβ A ˙ A−1 dA dt A dA, (27) 23 where we will again abuse notation somewhat by letting xA and ˙ AA denote, respec tively, the optimal value of x (given technology path A(·)) and the value of ˙ A when the technology level equals the subscripted A. We will define vA and δA likewise. Note that δA ≡ ¯ δAαxβ A, without dividing this expression by ˙ AA. That is, it is still a hazard rate: it represents the probability of catastrophe per unit time at technology level A, not the probability of catastrophe per unit of technological development. ˜ A(·) is an acceleration from A ∈ [A0,∞) to A ∈ (At,∞] if ˜ A0 = A0 and ˙ ˜ AA = ˙ AA, A ˙ AA, A∈(A,A); = ˙ AA, A≥A. The acceleration is permanent if A = ∞ and temporary otherwise. Let ˜ A(·) be an acceleration from A. Define ˜ vA such that at A < A, ˜ vA = vA, and at A ≥ A, ˜ vA is the costate variable on survival at A given that the subsequent technology path is ˜ A(·). Then ˜ xA is defined to equal (15) with A,˜ vA in place of At,vt; ˜ δA ≡ δ(A,˜ xA); and ˜ X ≡ ∞ A0 ˜ δA ˙ ˜ A−1 A dA. Given a baseline technology level A and a technology growth rate ˙ ˜ by ˜ A(·)[ϵ] the acceleration from A to A + ϵ with ˙ ˜ AA = ˙ ˜ A, A ∈[A,A+ϵ). A> ˙ AA, denote Then the effect on cumulative risk, per unit of technological development, of instan taneously accelerating to ˙ ˜ A at A is defined to be ∆A, ˙ ˜ A ≡ lim ϵ→0 where ˜ X[ϵ] is cumulative risk ˜ ˜ X[ϵ] −X/ϵ, X, as defined above, given acceleration ˜ A(·)[ϵ].14 14The effect on an instantaneous acceleration on cumulative risk per unit time is ∆A, ˙ ˜ A ˙ ˜ A, since 24 3.4.2 Three shocks Instantaneous level effects — The effect per unit time of a positive shock to the tech nology level At, letting policy adjust instantaneously, depends on whether the shock occurs before or after the regime-change time t∗. At t < t∗, temporarily multiplying the technology level by m > 1 has no impact on the optimal choice of x.15 The hazard rate thus rises. The future hazard rate is unaffected, so cumulative risk increases by δt(mα −1) > 0 per unit of time that the technology level is raised. At t ≥ t∗, temporarily multiplying the technology level by m > 1 multiplies the policy variable by m−α+γ−1 β+γ−1 , by (15). In combination, the positive shock to tech nology and the negative impact on the policy variable multiply the hazard rate by mα−βα+γ−1 β+γ−1 =m−(β−α)(γ−1) β+γ−1 1 lowers cumulative risk (per unit of time that the shock lasts) regardless of t. It does so only because the shock decreases the time spent at technology levels around At. The shock has no impact on the policy associated with any technology level. As in the tech-only model, therefore, we see that the impact of this shock on cumulative risk per unit of increase to the technology level during the acceleration is δt((m ˙ At)−1 − ˙ A−1 t ) < 0. Accelerations — Consider a sharp temporary acceleration, in which the technology level jumps at t from At to A > At and exponential technology growth is subsequently maintained. Since in this model optimal policy is independent of history, this technol ogy shock amounts to a “leap forward in time”. The resulting impact on cumulative risk is A − At δA ˙ A−1 A dA. More generally, an acceleration from A to A can lower the risk endured at the given range of technology levels for two reasons. 1. As in the tech-only model, increasing the technology growth rate at A always lowers cumulative risk directly because the exponent on ˙ AA in integral (27) is negative: ˙ ˜ A−1 A < ˙ A−1 A . 2. Going beyond the tech-only model, given A ∈ [At,A), the value of the future at A is higher given faster future technology growth: ˜ vA > vA. By (15), this motivates weakly more stringent policy ˜ xA ≤ xA and thus a weakly lower hazard rate ˜ δA ≤ δA. If ˙ ˜ AA ˙ AA decreases cumulative risk per unit of technological development during which it endures: a) ∆A, ˙ ˜ A = δA( ˙ ˜ A−1 − ˙ A−1 A ) < X, with equality strict only if A ≤ A∗. The impact of a shock to growth on the probability of survival is explored in the strictly more general model of Appendix A.3. The generalized results are given and proved there in Proposition 8. 3.4.3 Simulation The effects of a sharp temporary acceleration are illustrated in Figure 2. The pa rameter values used to illustrate the baseline path are the same as those used to simulate Figure 1. The acceleration takes place “today”, at t = 75, and multiplies A by e0.2 ≈ 1.22, so that at g = 0.02, it amounts to a 10-year leap forward. Recall from Section 3.3.5 that the probability of survival (from t = 75 onward) on the baseline path is approximately 65%. The proportional increase in the probability of survival can be found analytically. Cumulative risk X declines by precisely the area under the baseline hazard curve from t = 75 to 85; and since δ75 = 0.1%, g = 0.02, and α =1, this difference equals ∆X =−0.001 10 0 e0.02tdt = −0.05(e0.2 − 1). S∞ =e−X is then multiplied by e−∆X ≈ 1.011, so that in absolute terms S∞ rises by approximately 0.65 · 0.011 ≈ 0.7%. 27 1 0.8 Policy choice x 0.6 0.4 0.2 0 0 50 100 150 200 250 300 350 0.2 0.15 0.1 0.05 0 400 Time Figure 2: Acceleration shrinks cumulative risk (%) Hazard rate Calculations and code for replicating the simulation may be found in Appendix C. 3.4.4 Discussion

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Slow growth makes catastrophe inevitable — As noted in Section 2.2, a permanent negative acceleration, or “deceleration”, can render survival impossible: e.g. if it induces stagnation.

In this simple setting, the technology conditions necessary for survival can be stated more precisely. Consider a permanent deceleration after which technology grows power-functionally, so that ˜ At = tk for some k > 0. The exponential growth rate of ˜ A, denoted ˜ g, is then not constant at g but time-varying, with ˜ gt = k/t. By (17) and since ˜ gv → 0, δt then falls to 0 like t−(α−β)(γ−1) β+γ−1 k. Since cumulative risk is finite for δt ∝ t−κ iff κ > 1, the probability of survival is positive iff k > β+γ−1 (α −β)(γ −1).

Growth vs. patience — Faster growth increases the willingness to pay for safety. By contrast, those concerned about the safety of the long-term future often attempt to increase others’ willingness to pay for safety via ethical arguments for a low rate of time preference. Consider e.g. the Stern–Nordhaus debate (and the long debate since) over the discount rate to use in climate policy, or the arguments for concern for the future made by philosophers such as Parfit (1984), Cowen and Parfit (1992), Ord (2020), and MacAskill (2022).

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At any value of γ, stagnation at a low technology level A yields a permanent hazard rate of ¯ δAα. This may be arbitrarily low, so the expected duration until catastrophe 1/(¯ δAα) may be arbitrarily high. When γ < 1, an acceleration can quickly yield a hazard rate that permanently approximates δ∗ (25). The acceleration can thus lower civilizational life expectancy to approximately 1/δ∗. 29 4 Transition risk 4.1 Motivation A hazard function of the form δ(At,xt) captures what we have called “state risk”: δ depends on the level of technology. On this framing, it is perhaps unsurprising that escaping risky states more quickly lowers cumulative risk. But risk may instead be “transitional”: posed by technological development. This is the intuition captured by Jones’s (2016) “Russian roulette” model of technological development and (2024) model of AI risk, and by Bostrom’s (2019) analogy to drawing potentially destructive balls from an urn. Perhaps stagnation at a given level of tech nology is essentially safe, and risk arises in the process of discovering and deploying new technologies with unknown consequences. If so, given a positive-growth baseline, does accelerating technological development further increase cumulative risk? 4.2 A transition-risk-based hazard function To explore this possibility, suppose δ increases in ˙ At instead of, or as well as, in At. We will again restrict our consideration to a constant elasticity hazard function: δt = ¯ δAα t ˙ Aζ txβ t, ¯ δ > 0, ζ ≥ 0, β > 1. (29) Our original hazard function (5) is the special case of (29) with ζ = 0 (and β > α > 0). This model is thus a generalization of hazard function (5), complementary to that of Appendix A.3. If ζ > 0, however, the model is most naturally interpreted as one in which risk is posed by the introduction of new technologies—new “draws from Bostrom’s urn”— which consist of absolute increases to A. Fixing policy, introducing multiple technolo gies can pose more, less, or equal risk if done concurrently than if done in sequence, depending on the sign of ζ − 1. Introducing more advanced technologies can pose more, less, or equal risk than less advanced, depending on the sign of α. 30 Alternatively, to interpret one “new technology” as a proportional increase to A, simply rewrite the hazard function as δt = ¯ δAα+ζ t ˙ At At ζ xβ t. On this interpretation, α + ζ > 0 is the condition under which developing more advanced technologies poses more risk than developing less advanced technologies. Because ˙ A/A has been roughly constant through the last century, the view that the hazard rate has risen must be attributed to the increasing danger of each “technolog ical development” in this sense. Finally, consider the case of α = −1, ζ = 1, so that δt = ¯ δ ˙ At At xβ t. Here, fixing x, each proportional increase to A induces a constant hazard, indepen dently of how quickly the increase occurs. In the absence of policy—with x = 1 (or any other constant) permanently—this model is essentially equivalent to the “Russian roulette” model of Jones (2016)16 and the AI risk model of Jones (2024). 4.3 Acceleration and transition risk 4.3.1 Without mitigation Suppose that the baseline technology path A(·) is continuously differentiable, with a positive derivative. Let ˆ A≡limt→∞At be finite or infinite. As implied above, fixing policy, whether acceleration increases or decreases cumu lative risk depends on whether ζ is greater or less than 1. This can, as usual, be seen most clearly by integrating the hazard curve with respect to A: ∞ X = 0 16Our ¯ δ is the variable there denoted π. ˆ A ¯ δAα t ˙ Aζ tdt = A0 ¯ δAα ˙ Aζ−1 A dA. 31 Given acceleration ˜ A(·) from A ∈ [A0, ˆ A) to A ∈ (A, ˆ A], cumulative risk equals A ˜ X =X+ A ¯ δAα ˙ ˜ Aζ−1 − ˙ Aζ−1 A dA. The integral is negative if ζ < 1, zero if ζ = 1, and positive if ζ > 1. In the Russian roulette model, for instance, though there is a technology level ˆ A < ∞at which it is optimal to halt technological development (Appendix A.5), accelerating technological development before ˆ A does not affect cumulative risk. 4.3.2 With mitigation In Section 2, we saw that acceleration weakly lowered cumulative state risk absent policy. In Section 3, we saw that the tendency of acceleration to lower cumulative state risk was amplified by the presence of optimal policy. Here, we have seen that the impact of acceleration on cumulative transition risk is ambiguous absent policy. We will now see that it remains ambiguous given optimal policy, but that policy can reintroduce a tendency for acceleration to lower cumulative risk. For simplicity, we will now again impose the assumption that A grows at a constant exponential rate g. Also, since given exponential growth g ˙ A = g, we will impose β >α+ζ, (30) which, rather than β > α, is now the condition necessary for survival without Ct = Atxt → 0. Under these conditions, since ˙ A is proportional to A, the planner’s problem is precisely as described in Section 3.3, with α + ζ taking the place of α (up to a coefficient gζ that can be rolled into ¯ δ). Baseline x and δ paths, and S∞, are unchanged. The existential risk Kuznets curve remains. Let A∗ denote the uppermost technology level at which it is optimal to set x = 1 on the baseline technology path. Since the first-order condition ∂u ∂xt (At,xt) ≥ ∂δ ∂xt (At,xt)vt =⇒ A1−γ t x−γ t ≥ ¯ δAα tβxβ−1 t vt 32 must be satisfied everywhere and hold with equality for x < 1, we have    xA =   1 A≤A∗, ¯ δβAα+γ−1 ˙ Aζ AvA − 1 β+γ−1 A >A∗. Substituting (31) into the expression for cumulative risk ∞ X = we have X = A∗ ∞ ¯ δAα ˙ Aζ−1 A dA+ A0 ¯ ¯ δ Aα ˙ Aζ−1 A xβ AdA, δ1−γββA(β−α)(γ−1)vβ A − 1 β+γ−1 ˙ A ζ γ−1 β+γ−1−1 (31) (32) A dA. (33) A0 A∗ Recall that a technology path ˜ A(·) is an acceleration if ˙ ˜ AA > ˙ A for technology levels A ∈ [A0,∞) to A ∈ (A ≤ ∞]. With or without policy, an acceleration affects cumulative risk directly, by changing the technology growth rate from A to A. With policy, an acceleration also affects cumulative risk indirectly by affecting vA for A ∈ [A,A), which affects policy at this range of technology levels. Under the hazard functions of the previous sections, as we have seen, faster tech nology growth is always weakly preferred. This follows from the fact that it is feasible to offset higher values of At with lower choices of xt, such that the original consump tion path is maintained, and from the assumption from β > α that given this policy response, the hazard curve is weakly lowered. Since a future with faster growth is more valuable, an acceleration from A to A raises vA for A ∈ [A,A). Under hazard function (29), this argument is no longer valid. This is because, un like an increase to At, an increase to ˙ At brings no contemporaneous benefit, though it imposes risks that can still be mitigated only with less contemporaneous consump tion. And indeed, under hazard function (29), faster technology growth is no longer always preferred. We can see this most straightforwardly in the case of α = −1, ζ =1: again, this is the Russian roulette model of Jones (2016), and as Jones finds, with γ > 1, it is optimal for technology to grow only to a finite level. In the more 33 general model here, the result that stagnation is optimal is knife-edge, as discussed in Appendix A.5. Nevertheless, the result that an acceleration from A to A does not necessarily yield ˜ vA ≥ vA for A ∈ [A,A) holds more generally. These complexities are avoided when we focus on instantaneous accelerations. The impact of an acceleration from A to A on vA, for A ∈ [A,A), falls to zero as A−A → 0. The impact of a brief acceleration on cumulative risk is therefore approximately the impact found when we ignore impacts on vA. Proposition 4. Instantaneous acceleration and transition risk Given hazard function (29) and technology path (4), choose a technology level A > 1 and growth rate ˙ ˜ A> ˙ AA. If a. A ≥A∗ and ζ )1+ β γ−1 , or b. A )1, and ˙ ˜ A maintains (31) = 1 at A = A, then ∆A, ˙ ˜ A < (=,>)0. Proof. See Appendix B.3. The result follows essentially immediately from the exponent on ˙ AA in (32). In particular, instantaneous acceleration after A∗ lowers cumulative risk as long as ζ γ−1 β +γ−1−1< 1. The α ≥ −1, γ ≤ 2 case follows from the fact that if α ≥ −1, then, by (30), ζ < β + 1, so ζ β+1 < 1. Since macroeconomic estimates of γ ≤ 2 are standard, this result suggests that accelerations lower cumulative risk on the optimal path in the context of transition risk, at least if they occur late enough in time that mitigation is already underway. 34 Furthermore, this is, again, even without considering the fact that an increase to future growth can change the value of the future. Though the direction of this change is in principle ambiguous, most observers today take it for granted that, at least on a conventional discount rate, faster technology growth would be a benefit on the current margin. This would then be another channel through which a (positive duration) acceleration would motivate greater concerns today for safety. It may be counterintuitive that instantaneous acceleration reduces risk only when γ lies below a bound, because when γ is higher, the marginal utility of consumption is lower and it is optimal to shift resources from consumption to safety more rapidly. The result stems from the fact that, when γ is high, the marginal utility of consump tion rises rapidly as x is cut, so following an acceleration, a small cut to x suffices to equalize the marginal utility of consumption with the marginal value of safety spend ing. The higher γ is, the more quickly x falls as A rises, but the less sensitive x is to a change in ∂δ/∂x—e.g. an increase due to higher ˙ A—at a given value of A. 4.3.3 Discussion The nonrivalry of safety effort — Hazard function (29) is explored here mainly for its simplicity and similarity to (5). One valid criticism of this functional form is that it overemphasizes a channel through which the risks posed by a series of technological developments can be cheaper to mitigate if they occur at once than if they occur in sequence. Suppose that β ≈ 1, that ζ = 1, and that two small increases to ˙ A—let us call them two “experiments”—can occur in sequence or simultaneously. If they occur in sequence, halving the risk posed by each requires halving x and thus consumption for two periods in a row. If the experiments occur simultaneously, the same reduction in cumulative risk only requires halving consumption once. For some kinds of experiments and some kinds of safety infrastructure, the as sumption that safety efforts are “nonrival” in this sense is reasonable. Wastewater monitoring for the sake of early pandemic detection reduces the risk posed by poten 35 tially pandemic-inducing biological experiments by a proportion independent of how many experiments are underway. In other cases, however, it is not reasonable. It does not apply, for instance, to the costs of the safety equipment that must be used at each lab. Safety efforts of this kind might be better modeled by a modified version of the “safety in redundancy” model of Appendix A.4.2. A thorough attempt to shed light on the relationship between growth and transition risk would require further study. Nevertheless, the basic model explored here offers two lessons. First, in the absence of policy, the effect of acceleration on transition risk is ambiguous, and there is no effect in the arguably central “ζ = 1” case assumed by Jones (2016, 2024). Second, the presence of an optimal policy response can shift the relevant “ζ” threshold, in particular significantly shifting it upward to the extent that safety efforts are nonrival across contemporaneous risks. Stagnation vs. deceleration — When ζ > 0, complete stagnation ( ˙ A = 0) is always the safest path of all. Nevertheless, we have seen with and without policy that given a positive growth rate, faster growth can decrease risk. The key to this puzzle is that, given stagnation at ˆ A, levels of A > ˆ A are never attained. Cumulative risk is therefore not (32) but (32) with the ∞ replaced with ˆ A. Absent stagnation, however slow the growth rate, all levels of A are attained. The growth rate only determines the risk endured at each one. The direct cost of faster progress during a given range of A-values (higher risk per unit time, to the extent that ζ > 0) is partially, and may be more than fully, outweighed by the fact that faster progress motivates more mitigation at each point in time, in combination with the now familiar fact that when progress is faster we do not linger in a given range of A-values as long.

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Human activity can create or mitigate existential risks. The framework presented here illustrates that, under various conditions, existential risk should be expected to exhibit a Kuznets curve. This observation offers a potential economic explanation for the claim by some prominent thinkers that humanity is in a critical “time of perils”. We may be advanced enough to be able to destroy ourselves, but not yet enough that we are willing to make large sacrifices for the sake of safety. If we are indeed living through the time of perils, reductions to existential risk today have massive expected long-term consequences.

At the same time, this framework highlights a channel through which some ef forts intended to reduce existential risk may backfire. In the absence of policy, when risk is posed by the existence of advanced technologies, broad-based decelerations to technological development typically worsen or do not affect the odds of long-term survival. Given an optimal policy response, even by a policymaker with little care for the long-term future, this impact is magnified. The impact can be significant, with proportional consumption decreases having comparable impacts to proportional in creases in the planner’s rate of time preference. In the extreme, permanent stagnation can make a catastrophe inevitable that might otherwise have been avoided.

### 2NC---Tariffs Case !---T/C: Fed Workers

#### Striking down tariffs enshrines the MQD

Chemerinsky 25 [Erwin, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law, “The Supreme Court, tariffs, and judicial consistency”, 9-15-25, https://www.scotusblog.com/2025/09/the-supreme-court-tariffs-and-judicial-consistency/]

Even beyond textualism, another doctrine created by the conservative justices, the “major questions” doctrine, undermines any claim of presidential power to impose tariffs under the IEEPA. In recent years, the six conservative justices repeatedly used the major questions doctrine – which requires clear guidance from Congress before a federal agency can act on a major question of economic or political significance – to strike down actions by the Biden administration.

In the 2022 case of National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration, the Supreme Court, by a vote of 6-3, invalidated the Biden administration’s mandate that employers require vaccination or COVID-19 testing in workplaces of more than 100 employees. Although the court did not explicitly mention the major questions doctrine, that was the rationale: Congress had not given sufficiently specific authority for imposing the vaccine mandate.

In the 2022 case of West Virginia v. Environmental Protection Agency, the court held, again by a vote of 6-3, that the EPA lacked the authority to regulate certain greenhouse gas emissions from coal-fired power plants. Chief Justice John Roberts, writing for the majority, said that this was a major question of economic and political significance and Congress had not provided sufficiently specific authority for such regulation.

In the 2023 case of Biden v. Nebraska, the court, in another 6-3 decision, struck down the Biden administration’s student loan relief program. Even though a federal statute allowed the Secretary of Education to “waive or modify” student loan debt, the court, once more in an opinion by Roberts, said that this was a major question and there was not sufficient congressional authorization.

The Federal Circuit applied these precedents to hold that Trump lacked authority to impose the tariffs. It stated that imposing “tariffs of unlimited duration on imports of nearly all goods from nearly every country with which the United States conducts trade” is “both ‘unheralded’ and ‘transformative.’” Because “[t]he Executive’s use of tariffs qualifies as a decision of vast economic and political significance, so the Government must ‘point to clear congressional authorization’” for its actions. The Federal Circuit concluded that there was no such authorization in the IEEPA.

Nor can the conservative justices draw a distinction between the powers of the president and the authority of agencies, saying that the major questions doctrine applies only to the latter. In a series of recent rulings on the emergency docket involving removal of government officials – such as Trump v. Wilcox and Trump v. Harris – the six conservative justices have made clear that they accept the unitary executive theory, or the idea that the president has control over the entire executive branch. In Trump v. United States, the court stated (quoting a previous case): The president is “the only person who alone composes a branch of government.” In light of this, there cannot be a meaningful distinction between the powers of the president and the powers of the agencies.

#### That blocks Schedule F

Farber 24 [Dan; December 15th; JD, Sho Sato Professor of Law @ UC Berkeley, "Can the Major Question Doctrine Block Trump’s Excesses?", Legal Planet, https://legal-planet.org/2024/12/05/can-the-major-question-doctrine-block-trumps-excesses/) [Typo corrected]

In West Virginia v. EPA, struck down Obama’s Clean Power Plan. The Court’s opinions opinion announced new limits on government actions in what it termed “extraordinary cases.” This has become known as the major question doctrine. It tells judges to be skeptical when the government leverage[s] some vague or obscure law to support a dramatic, unprecedented action. Dramatic, unprecedented actions are Trump’ stock in trade. The major question doctrine could be a major roadblock.

In his opinion in the West Virginia case, Chief Justice Roberts relied on the following factors to justify applying the major question doctrine:

Stark departure from past practice and regulatory norms. The agency’s interpretation of the statute was “not only unprecedented; it also effected a ‘fundamental revision of the statute, changing it from [one sort of] scheme of … regulation’ into an entirely different kind.” Moreover, EPA had relied on an obscure and little-used portion of the statue.

Breadth of the claimed authority. Under EPA’s view of the statute, Roberts says, “Congress implicitly tasked it, and it alone, with balancing the many vital considerations of national policy implicated in deciding how Americans will get their energy.” Congress needs to say so clearly if that’s what it intends.

Lack of relevant expertise. EPA lacked expertise on running the electricity system.

Congressional consideration and rejection. Congress considered and rejected multiple efforts to create a cap-and-trade scheme for carbon.

As an example of how the major question doctrine could block Trump, consider Schedule F. Schedule F is a tool Trump has said he plans to use to use as soon as he takes office to “remove rogue bureaucrats,” and he promises to use that tool “very aggressively.” It could strip as many as fifty thousand workers of their Civil Service status.

Schedule F has many of the earmarks of a major question:

An obscure, vague statutory provision,

Unprecedented use of the provision,

A radical departure from past practice, and

Political controversy and a significant economic impact (potentially layoffs for 50,000 workers).

It seems unlikely that Congress would have wanted to delegate a decision of such consequence to the executive branch, especially since the whole purpose of the Civil Service Act is to limit politicization of the bureaucracy. As Justice Scalia once said, Congress does not hide elephants in mouseholes — and § 7511(b)(2) is as much a mousehole as you could find in the U.S. Code.

I don’t want to oversell the utility of the major question doctrine in blocking Trump. The scope of the doctrine is very unclear, leaving lower courts all over the map in how they interpret it. And a conservative Supreme Court could well find reasons to apply it to liberal actions but not conservative ones. But because the doctrine is designed to prevent quantum leaps in government policy, it just might be what we need in the Trump era.

### 2NC---Tariffs Case !---T/C: Democracy

#### A ruling for Trump in the tariffs case gives him dictatorial authority and cements his control

Millhiser 9-16 [Ian Millhiser is a senior correspondent at Vox, 9-16-2025 https://www.vox.com/politics/461677/supreme-court-trump-dictator-economy-tax-spending]

Realistically, however, if the Supreme Court gives Trump the other powers he is seeking, it would be child’s play for him to get around the Constitution’s Appropriations Clause. The mechanism that prevents federal officials from illegally spending money is the Antideficiency Act, which makes it a crime for federal employees to spend money in excess of the amount appropriated by Congress.

But Trump can pardon anyone who violates this criminal law. And the Republican justices already held, in Trump v. United States (2024), that Trump is immune from prosecution if he uses his official powers to commit crimes.

If Trump gets what he wants from the Supreme Court, in other words, he could wind up with dictatorial authority over US fiscal and monetary policy — fully empowered to tax and spend without any meaningful checks from the other branches of government. And there is a real risk that this Court, which has a Republican supermajority that has shown extraordinary deference to the leader of their political party, will give Trump what he wants.

Trump claims the power to raise trillions in new taxes — Trump v. V.O.S. Selections

The power to tax is potentially the most frightful power that any government possesses. It is essentially the power to take the fruits of people’s labor and to spend that money on programs of the government’s own choosing.

Which isn’t to say that taxation is wrong. Taxes fund essential humanitarian services, such as Medicare or Medicaid. But they can also fund armies of conquest. Or a secret police directed at a nation’s own citizens.

Historically, the United States has prevented its taxing power from becoming a tool of tyranny by vesting this power in an elected Congress. The Constitution provides that “Congress,” and not the president, “shall have the Power to lay and collect Taxes.” As mentioned above, it also requires Congress to determine how this money will be spent — although Congress does often enact broad appropriation bills and leave the details of how to spend that money to the Executive.

In V.O.S. Selections, however, Trump claims the power to raise trillions of dollars worth of new taxes without first seeking Congress’s permission to do so.

In fairness, Trump’s lawyers do argue that he has levied these taxes pursuant to an existing federal law — the International Emergency Economic Powers Act of 1977 (IEEPA), which permits the president to “regulate…transactions involving, any property in which any foreign country or a national thereof has any interest.” Notably, however, IEEPA only permits the president to use this power “to deal with an unusual and extraordinary threat.”

But multiple federal judges have now ruled that this law does not permit the massive tariffs imposed by Trump. One argument is that the power to “regulate” imports does not include the power to tax them. Other judges have pointed out that Trump has not actually identified an “unusual or extraordinary threat” that can justify the taxes.

### 2NC---Tariffs Case !---T/C: Trump Agenda

#### Ruling against Trump hamstrings his entire agenda

Gupta 25 [Samantha; September 24; J.D. from Yale Law School, Policy Fellow at the Stanford Institute for Economic Policy and Research; Royal United Services Institute, "The US Supreme Court’s Tariff Trolley Problem," https://www.rusi.org/explore-our-research/publications/commentary/us-supreme-courts-tariff-trolley-problem]

Third, there will be uncertainty in President Trump’s [approach](https://www.washingtonpost.com/business/2025/08/09/trump-trade-policy-national-security/) to his policy agenda, including for the domestic economy, foreign policy and national security. With the tariff as a hammer, the President views every problem as a nail. To reindustrialise America, tariff foreign competition. To end the war in Ukraine, tariff India. To induce greater NATO spending, tariff allies. Without the ability to use IEEPA, the President’s agenda could be hamstrung. There are a **handful** of other authorities permitting the use of tariffs, but each comes with requirements that limit the expansive approach the President has pursued under IEEPA, though the administration certainly may test the bounds of these authorities.

### 2NC---I/L---Court Balance Thesis

#### 2AC 1 was “court capital wrong”---this is not a court capital disad, it’s a “checking Trump” disad. Broader claims about the court being conservative or political is irrelevant and our argument

#### The court chooses explicitly to check Trump on some cases---they “rebuff radical efforts” while granting seemingly “liberal wins” to pulverize laws.

< 1NC Lithwick, FOR REFERENCE >

As the Supreme Court term crashed to a close last week, in a string of stinging defeats to progressives, a familiar narrative began shaping up in the public discourse: The court had, on balance, remained largely loyal to the conservative legal project while delivering just enough compromises to quell any meaningful challenge to its power and legitimacy. That story is the one Chief Justice John Roberts would probably like to have you tell; it is both descriptively accurate and superficial to the point of distortion. The court did, indeed, refuse an invitation to clobber several liberal precedents and policies, which had the effect of leaving the law in place, a set of status quo decisions dressed up as liberal “wins.” It then used the resulting good press as cover to pulverize laws that directly improved the lives of tens of millions of Americans, including the most vulnerable and underprivileged among us. And it achieved these goals largely through the invisible hand of docket manipulation, a trick that’s unique to the modern Supreme Court.

What does that all mean? Nothing too lofty. Justices Brett Kavanaugh and Amy Coney Barrett have finally embraced the chief justice’s tried-and-true formula of years past, joining a series of decisions rebuffing some of the most radical Republicans’ most cynical efforts to yank the law far rightward. The sloppiest, least defensible big swings—pushed by Alabama, Texas, and North Carolina—were rebuffed. Slightly less sloppy big swings were embraced joyfully and written into law, including a case that had no facts and a case that ignored the record below. In swinging at only some of the worst pitches served up, Barrett, Kavanaugh, and the chief justice got a chance to tick off a bunch of policy agenda items that are too unpopular and misery-inducing to pass via the democratic process. After last term’s eruption of molten, cruel conservatism, the 6–3 majority has sought safer political ground without sacrificing any of its most cherished goals.

#### Prefer issue specific uniqueness---this is case would be the radical effort that the court wants to check to give the appearance it’s not a 6-3---the aff uses it on the civil service

Jones 25 [Callum Jones is deputy business editor for Guardian US; internally citing, Mark **Graber**, a leading scholar on constitutional law and politics. JD from Columbia, MA and PhD from Yale, 9-8-2025, "The US supreme court may address Trump’s tariffs. Does he want to win?", https://www.theguardian.com/us-news/2025/sep/08/trump-tariffs-supreme-court]

Donald Trump has upended the global economy, imposing steep tariffs on US allies and rivals, dismissing fears of higher prices, and promising his strategy will yield a new “golden age”. All the president needs to do now is prove he’s allowed to do it.

Legal experts say he may face an uphill battle.

In May, the US court of international trade ruled that the bulk of Trump’s tariffs “exceed any authority granted to the president”. And last Friday, the US court of appeals for the federal circuit ruled that Trump’s levies “assert an expansive authority that is beyond the express limitations” of the law his administration has leaned on.

Now Trump is taking the case to the supreme court, claiming any decision against him would “destroy” the US.

The appeals court has paused its ruling, allowing the tariffs to remain in place until 14 October. The administration wants the supreme court to move swiftly; solicitor general D John Sauer has requested the justices decide by Wednesday, 10 September, whether to pick up the case. Oral argument could take place in the first week of November, he suggested.

In a filing this week, Sauer claimed the appeals court’s “erroneous” decision had “disrupted highly impactful sensitive ongoing diplomatic trade negotiations and cast pall of legal uncertainty over the President’s efforts to protect our country by preventing an unprecedented economic and foreign policy crisis”.

It sets the stage for the biggest legal test yet of Trump’s controversial and fundamental rewrite of US trade strategy, hiking tariffs on foreign goods to their highest levels in the best part of a century.

Mark Graber, a leading scholar on constitutional law and politics at the University of Maryland, expects the administration to ultimately lose the case. “This is an issue that really splits the Trump coalition,” he said. “If it splits the Trump coalition, it probably splits the Trump coalition on the bench.”

The US supreme court is dominated by conservative justices, with six of the nine nominated by Republican presidents, including three by Trump. This supermajority has granted Trump 18 straight victories in the administration’s requests for emergency relief – and been accused by Sonia Sotomayor, a liberal-leaning justice, of undermining the bedrock principle that America is a “government of laws, not of men”.

“It won’t surprise me if a number of Republicans on the supreme bench actually jump on this one,” continued Graber, who believes four of the court’s conservative voices could be persuaded to vote against the tariffs, perhaps in part to counter the narrative that the court has been hijacked by the right. “I don’t think the [John] Roberts, [Amy Coney] Barrett, [Brett] Kavanaugh people are really very thrilled about tariffs. Probably not [Neil] Gorsuch, either.”

“I think this court would love to have a case where it doesn’t side with the administration,” he said. “This strikes me as a perfect case” to counter the perception that the supreme court is stacked with “stooges for Trump”.

### 2NC---Link---Fed Workers---TL

#### The plan forces the Court to horse-trade labor rights for other conservative priorities

Doerfler & Moyn 21 [Ryan D. Doerfler, Professor of Law, University of Chicago Law School; and Samuel Moyn, Henry R. Luce Professor of Jurisprudence, Yale Law School; Professor of History, Yale University, “Democratizing the Supreme Court,” California Law Review, 2021, Vol. 109, No. 5 (2021), pp. 1703-1772, JSTOR]

At first blush, partisan balance requirements operate the same way, ensuring at most a limited partisan skew and more ideologically moderate outcomes.161 Some, however, advocate partisan balance on the theory that such an arrangement would necessitate ideological compromise, which, these advocates insist, would take the form of less sweeping judicial holdings.162 Such judicial minimalism163 would, in turn, leave more space for Congress to act. While attractive in theory, this minimalist prediction fits poorly with recent historical practice. The narrowly divided Roberts Court, for example, has opted for horse trading rather than incrementalism in some of the most politically significant cases.164 And even in areas like abortion where the Court has taken a more incrementalist approach, the ultimate effect looks to be a more significant shift in constitutional law than would result from more dramatic rulings followed by predictable backlash.16

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C. Rights The most common objection to disempowering reforms to the Supreme Court focuses on the need for it to protect important rights, especially minority rights against hostile majorities. For many, rights protection is the leading criterion for assessing not just judicial reform, but the basic purposes of a judiciary in the first place.166 We need not review the gargantuan literature on the plausibility of the familiar claim that democracies empower judiciaries precisely to protect rights. As Justice Robert Jackson immortally put it, the goal is “to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.”167 But a few targeted responses to that conventional wisdom from the perspective of Supreme Court reform are indispensable. We will argue that (1) disempowering reforms open the possibility of much superior rights protection precisely because the progressive legislative agenda withdraws unjustifiable protection for the powerful and allows for or improves upon rights protection for both majorities and minorities alike; (2) disempowering reforms leave a range of plausible judicial mechanisms for rights protection in necessary cases; and (3) even to the extent that disempowering reforms imaginably threaten rights, it is not clear that personnel reforms have better credentials for ensuring their protection. (1) The progressive frame disputes that majority rule endemically conflicts with rights protection. On the contrary, the historical record clearly demonstrates that legislatures serve as the chief historical source of rights, while judicially enforced rights protections can easily devolve into technologies of minority rule.168 If true, as a general matter it is quite possible that disempowering leads to superior rights protection, not worse. On the one hand, it subjects to majority rule the powerful and wealthy minorities claiming and getting the protection of the courts.169 On the other, progressive reform through the political branches of government can potentially lead to superior legislative protection of the rights of majorities from those powerful and wealthy minorities, as well as superior legislative protection of the rights of vulnerable or weak minorities. The American (and, even more, global) progressive default was long, not the absence of rights as a political goal, but “legislated rights.”170 The privilege of the judiciary led to the Lochner era. No doubt, if that case is anticanonical in American memory, it is so precisely as a form of illicit rights protection and was cast aside to achieve better rights protection through legislative means. As Roosevelt accurately explained, “the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.”171 This sometimes requires putting courts in their place in order to privilege legislatures pursuing rights for all and balancing the claims of majorities and minorities alike. In this spirit, the legislature can be seen as the first and most important defender and propagator of rights, and majority rule the default source of legitimacy for assessing the scope of rights and resolving conflicts among rights and between rights and other priorities. Roosevelt’s “Second Bill of Rights” envisioned a suite of economic and social entitlements of modern citizenship, but not one that judicial authority would enforce and whose scope remained to be determined in light of other interests and values.172 And though they did not enact it, Americans have remained within a legislated rights frame in propounding civil rights acts that effectively did more than any judicial decision to confront exclusions based on race, gender, or disability.173

<<PARAGRAPHS RESUME>>

Consider again from this perspective the current baseline of rights protection in American constitutional law and what the Green New Deal would do in supplementing it. As noted above, illicit forms of rights protection associated with the Lochner era and our own neo-Lochnerian one foil prospective reform absent Supreme Court renovation.174 Americans can boast strong judicial protection of core forms of speech, along with other protections of religion. These decisions have their defenders even when used to limit the scope of other constitutional rights or even allow the Supreme Court to expand statutory antidiscrimination protections to sexual orientation, in expectation that those requesting religious accommodations and exemption will be provided them.175 By the same token, however, Americans do not have other basic rights under the U.S. Constitution, whether rights to basic provision (of food, housing, sanitation, or water, all familiar in other national settings and international law).176 In the case of health care, not only do Americans not have a right to it, but the Constitution’s established judicial power weakened the initial attempt to take some steps towards it under the star-crossed Affordable Care Act (ACA).177 State constitutions often protect the right to education, but the Supreme Court explicitly rejected it.178 More generally, even with respect to the rights for which constitutional law provides robust protection, they are not class sensitive, and not only are material insufficiencies not understood as rights violations under judicially elaborated frameworks, material inequality is not either.179 A right to work, or labor rights to organize and strike, have never been significant features of America’s constitutional law.

By contrast, while not everything an H.R. 1 democratizing statute, Green New Deal law, or other progressive legislative reform should be conceived as the elaboration or substantiation of a right, much of it is easy to understand that way. Many of their key planks—access to the polls and other voting entitlements, job guarantees vindicating the right to work, high-quality food, health care, housing, or water correlating with well-known rights, promises for high-quality education not only at the primary but secondary level—fit.180 Even its “green” part can be seen as rights protective. The more general rhetoric of facing down inequality after decades of its expansion bears not only on basic rights, but also can be conceived to involve rights beyond sufficient provision to an entitlement to rough equality in life chances. Ronald Dworkin has epitomized a stereotypical view of judicial authority that was absolutely required for rights to be invoked as principled “trumps” against aggregating legislatures.181 This picture entirely missed whether legislatures might be fora of principle equal or even superior to defending extant rights commitments and propagating new ones. (Dworkin did acknowledge that “fit” with American traditions forbade any very expansive understanding of our constitutional rights.)182 Shifting away from recent Dworkinian assumptions is especially pertinent when it comes to so-called positive rights, none of which are protected under the U.S. Constitution and few of which have ever been sought— even at the zenith of liberal power on the Supreme Court—through judicial interpretation. As Dworkin’s assumptions more or less accurately reflect, Americans boast a small number of rights that they protect in absolutist ways through judicial intervention. Other countries proceed differently by propounding a much wider variety of rights, which their legal systems protectless robustly through proportionality balancing against other interests and distributed institutional control over rights.183

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It is, of course, true that judge-led interpretation of the Constitution’s rights applied most of them to the states in the middle of the twentieth century, and in doing so revolutionized protections in criminal procedure. It also extended individual rights not mentioned in the constitutional text across the century—in the phase since the 1960s, mostly under the Due Process Clause’s promise of liberty, freed from the constitutional protection of freedom of contract as a right. In this vein, the Court protected rights like freedom from compulsory sterilization,184 and to choose to abort a pregnancy or marry a spouse of a different race185 or the same sex.186 And the Equal Protection Clause banned formal apartheid, and especially formal segregation of races in schools.187 These results account for the familiar anxiety that Supreme Court disempowerment would threaten rights protection. And no one should pretend that a legislated rights regime would match the set of entitlements achieved through judicial interpretation precisely. Even if a legislated regime provides for many rights on its own, or more of them, it may miss others. But it is pivotal to any genuine comparison that it is not a matter of exclusive principled defense of rights in judiciaries on one side against unprincipled majoritarian action on the other. Instead, it is a comparison of some schedule of rights and some modicum of protection on both sides of the line. Minimally, rights concerns do not cut against legislative empowerment per se. And more maximally, progressives assume that rights protection may well be available in superior form through political branches as agents of national transformation. However, judicial empowerment to achieve the current spotty and weak protection of rights generally serves debatable ends, and primarily protects the rights of powerful and wealthy interests. Not only can legislatures protect rights for majorities and minorities, but judiciaries can convert rights protection into illicit minority rule. Indeed, if existing entitlements for the needy are weak and for the powerful are strong, judicial empowerment can at least as plausibly be construed as a project of rights violation as of protection and disempowering as instrumental for the sake of rights themselves. Sometimes progressives may rely on accounts of the comparative institutional bias of judiciaries (relative to legislatures) towards views of elites188 and outcomes favoring them.189 Sometimes they may even—as in Karl Marx’s early writings190 and in the critical legal studies movement191—claim that individual rights are especially susceptible to the production of those same outcomes. And those suggestions deserve careful scrutiny. But even if neither kind of account is persuasive, disempowering reform can be construed as a project of rights expansion and vindication, beyond the narrow list and weak protection of Supreme Court doctrine, currently and even historically. One should question whether the Supreme Court’s unimpressive baseline protection of the rights of vulnerable minorities, even as it has come to systematically favor neoliberal outcomes in First Amendment jurisprudence and beats back at legislative protection in areas like affirmative action or voting rights, suffices to justify its empowerment as guardian of basic entitlements. When we consider the likely obstacle the Court would pose to rights expansion as a progressive agenda, the answer to that question is not hard. Disempowering reforms would count as a far greater victory for rights than an empowered victory could ever deliver. (2) Furthermore, while the functional effect of disempowering reforms like jurisdiction stripping and supermajority rules on the Supreme Court reduces the significance of judicial review, it is not a matter of either-or. Functional disempowerment of the Supreme Court leaves a series of stopping points short of full negation of judicial review through some institutional reform, which only a persistent but tiny minority of followers of Thomas Jefferson in American life supports.192 Indeed, many proponents of weakening judiciaries have offered stopping points to manage judicial rights protection. If they have generally failed— leaving too many protections for the undeserving and too few for those in need— it by no means obviates a new compromise leaving some crucial judicial rights protection intact. James Bradley Thayer’s proposal merely to subject majority legislation to rationality rule left room for policing irrational results.193 More boldly, the original move in the 1930s, first defended in the fourth footnote of the Carolene Products opinion194 and canonically justified by John Hart Ely,195 was to “bifurcated review.” This framework subjected economic legislation to rationality review after the abandonment of the old substantive due process while protecting some schedule of rights and some kinds of minorities. Where personnel reforms do not react to the general failures of past compromises either to deal with underenforcement of rights or “juristocratic” excesses, disempowering reforms hardly abandon the possibility of a more successful one. Relative democratization hardly means total disempowerment of judiciaries to protect rights. The same verdict applies to Ely’s defense of judicial review to remedy participatory exclusions and failures. While there is no reason on its recent track record to believe that the Supreme Court will pursue his vision,196 attractive in theory but dead in practice for several decades, nothing forbids a disempowered judiciary from doing so. If properly calibrated, jurisdiction stripping statutes, for example, could insulate precisely the attempted expansion of legislative rights from judicial limitation in the name of various provisions of the Constitution weaponized by the right (notably, the Free Exercise and Free Speech Clauses), while leaving judges power to protect other rights from unsuspected majoritarian excess. Similarly, supermajority rules have a distinctive capacity compared to personnel reforms for counteracting the reality that controversial minoritarian tyranny today very much works through the Supreme Court, while leaving room for justices to intervene in the case of genuine majoritarian tyranny when enough justice agree it is real, rather than a smokescreen for illicit capture. Finally, unlike personnel reforms, disempowering reforms do not rely on judicial self-restraint as a mechanism to ensure democratic choice. Thayer’s proposal relied on judicial self-restraint, and Carolene followed suit insofar as it ultimately consecrated a purely judicial determination as to when to cross the line from rationality review to heightened forms of scrutiny. The result was, arguably, a Supreme Court in which both sides of a partisan split exercised judicial authority selectively and opportunistically. Judges allowed democratic will-formation, blocking it contingently (sometimes for better, regularly for worse) based on their own evolving doctrines of intervention. What all of these reforms shared was a rejection of Thayerian deference de facto, and an expansion of judicial authority uncontemplated and undesired in the middle of the twentieth century.197 “A lesson that some will take from today’s decision,” one conservative justice remarked bitterly at the end of the day, “is that preaching about the proper method of interpreting the Constitution or the virtues of judicial self-restraint and humility cannot compete with the temptation to achieve what is viewed as a noble end by any practicable means.”198 If he was right, however, it was because judicial self-restraint failed to ensure conservative (not just liberal) self-policing. Even with personnel reforms, any bench will face the temptation to overstep, whereas disempowering reforms specifically deprive them of the temptation. Disempowering reforms limit the Court’s power to act or abstain from acting in the first place. (3) Finally, even to the extent disempowering reforms hypothetically threaten rights, personnel reforms do not plausibly provide superior protection. Generally, the goal of relegitimation of the Supreme Court—the rationale for many proposed reforms today, as discussed above—is orthogonal to rights protection. There is no reason to believe a court with comparable powers as now, but with improved legitimacy, would improve rights protection. To make out a case that it would, one would have to correlate legitimation with rights protection, and it seems churlish to suggest credibly doing so. As we suggested above, most approaches to legitimacy define it in terms of partisan neutrality rather than rights protection. To be sure, there are some accounts of normative legitimacy of apex judiciaries that may be less about nonpartisan neutrality than most, and may even put rights protection at the very heart of what a normatively justified Supreme Court would do.199 The trouble is that none of the personnel reforms credibly advance that form of legitimacy. It is, alas, unclear that any reforms of the Supreme Court we can imagine would do so—thus it cannot be an argument against disempowering reforms that they fail to do so. Of course, personnel reforms might plausibly stave off the threat posed by the current conservative majority on the Supreme Court in the short term— though evidence suggests that the most extreme fears of the majority’s consequences for abortion and other rights have proved premature. Our point is that, even conceding the possibility of threats to rights, relegitimation is hardly well-designed to achieve this end exclusively and narrowly. On the contrary, given recent baselines before the need to “save” the Supreme Court became apparent, relegitimation involves far greater risk for confirming the endemic judicial underenforcement of rights of the vulnerable and weak, and potentially even overenforcement of those of the powerful and wealthy. And if the suggestion is that personnel reforms achieve short-term democratic legitimacy by updating the bench to match the popular will, then any improvement they might achieve in rights protection is also available legislatively. Either way, there is no way to conclude that disempowering reforms would lead to more abuse of rights than other reform options, and may well lead to their greater vindication. D. Regularity A separate aim of many reforms is to regularize the appointment of Supreme Court justices.200 According to the standard narrative, the Supreme Court appointment process has grown increasingly fractious since the Senate rejected Robert Bork’s nomination in 1987.201 Today, it is popular to insist that the appointment process is “dysfunctional[,]”202 “broken,”203 or otherwise in disrepair. Complaints about the dysfunction of the appointment process are typically coupled with worries about undue “politicization.”204 As discussed above, worries about politicization go to the Supreme Court’s legitimacy. Apart from legitimacy, however, several reformers allege concern with the functionality of the appointment process. According to these scholars and advocates, increased “polarization” and the stakes of judicial appointments have resulted in a system burdened by gridlock and that encourages destabilizing political tactics.205 Most of the contestation over Supreme Court appointments is tied directly to important normative disputes within our political community. As such, so long as Supreme Court justices continue to wield tremendous authority, it is both predictable and appropriate that political actors will fight aggressively for control of the Court. Given the stakes, efforts to regularize the appointment process through mere shifts in personnel will predictably fail. To see why, take the proposal to impose term limits on Supreme Court justices. As described above, this proposal would, in its most popular form, allot one Supreme Court appointment per congressional term, with each justice permitted to serve for a period of eighteen years.206 One of the supposed advantages of this reform is that it would help regularize the appointment process by lowering the stakes of individual appointments.207 Because each president “gets two appointments per term,” the motivation to contest specific appointments is, we are told, substantially less.208 Notice, however, that each president “get[ting]” two appointments is more hope than promise under this scheme. Because its advice and consent function would remain the same, an opposition Senate would retain the incentive to reject nominations, thereby helping to accrue partisan advantage on the Supreme Court over time. Even if quorum and vacancy rules would eventually force the choice of confirming a nominee or rendering the Supreme Court incapable of issuing binding judgments,209 a strategic opposition might easily prefer to effectively empower the courts of appeals, building partisan advantage at that level through similar tactics. The point here is that Supreme Court term limits would do little to deter an opposition party from engaging in constitutional hardball. While true that the stakes of an eighteen-year appointment would be lower than an appointment of an indefinite tenure, determining the ideological character of the Supreme Court would remain an enormously high-stakes affair. If the fate of climate or health care legislation, say, were to continue to rest with that institution, it would be malpractice for progressives not to do everything within their power to ensure that the Supreme Court was progressively inclined. Other purportedly regularizing personnel reforms suffer from similar defects. Partisan-balance requirements, for example, would present an opposition Senate with the same opportunity to refuse to confirm nominees to seats assigned to the President’s party. Again, an opposition Senate might be left with the choice of confirming a nominee or depriving the Supreme Court of a quorum, but as our current politics shows, such aggressive tactics are sometimes appealing.210 Merit selection presents similar issues, though this time with both the President and the Senate. Barring constitutional amendment, any potential nominees chosen by a nonpartisan or bipartisan panel would have to be nominated by the President formally.211 Given a cooperative Senate, a boldly progressive or conservative President would have little reason to assent to the sort of centrist or moderate candidate such panels are designed to produce. The same would be true for a stridently progressive or conservative Senate. Why settle for a “compromise” nominee when one has the leverage to demand more? The complication with lottery systems is slightly different. As described above, such proposals would replace our system of permanent Supreme Court justices with panels composed of randomly selected judges from the federal courts of appeals or permanent associate justices drawn from an enlarged pool. Pursuant to this reform, although the Supreme Court as such would retain its authority, the authority of the individual judges who make up the Court would be substantially reduced. On this scheme, individual judicial appointments would be less significant than the appointment of justices today.212 Still, because this proposal would make every federal court of appeals judge a potential Supreme Court justice, the stakes of filling court of appeals vacancies would increase accordingly. Given the already rising level of contestation over such nominations, it is hence easy to imagine a panel system causing appointment “dysfunction” merely to spread. Again and again, we see the same basic issue. Under our constitutional scheme, both the President and Senate have a say in the appointment of justices.213 Because Supreme Court justices wield tremendous authority and because ideology determines in part how they wield it, those two parties will be disposed to fight should their ideologies differ. The intensity of that disposition will depend, of course, on the strength of their ideological disagreement. In a country racked with intense political disagreement, however, that disposition is going to be incredibly strong at least some of the time. Given the intensity of that disposition, comparatively small adjustments like the imposition of term limits would barely affect, say, an opposition Senate’s decision-making calculus. With the stakes of appointments so incredibly high, such modest if salutary reforms are not at the requisite scale. By comparison, more aggressive disempowering reforms might at least register with a president or opposition Senate. Stripping courts of jurisdiction over constitutional cases or requiring a supermajority to declare federal legislation invalid, for example, would meaningfully reduce the stakes for Supreme Court appointments and judicial appointments more generally. Even with its authority so limited, the Court’s ideological character would continue to matter even outside of constitutional or politically significant cases. Still, in terms of stakes, disempowering reforms would make the appointment of justices more akin to the appointment of agency officials. To be sure, the appointment of such officials is also increasingly contested, as should be expected in polarized times. In terms of regularization, then, even aggressive disempowering reforms can only promise modest benefits.

<<PARAGRAPHS RESUME>>

E. Pragmatism

A less conceptually ambitious but equally commonplace framework for evaluating a reform scheme is pragmatism: case-by-case consideration of the reform’s outcomes. This criterion is not oriented to the legitimacy of the Supreme Court either as an apolitical, neutral institution or as one made safe for democratic life. Pragmatism appeals to a narrower kind of legitimacy: one of output. Are the results of Supreme Court decision-making good (enough), or at least not bad (enough)? But the truth is that, as our parentheticals indicate, such a criterion is overwhelmingly oriented to harm avoidance, pointing not to good results but to ones that are a tolerable mix of outcomes, or—even more modestly—do not incur grievous enough harm.214

As an example of pragmatism in action, consider June Medical Services v. Russo,215 the Court’s latest consideration of an already whittled-away abortion right. The case might have constrained that right further, reducing the number of Louisiana clinics where women can seek abortions from four to one, but instead protected the right. In the hours after the decision, liberal outlets responded with a palpable relief. Early narratives said Chief Justice Roberts had “betrayed” his conservative movement in failing to grasp a long-sought prize here, and in his vote two weeks earlier to extend statutory civil rights protection to sexual orientation.216 Yet commenters also noted that Roberts’ majority decision, clearly in response to the erosion of the Supreme Court’s sociological legitimacy, also opened the way to less brazen legislative curtailments of abortion rights in the future.217 Though not the dire outcome long feared, Roberts’s controlling opinion was widely recognized as a terrible blow for the very right it purported to preserve.

Routinely, pragmatism really amounts to what one might call a Supreme Court liberalism of fear.218 It greets the fact that justices have not eroded past progressive gains, while also restraining the conservative majority from experiments that are too perilous—as if such triangulation were a worthy cause. This pragmatic sensibility surges in real time at the end of each Supreme Court term as observers, though far from celebration, welcome individual case results as examples of the institution not doing its worst. Chief Justice John Roberts has, over the last decade, become the icon for this approach,219 [FOOTNOTE 219] 219. For recent instances in an infinite commentary to this effect, see, for example, Jeffrey Rosen, John Roberts Is Just Who the Supreme Court Needed, ATLANTIC (July 13, 2020), https://www.theatlantic.com/ideas/archive/2020/07/john-roberts-just-who-supreme-court needed/614053/ [https://perma.cc/43UR-PF3J]; Hail to the Chief: Justice John Roberts Joins the Supreme Court’s Liberal Wing in Some Key Rulings, ECONOMIST (July 2, 2020), https://www.economist.com/united-states/2020/07/04/justice-john-roberts-joins-the-supreme-courts liberal-wing-in-some-key-rulings [https://perma.cc/ER3G-H34Q]. [END FOOTNOTE 219] sometimes abetted by due respect for Justice Elena Kagan as a master strategist of achieving harm avoidance through compromise with conservatives.220

Assuming the pragmatic rationale really does minimize harm in the absence of a possibility of help—both prongs of which are easy to dispute—it could succeed on its own terms. For many, however, it tolerates the enormous harm it says it avoids while foreclosing help through institutional creativity backed by political action. Worse, the rationale’s price is a set of unacceptable baselines that it defends. The basic objection to this outlook, then, is that it is not very pragmatic. What is pragmatic about accepting the continued erosion of current baselines that leave cherished liberal policies like abortion rights221 and affirmative action222 hanging by a thread, even as multi-decade conservative inroads in many doctrines—including edging up to the deconstruction of the administrative state223—continue accruing? Such “pragmatism” allows existing doctrines and case law to remain entrenched, on the rationale that the Supreme Court could worsen them. For progressives, by contrast, the current baselines are the problem and could allow a Supreme Court, even one saved from doing its worst, to damage their legislative proposals. The pragmatic framework rests content with the existing baseline of stunted left-wing policy, as if a right-wing adventurism blocked by John Roberts justified the threat a powerful Supreme Court—and John Roberts himself—would pose to genuine progressive reform were it to emerge.

In fairness, one sometimes senses that pragmatism shelters the utopian hope that someday the Supreme Court will return to its predestined role institutionalizing justice in the country. That maximalism can take refuge in minimalism does not mean the permanent replacement of the one by the other. Indeed, pragmatists often feel that depression about outlooks—acceptance of bad outcomes because they could be worse—is in fact justified solely because the alternative is to attack the Supreme Court itself, to which they profess independent allegiance. “The Roberts court, against all expectations, has made this battered country a better, safer place[,]” wrote senior courtwatcher Linda Greenhouse in response to the recent abortion case, epitomizing the pragmatic stance.224 “For now[,]” she clarified—adding that, while she “breathed a deep sigh of relief,” it was not just for the Louisiana women affected but also “for the Supreme Court itself, for having avoided plunging along with Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh into an institutional abyss.”225 In other words, the pragmatist acceptance of an unacceptable baseline requires some justification other than pragmatism itself. If it were plausible that keeping the Supreme Court from the abyss for now would allow it to ascend to the empyrean later, “pragmatism” might make sense. But it’s not, which reveals pragmatism to be a kind of utopianism.

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The limitations of pragmatism—normally deployed by those uninterested in or wary of institutional reform debates—make it a weak candidate for justifying Supreme Court reform. As a potential rationale for reform, pragmatism faces the threshold worry that it is the default stance of those who complacently accept the institution as it is. It is hard to imagine a compelling justification for institutional reform that appeals to slightly better outcomes and does not shift major baselines. Nor, if pragmatists called for reform out of exasperation with enough bad news, does their framework obviously help select among reforms. There is no denying that Supreme Court reform in the name of pragmatic output legitimacy could make sense on its own terms—a slightly less scary nightmare is worthwhile if waking up is not an option—even if it entrenches the prevailing low expectations for output. It might face a constituency problem: if those interested in Supreme Court reform at all move to put pressure on the mainstream acceptance of the institution in current form, it is because they are dissatisfied with how little pragmatism currently boasts. If they adopted a pragmatic rationale for evaluating their prospects, advocates of Supreme Court reform would have to rationalize embarking on an agenda that will be decried as radical when their ends are merely to reinstate low expectations at a somewhat higher level. And if it is true that the Supreme Court could indeed get even worse either by abandoning favorite progressive precedents or minting novel conservative doctrines, pragmatic reform would not necessarily change this. The framework also provides little help for selecting among imaginable reforms, especially compared to a democracy criterion for evaluating them. Once again, contrast a partisan balance scheme with a jurisdiction stripping one. The first might well aim to “reset” the current lopsided ideological configuration of the Supreme Court by repopulating the justices and depriving conservatives of their current majority. But while this scheme is a pragmatic choice to reset the Supreme Court to a stage prior to Justice Neil Gorsuch, a Justice Merrick Garland on the bench instead would have resulted in modest doctrinal variation at best.226 Such reform does nothing to reverse decades-long drift or to prepare the ground for progressive legislative reform, which in fact it leaves almost as endangered as before. Supreme Court personnel reforms on pragmatist terms might achieve slightly better outputs than before. But the same is true of disempowering reforms. At worst, jurisdiction stripping simply leaves things the way they are, made no worse by Supreme Court intervention—this time because it is disempowered to act. The same is true of a supermajority rule. At worst, it would stabilize current doctrine because not enough votes are available for a conservative majority to erode past progressive victories or to set off in radical new directions of its own. In short, whatever modest improvement of current baselines that personnel reforms justified pragmatically can achieve, those justified democratically can as well. At best, those latter reforms may make room for political branches to alter existing baselines by passing legislation that a disempowered Supreme Court can no longer block as easily. Contesting a pragmatic view through progressive beliefs, personnel reform sounds like a choice between resting content with the current Roberts Court or turning it back into the one in which Roberts could indulge his priors while allowing Justice Kennedy to control the right instead of him. By contrast, disempowering reforms, by sidelining the institution altogether, far more plausibly allow a potential shift away from a pragmatism of harm avoidance and reduction to make room for progressive reform if the political branches settle on it. That may, in the end, be the only durably pragmatic hope Americans have in the future. IV. FEASIBILITY Part III assessed reform proposals in terms of desirability. Here, we turn to feasibility, asking which reforms stand a chance at successful implementation. To do so, we evaluate the various proposals according to two criteria. First, we consider whether a given proposal would be legal, which is to say consistent with the Constitution without amendment. Second, we look at political feasibility, examining whether a stable coalition might emerge in support of a reform. As we show below, both personnel and disempowering reforms are subject to legal objection. In most cases, however, those objections admit of rejoinders, leaving the two approaches roughly on par. Similarly, while any reform faces an uphill political battle, we argue that disempowering reforms have at least as good a chance as personnel reforms at garnering coalitional support. A. Legal The legality of different reform proposals has been covered exhaustively by existing scholarship. In this brief survey, we suggest that both personnel and disempowering reforms are fairly characterized as legally plausible. Because both types of reforms are vulnerable to judicial obstruction, the fate of either would depend on the willingness of the political branches to push back in support. 1. Personnel Reforms Among personnel reforms, court-packing is probably the most uncontroversially legal. As others have documented, the number of seats on the Supreme Court has been set since its inception by statute,227 and Congress has adjusted the size of the Court—from six to seven,228 to nine,229 to ten,230 back to nine231—numerous times.232 This longstanding congressional practice couples with relative constitutional textual silence. While Article III assumes the existence of a Supreme Court and Article I, section 3 that there will be a Chief Justice, nothing else in the text seems to bear on how large or small the Court must be.233 Such historical and textual evidence notwithstanding, court-packing has been and continues to be subject to legal objection.234 For instance, the 1937 Senate Judiciary Committee declared President Franklin Roosevelt’s court packing proposal unconstitutional. According to the Committee, the apparent purpose of the reform was to “appl[y] force to the judiciary,” coercing it to adopt a “line of decision” that it otherwise would not.235 The proposal, the Committee continued, was “an invasion of the judicial power such as has never been attempted” before, alleging that prior adjustments to the Court’s size were not intended to “influence . . . decisions.”236 After court-packing, the legality of personnel reforms gets murkier. Panel systems, for example, typically require individuals to be appointed both as a federal circuit court judge and as an associate justice. As Epps and Sitaraman concede, one could argue that such dual appointments would be unconstitutional, reasoning that both Article III237 and the Appointments Clause238 understand those two offices as distinct and so not to be combined or jointly held by some individual.239 Maybe more worrisome, transitioning to a panel system could be characterized as effectively removing sitting justices from office in violation of Article III.240 Term limits for Supreme Court justices are vulnerable to analogous objections. Imposing term limits on all federal judges would plainly require constitutional amendment. For the Supreme Court, the proposed workaround is for appointees to serve as active justices for a fixed term, after which those individuals would transition either to “senior” status, sitting only in the event of recusal or temporary disability, or to acting as judges on the federal courts of appeals.241 The senior status proposal invites charges of effective removal from office. Rotating justices to circuit court judges is more promising (though not without concern242). And even that approach leaves the issue of sitting justices, who would either have to be removed without being “removed” or allowed to depart the Supreme Court over time. Partisan balance reforms are open to challenge as well. Partisan balance is a familiar feature of agency design and has generally been upheld by courts, though we lack a definitive endorsement along the lines of Humphrey’s Executor.243 Partisan balance on courts, however, raises distinctive questions. For one, the Supreme Court is, unlike the Federal Elections Commission or the Securities and Exchange Commission, a creature of the Constitution,244 suggesting that Congress may have less discretion in setting qualifications for Supreme Court justices. More still, depending on the formulation, conditioning appointment to the Court upon the party affiliation of the appointee or the appointing president or on the approval of some congressional block245 would present either First Amendment246 or Appointments Clause concerns.247 Last, merit selection presents obvious Appointments Clause worries insofar as the recommendations of the selection committee are binding.248 Epps and Sitaraman cleverly try to avoid this worry by assigning appointment of a subset of justices to the other, regularly appointed justices and then limiting the pool of potential Supreme Court justices to judges previously appointed to lower federal courts.249 In so doing, Epps and Sitaraman attempt to mirror the widely accepted practice of federal judges sitting “by designation” in different jurisdictions and at different levels of the judicial hierarchy.250 Even here, though, the Supreme Court’s current hostility to institutional innovation poses a serious challenge,251 as no lower court judge has ever sat by designation on the Supreme Court. 2. Disempowering Reforms Disempowering reforms are also legally contestable. Jurisdiction stripping is perhaps the most aggressive reform and famously raises numerous constitutional questions—questions that become more difficult the more comprehensive the strip. In particular, the Supreme Court has remarked repeatedly that “serious” concerns “would arise if a federal statute were construed to deny any judicial forum for a colorable constitutional claim.”252 Such worries apply to specific constitutional issues, let alone to broad categories of claims. Despite this controversy, stripping courts of jurisdiction, even over constitutional challenges, has strong textual footing. As numerous scholars have observed, Article III’s grant of authority to Congress to “make . . . Exceptions” to the Supreme Court’s appellate jurisdiction while at the same time placing the existence of “inferior” federal courts entirely within congressional control suggests that Congress enjoys sweeping authority concerning federal jurisdiction.253 And as to state courts, both the Supremacy Clause and the Necessary and Proper Clause appear to provide Congress substantial discretion there as well.254 Taken together, Christopher Sprigman argues that these features indicate the Constitution “gives to Congress the power to choose whether it must answer, in a particular instance, to judges or to voters,” relying in some instances on political rather than judicial checks to enforce constitutional constraints.255 Voting rules present different issues. Sachs, for instance, argues that a supermajority rule for constitutional invalidation would amount to Congress “pick[ing] and choos[ing] among different substantive holdings,” requiring a “supermajority to express one legal conclusion,” but allowing a “minority of Justices” to uphold another.256 Similarly, Evan Caminker worries that “Article III implicitly mandates that the Supreme Court decide cases by bare-majority rule.”257 And likewise, Epps and Sitaraman acknowledge that some read Article III as granting the Court exclusive or final authority to “decide how to resolve its own cases.”258 Jed Shugerman has offered the most comprehensive response to these objections. He begins by noting that the Court already makes various decisions pursuant to non-majority rules—whether to grant certiorari, for example.259 In addition, Shugerman observes, Congress already exercises authority over how the Court operates, defining by statute, for example, how many justices constitute a quorum.260 Last, as to the concern about Congress dictating substantive holdings, Shugerman argues, channeling Frank Easterbrook,261 that supermajority rule should be conceived as a constraint on the Court’s jurisdiction, depriving it of jurisdiction to pass on a constitutional question if only a bare majority of justices vote in favor of unconstitutionality.262 Finally, proposals for a legislative override raise fundamental questions about the constitutional basis of judicial review. In its weaker form, a legislative override would amount to an assertion of constitutional departmentalism, respecting individual judicial judgments but reserving to Congress the right to interpret the Constitution independently. Departmentalism has a strong legal263 and historical264 pedigree. At the same time, this sort of limited override would leave the Supreme Court as the final arbiter on most constitutional matters, especially in areas such as climate change in which only a single judgment could substantially undermine federal policy.265 By contrast, allowing for a legislative override that displaces or precludes future contrary judicial judgments requires, by definition, a rejection of what Mark Tushnet calls “[s]trong-form” judicial review.266 It is widely (though not universally) accepted that the Constitution provides for that form of review with respect to individual judgments, making displacement of judgments an uphill constitutional battle.267 With respect to future contrary judgments, however, one could fashion a legislative override as a forward-looking strip of jurisdiction, depriving courts of the opportunity to issue analogous judgments going forward. Such an override would, of course, inherit the constitutional questions surrounding jurisdiction stripping more generally.268 In sum, both personnel and democratic reforms are vulnerable to constitutional objection. Few if any of those objections are knockdown. Both types of reform are, broadly speaking, legally plausible. Nonetheless, to call both types of reform plausible is not to say that the current Court would rule in their favor. The Court has been hostile to institutional innovation, as well as protective of its present character and authority. It would be presumptively hostile to almost any of these proposals. As we see today, though, the Court is also acutely aware of its relative institutional power. Ultimately, the likelihood of success for any of these plausible legal theories depends upon the political support in their favor. B. Political A separate question from the legal availability of these reforms concerns their political feasibility. By “political feasibility,” we mean the range of non legal constraints and possibilities that might make enacting one reform rather than another less or more likely. In the litigious real world, legality may loom large in the political feasibility of any reform. Still, separating the criteria is useful. There is no point in pursuing one reform, however legally plausible, if it is wholly infeasible on other grounds. Conversely, the ease of forming a coalition or gathering momentum for a given reform might offset its legal challenges. The worry that institutional intervention will cause “spirals” of tit-for-tat partisan response is also serious enough to warrant separate treatment; such a destructive cycle of vengeance is to be avoided, other things being equal. As with feasibility generally, this specific risk of spiraling varies across different reforms tremendously. Our essential contention is that personnel reforms are no more politically feasible and often less so than disempowering reforms are (in part because the latter are not plausibly subject to the risk of spiraling out of control). If legality is no bar to more desirable proposals for Supreme Court reform, neither is political feasibility. 1. In General Political feasibility is often treated as a hard constraint, forbidding Supreme Court reform of any kind.269 And the suggestion that any institutional intervention is unavailable affects personnel and disempowering reforms alike. It makes sense to begin, therefore, with the argument that a progressive frame makes more plausible—if not necessary—a lifting of the usual marginalization of reform of the Supreme Court. Dispute about which reform is feasible, after all, pales beside the consensus that none is. But the erosion of that belief in the last few years means its grounds are no longer what they once were. Supreme Court reform was once a fringe notion, and figures as different as Earl Warren and Adrian Vermeule have concurred that it would remain so forever. In 1974, Warren reflected that reformers had not only “consistently fallen under the weight of their own ineptitude,” but the Supreme Court itself “has remained steadfast as an institution,” and “prevailed . . . over those who would destroy its function and its symbol as the chief architect of our constitutional way of life.”270 A quarter-century later, as minor proposals to impose term limitations on Supreme Court justices were percolating, Vermeule offered an elaborate rationale for why Supreme Court reform could never happen. While he grudgingly acknowledged that it is not that “structural reform is impossible,” the hard truth is that “it is systematically unlikely to occur.”271 But there is no doubt that it has become more mainstream today than in nearly a century. As Roberto Unger once remarked in another context, “The distance between the unthinkable and the familiar may be short in the history of politics and of law.”272 One might reply—and the end of the 2019 term substantiates it—that the Chief Justice or an alliance of liberals and conservatives on the court will always prioritize decreasing the feasibility of reform by avoiding sufficiently outrageous outcomes. On one hand, there is currently an alliance of sentiment between “pragmatists,” who operate with a harm reduction philosophy while never challenging the institutional foundations of Supreme Court partisanship or power. On the other hand, there are justices who rank sociological legitimacy over other concerns, even when it means that conservatives deny themselves the disruptive outcomes they may have spent a career preparing to reach.273 This suggests that Supreme Court reform can never become feasible; to the extent it looms, steps to postpone it will be taken. There are two responses to such a hypothesis. The first is that it is hardly guaranteed that the line of feasibility is set in stone, however assiduously managed by those who wish to draw it just far enough so that it is never reached. On the contrary, it is widely recognized that, with the Supreme Court moving further right after Kennedy was replaced by Roberts as median justice, the line of feasibility has been eroded to a remarkable extent. And the events of the late Lochner era prove that there certainly are conditions for it to be erased altogether. The “four horsemen” before the switch in time aroused sufficient political rage to prompt open national debate about the role of the Court in the constitutional order. Judicial intransigence has occurred, and the politics of its overcoming too, albeit with the results of doctrinal rather than institutional reform.274 It is hard to understand what arguments could acknowledge the feasibility of the first but deny the second. The basic answer to the premise that Supreme Court reform could never be feasible is captured by the Georgia deacon when asked if he believes in baptism by total immersion. “Believe in it?” he replies. “I’ve seen it done!”275 Far more important, it takes two to tango. The variable of popular mobilization is central to the feasibility of Supreme Court reform. In a progressive frame, America looks to be moving from a period of quiescence to one of radicalization, and for good reason. If so, no amount of management of institutional credibility inside and outside the Court can avoid answering to the changing—sometimes rapidly changing—demands of mobilized populations. This popular will can and should outstrip any amount of flexibility in Court self management, even in the most generous scenario. Of course, we can embroil ourselves in a debate between followers of Robert Dahl,276 who contend that the Supreme Court just follows popular opinion, and those of President Franklin Roosevelt, who reply that, even if “ultimately the people and the Congress have had their way” in the long run, “that word ‘ultimately’ covers a terrible cost.”277 Our point is merely that even if maximum political feasibility concerns are deployed to keep the Supreme Court’s current institutional form stable, its need to engage in doctrinal management to keep the threat of reform at bay could increasingly fail—making such reform more and more plausible. It is also worth noting that the opposite perspective, which turns feasibility concerns against our exploration of Supreme Court reform, will not work either. On this view, opponents of any reform might claim that, if statutory reform is available, then options like constitutional amendment or revision make more sense. Our response is that there is a great deal of distance between the threshold for institutional reform by statute and the threshold for a constitutional amendment to pass Congress and win approval from the requisite states.278 In fact, due to well-rehearsed reasons, proceeding by constitutional amendment through Congress (to say nothing of a convention, whether for amending or replacing the original text) is practically unthinkable for the moment, even compared to the currently narrow likelihood of statutory intervention. The bolder ideas are increasingly familiar in American constitutional thought after a long absence, associated with commentators such as Sandy Levinson279 and Lawrence Lessig.280 But no matter the desirability of constitutional reform on its own terms, there can be no doubt that the statutory alteration of the Supreme Court within the existing constitutional framework is more feasible. One need not claim that amendments are wholly infeasible to easily conclude that the reforms we categorize and compare in this Article are far more so. 2. Personnel Reforms Personnel changes have to be disaggregated in order to assess their political feasibility. This is not only because court-packing is more or less clearly legal compared to other more contestable personnel reforms, but also because it has received the huge lion’s share of attention in the debates that followed the blocked confirmation of then-Judge Garland. Court-packing or personnel expansion might seem like the most politically feasible reform. And it is true that, currently, it is one of two reforms—the other being term limitation281—that has generated a contemporary advocacy group of its own. Its early familiarity and historical prominence have made expansion the go-to reform. To take one prominent example, Mark Tushnet, while mentioning that “it’s important to keep in mind the background concern about structural reform more generally[,]” has recently oriented his historic challenge to Supreme Court conservatism to court packing (and chairs the academic advisory board of Pack the Court, the advocacy group favoring this reform). It is this reform, rather than other ones, that has become “thinkable again.”282 But familiarity can breed contempt, not just feasibility. The very prominence of court-packing, far from bolstering the feasibility of court expansion, could undercut it. Its uses in Eastern Europe in a wave of attacks on judicial independence are another strike against it.283 More Democrats— including Joseph Biden during his campaign to become Democratic Party nominee for president—are now on record opposing it more than any other reform, and its meteoric rise in recent debate means it elicited unique pushback.284 While President Franklin Roosevelt proved its use as a threat, at least on most accounts of the Supreme Court’s switch in time in the 1930s, the episode left bad enough memories in some quarters, raising its prominence only to undermine its feasibility now.285 Not least, court-packing is the reform most imaginably subject to tit-for-tat acts of repeated expansion without an institutional brake other than durable electoral dominance—a risk we treat separately below. For now, our point is just that the early prominence of court packing, and the somewhat radioactive associations it acquired in the 1930s (and, even more, in some recent re-readings of that era), are an enormous strike against its political feasibility. As for the other personnel reforms, they fall naturally into two sets, with deadly if opposite political feasibility concerns. One set is politically infeasible because it is utopian. Its proposals presuppose restoration of the status quo ante of a pre-polarized judiciary, against the background of endemic polarization that rules such restoration out. The other set is feasible but trivial. Term limitation may well be the most plausibly available of the reforms, but only because it would not solve the problem that justifies reform in the first place. Take merit selection or partisan balance to begin with. All of their imaginable or proposed versions reflect a utopian aspiration to bracket the very political breakdown (and opportunity) of contemporary American politics. They want to wish it away in favor of centrist partisan agreement that has evaporated in the very years that Supreme Court reform has become plausible. The framing of the problem these solutions presuppose rules them out in practice. And besides this sort of infeasibility, many personnel changes also suffer from the mismatch between their technocratic or wonkish character and the progressive coalition that alone has prioritized Supreme Court reform in recent years. The Epps-Sitaraman hybrid proposal is exemplary in this regard. Its endorsement by Buttigieg—celebrated and reviled as a centrist technocrat—is revealing (much like his deference to “smarter legal minds than mine” and to the Yale Law Journal by name onstage at the October 15, 2019 debate of Democratic candidates for president).286 The point is not so much that obscurity afflicts personnel alternatives to court-packing, since disempowering reforms currently have the same problem. It is that the over-complication of some proposals depends on the belief that experts can find the formula to exit political crisis and stalemate. This dooms any case for their feasibility. What only law professors can understand, a popular movement will never demand. On the other side of the mismatch between such personnel reforms and the rising progressive coalition, the reforms would fall badly short of progressive aspirations in an emergency, even if they were available. Progressives, to put it bluntly, are not rallying increasingly around the cause of Supreme Court reform to make the centrist ACA compromise invalidation-proof, or to postpone carbon neutrality to 2050 in hopes that massive concession in advance will save it from the kind of gutting the ACA has suffered in the past decade. Nor, to face expanding inequality, do progressives expect to avoid targeting wealth through direct taxes out of fear of a return to nineteenth-century jurisprudence.287 In a plausible political reality, a progressive coalition will support Supreme Court reform to make progressive legislation viable, and nothing short of it. That merit selection or partisan balance, for the sake of a Supreme Court in centrist equipoise, would surge in the quest to protect such legislation is even more of a fantasy than the feasibility of such reforms against the background of a polarized political class. If such personnel reforms fail the test of political feasibility because they are utopian, by contrast, term limitation might well work because it makes so little difference. Indeed, it is probably for this reason that the American people have considered this reform for decades, while disregarding bolder steps as out of bounds. As we’ve discussed throughout, the goal of term limitations is to ensure that opportunities to appoint Supreme Court justices are distributed evenly according to electoral outcomes. Such reforms would work less well than is often suggested since Congress cannot simply legislate away an obstructionist Senate. They would slightly lower the stakes of Supreme Court appointments and make it more likely that winning a presidential election would mean more chance to shape the Court’s ideological character. But that is all. Laudable as such a reform might be, the imposition of Supreme Court term limits would give progressives little reason for solace. Under the standard proposal, Supreme Court justices would serve for terms of almost two decades, meaning that the dead hand of the recent past would continue to shape judicial policymaking in the present day. To ensure judicial approval of an ambitious legislative agenda, progressives would need to capture the presidency and different chambers of Congress not once but repeatedly, replacing justices from both conservative and more moderate periods. Given the difficulty of achieving sufficiently large legislative majorities to enact Green New Deal-type legislation, the additional burden of appointing sympathetic justices over years, if not decades, is one that progressives plainly ought to reject. 3. Disempowering Reforms Given these concerns with personnel reforms, it seems natural to conclude that disempowering reforms would be no less politically feasible. And there are reasons to believe they would be more so. Jurisdiction stripping may be different. The formidable legal objections it faces, especially where constitutional rights are concerned, affect its political feasibility. Its erosion of the subject-matter jurisdiction of the courts might well feel especially radioactive to some audiences.288 One possibility to exploit, on the model of the World War II price controls regime, is to couple stripping with reallocation of jurisdiction. This is almost certainly the more politically palatable move.289 Either way, there is no reason to believe that jurisdiction stripping would be less feasible on grounds of this kind other than aggressive moves like court-packing, which resemble East European analogues more closely than jurisdiction stripping does. As noted above, some of the personnel reforms suffer feasibility concerns because of their technocratic complication. In contrast, all three of the main disempowering reforms considered—jurisdiction stripping, legislative override, and supermajority rule—have an inverse superiority because they are easier for a general public to understand and evaluate. Like the personnel reforms that have ever gained popularity, court expansion and term limitation, the disempowering reforms are clear and simple.290 One enormous advantage that disempowering reforms have over even clear and simple personnel reforms is that they can cut across existing partisan configuration by not aiming at direct partisan advancement. Disempowering reforms have a unique advantage in making possible conservative buy-in or even creative new coalition building. They have broader coalitional possibilities by redirecting partisan strife to other arenas, without favoring any direct partisan tilt themselves. Court-packing exemplifies a personnel reform guaranteed to attract fierce and immediate resistance for serving Democrats, rather than democracy. But disempowering reforms favor electoral winners generally. True, not all personnel reforms seem as naked an attempt to secure momentary partisan advantage as others. But, as we have already argued, the broader constituency for term limitations could prompt buy-in from a much wider array of supporters mainly because its effect is likely to be so minimal. Other personnel reforms, like the balanced bench or merit selection, will look like Democratic partisan moves to conservatives who enjoy current preponderance in the federal courts. Meanwhile, the disempowering moves improve no one’s position, except those who go on to win elections at various levels. As noted earlier, the critique of the Supreme Court and a number of its recent doctrines as antidemocratic—including in a number of dissents accusing the majority of elite power grabs291—has tended to be conservative in the last several generations, rather than liberal. This trend continued even after the conservative ascendancy in court output began in the 1970s. Since the early twentieth century, conservatives have tended to initiate disempowering institutional reforms to the Supreme Court, including the supermajority rule proposal.292 It would probably go too far to suggest that calls for democracy, so familiar in conservative responses to some Supreme Court doctrine, would raise the feasibility of disempowering reforms by themselves. Right-wing commentators and judges who have spent decades calling for more democracy and less judicial authority are hardly locked into their rhetoric, not least since the judges have felt free to deploy their authority to their own ends. But it would not be rhetorically easy for those who have called for more democracy, rather than judicial control, to refuse its introduction now. By the same token, left-wing disempowering has some past commitments of its own to live down, since progressives have been fair-weather friends of democratic empowerment themselves. For both reasons, it would make more sense to treat disempowering reforms as invitation for coalition-building now, with potentially more chance of success than personnel reforms. In particular, disempowering reforms avoid what Vermeule penetratingly calls the “trade-off between impartiality and motivation,”293 one of his reasons that he infers dooms Supreme Court reform altogether. On his account, nonpartisan attempts at institutional innovation lose the very short-term benefit that justifies and grounds support for reform in the first place. His example is term-limitations proposals that grandfather in extant justices so that no serving justice is deprived of life tenure.294 Disempowering proposals, which Vermeule does not consider per se, may suffer other problems but escape this one. That is, disempowering the court serves whatever majority can now take more security in the immunity of its lawmaking to invalidation. Abstractly, because of the institutional separation disempowering proposals rely on between a site of disempowerment (the court) and a site of contestation (the rest of politics), they can proceed neutrally in the first while retaining heated partiality in the second. Indeed, since disempowering reforms have no direct implications for partisan empowerment in the short term, but instead favor whoever can muster majorities,295 there is reason to believe they can boast unique feasibility benefits in coalitional politics. Unlike personnel reforms, they harmonize with the partisan realignment that many anticipate or even consider necessary for a progressive movement beyond the limits of the country’s current partisan configuration—for example, to create a multiracial working-class party with broader appeal.296

<<PARAGRAPHS RESUME>>

In some quarters, the fact that progressives might come to agreement with (some of) their usual enemies over disempowering reforms might seem like a strike against them. But in most imaginable scenarios, a compromise to shift partisan contention from the Supreme Court to political contest (where it belongs) would benefit, rather than hurt, progressives on the national level. Almost all the areas progressives care about, where the Supreme Court hasn’t delivered—from labor rights to partisan gerrymandering to racial justice—would benefit from democratization, whether or not the threat the Supreme Court poses to their legislative agenda crystallizes. And framing disempowering reform as a compromise that cuts across other ideological disputes would counteract the frequent anxiety that anything less than full engagement in partisan contention through the courts would amount to “unilateral disarmament.”297 A better and fairer way to conceive of disempowering reforms is as a weapons control regime within one arena, in order to concentrate fully on the fight in democratic arenas.

Of course, the greater political feasibility of disempowering reforms that this argument implies is not necessarily costless. Though our point is that judicial empowerment has not favored progressive victories lately, if ever, no one thinks that democratic processes ever guarantee them either. But as with rights above, it is hard to imagine that disempowering reforms would incur less constitutional supervision of the states, in either of two alternative scenarios. The first is that the reforms are calibrated to democratize power at the federal level without returning it to states, as in a supermajority requirement only for constitutional challenges to federal law. The second is that, even if such a reform were extended to challenges of the constitutionality of state law, it would require even more votes to overturn cases from Brown298 to Obergefell v. Hodges,299 and plausibly would never happen. In any event, what passes for federal supervision of outlying states is at its weakest in at least a half century, compatible with current outcomes like restricted abortion rights300 and the unconstitutionality of Medicaid expansion to populations that most need it.301 Nor is strengthening it through any reform of the judiciary an option.

#### The court doesn’t want to rule against Trump’s dismantling of the civil service---they consider it a “less sloppy swing” than tariffs because a textual interpretation shows he has the authority. That’s 1NC Howe and…

Hart 24 [Benjamin Hart; staff editor at Intelligencer, Interviewing Donald **Kettle**; a professor emeritus and former dean at the School of Public Policy at the University of Maryland who is a nationally recognized expert on the inner workings of the federal government, 12-9-2024, "Why Trump Can Probably Get Away With a Mass Government Purge", Intelligencer, https://nymag.com/intelligencer/article/trump-purge-federal-employees-schedule-f.html]

Can you explain why you think Donald Trump is on such sound constitutional footing with what he wants to do here?

﻿Among opponents of Schedule F and other big proposals to try to transform the civil service, there’s been a fair amount of confidence, and I would say overconfidence, that they could stop it in the courts — especially on the left. But as I read it, existing law gives the president authority to implement civil-service laws that have been created and passed by Congress. That includes, it seems, authority to create things like Schedule F. I’m not sure it was ever intended that that kind of power would be used in a way to essentially create an enormous workaround to the civil service. But as best I can tell, in fact, the president does have the power to do such a thing.

The question is, do people who are in the civil service have any power to resist being taken out of their existing protected status and put into this new Schedule F? And here, again, as best I can tell, the answer is “no.” They don’t have any real legal basis on which to contest this.

There are those who think it may be possible to file a suit and say that the rights of people hired by Uncle Sam to work on the government’s programs do, in fact, have protections against dismissal. But I think the odds favor those who say the president does have that power. The only way we’re going to know for sure is whether or not somebody raises a legal challenge and takes it through the courts. These days, for people on the left, that is a difficult proposition. Joe Biden has succeeded in appointing lots of judges, but Trump appointed even more, especially on the Supreme Court. Ultimately, if you ask the Supreme Court, “Do you favor more power for the president?,” the answer will be “yes.”

#### Empirics prove---they’ve stayed all injunctions

Newland et al. 25 [Erica Newland, counsel at Protect Democracy and co-manager of the separations of powers team, former Attorney Adviser at the Office of Legal Counsel in the Department of Justice, JD Yale Law School; Jules **Torti**, counsel at Protect Democracy, formerly served in a senior leadership role at a United States Attorney’s Office, JD NYU School of Law; Walter M. **Shaub**, Jr., former Director of the U.S. Office of Government Ethics, JD American University Washington College of Law; and Ellinor **Heywood**, Impact and Litigation Specialist at Protect Democracy, MA Conflict Transformation & Social Justice from Queen’s University Belfast; “To the victor goes the spoils system?” If You Can Keep It, 7-31-2025, https://www.ifyoucankeepit.org/p/to-the-victor-goes-the-spoils-system]

The Supreme Court’s terse and unprecedented number of interventions in the early stages of lawsuits — including civil service suits — has sown confusion, even among lawyers and judges. In short, lower courts have been presented with actual evidence of the illegality of dismantling, firing, or reorganizations, and they have generally put a preliminary hold on the actions — temporarily pausing the destruction of agencies and removal of their employees. These pauses preserved the status quo while the cases could be litigated. In a number of civil service-related cases, the Supreme Court intervened early to lift these preliminary pauses — called preliminary injunctions.

One of these cases was AFGE v. Trump, a case Protect Democracy is helping to litigate, which challenged RIFs and reorganizations at over a dozen agencies. The Court has effectively paved the way for RIFs and reorganizations to continue while the cases continue to be litigated, and it has done so without real explanation or justification. And in the case concerning the dismantling of the Department of Education, it effectively did the same thing in no words at all.

Generally, these cases continue to be litigated — the Supreme Court did not end the RIF, reorganization, or dismantling cases. But the Supreme Court interference does unfortunately allow the government to move forward with its actions during the case, unless a judge again puts a stop to a specific act.

### 2NC---Link---Fed Workers---AT: Plan’s Popular

#### There’s zero internal link – all of our balancing args are in the context of the court’s reaction. No ev that the House popularity is relevant.

#### BUT, it’s not – it was DoA in the Senate which proves not bipartisan

#### Despite some GOP and public support, legislation to reverse Trump’s XO’s still broadly unpopular

McFerran 25 [Lauren McFerran is a senior fellow at The Century Foundation, having previously served as chairman of the National Labor Relations Board (NLRB) 9-1-2025 https://www.commondreams.org/opinion/3-ways-gop-help-workers]

(3) Restoring the Federal Right to Organize. As of July, 2025 almost 3 million people were employed by the federal government. Federal workers comprise a significant portion of the workforce in many states across the country. These public servants have faced mass firings and unprecedented attacks in the new Trump administration, including an executive order purporting to strip nearly 1 million federal workers of their right to form and join a union.

Whether in federal, state, or local government, both public servants and the people they serve benefit from collective bargaining. The process is a valuable tool to resolve conflicts early, reduce litigation, improve morale, and help attract and retain a qualified workforce, all of which helps the government function better. Thirty-four states and the District of Columbia recognize this and provide some collective bargaining rights for their public sector workers. When politicians attempt to revoke these rights, voters can use ballot initiatives to protect them—as in 2011 when Ohio voters overwhelmingly rejected an effort to strip rights from their public servants.

The Protect America’s Workforce Act (PAWA), recently introduced in the House of Representatives, would reverse the Trump executive order and protect federal workers’ right to form and join a union. This popular legislation has 222 cosponsors, including seven Republicans. Two Senate Republicans—Susan Collins of Maine and Lisa Murkowski of Alaska—have already voted for an unsuccessful amendment on the Budget resolution to protect collective bargaining rights for federal workers. If the two GOP senators from Ohio would follow their constituents’ lead in supporting public sector collective bargaining rights, PAWA could pass both houses of Congress and restore these important protections to more than 1 million American workers.

More than seven months into this Congress’ work, the fact that none of these commonsense proposals are even under discussion by our nation’s elected leaders sends a strong message about this Congress’ priorities. And it is manifestly clear that Republicans in Congress stand with President Trump, and not with working Americans.

### 2NC---UQ---TL

#### SCOTUS will narrowly repeal tariffs – previous cases and votes prove – that’s Khardori

#### 2AC Reklatis is neg – says the likelihood increase “moderately” but there’s still debate, which the link flips

< FOR REFERENCE, MSU is GREEN >

Victor Reklaitis 1/14. Washington Correspondent for MarketWatch. “The wait for a tariff ruling could signal a Trump win — or a refund headache.” https://www.marketwatch.com/story/the-wait-for-a-tariff-ruling-could-signal-a-trump-win-or-a-refund-headache-e1d55605?gaa\_at=eafs&gaa\_n=AWEtsqe3HtGGl2fqEZw\_T-T5T2NPYkKKyDsKH41XO-NLuqpx8VPK2UVZtbJjua-SnvQ%3D&gaa\_ts=696bcaff&gaa\_sig=dIwOtXjy9LBscU8F5Cp6j5nEHbAoZi0Z9f4Cvs4yBXC0SSzfGGBT\_-tfJuReRpCP71-iuh8k8xxL6wxn\_5k2kg%3D%3D.

The likelihood of the Supreme Court ruling in favor of President Donald Trump in a closely watched tariff case increased moderately Wednesday after the court again held off on releasing its decision.

The high court has indicated it is acting in an expedited manner in this case, which has massive economic stakes, but the justices don’t typically give hints about exactly when a particular opinion will be issued.

Investors, importers and others who had braced for a ruling on Wednesday morning were left disappointed, just as they were last Friday.

Some analysts have said it’s a good omen for Trump if the Supreme Court keeps holding off on releasing its decision. It’s possible that there is significant debate among the justices, rather than a widespread view that lower courts were right to rule in favor of the importers challenging a wide swath of Trump’s tariffs.

#### They will invalidate tariffs because they want to check Trump on a high profile case

Litman and Murray 11-10 [Leah Litman, professor of law at the University of Michigan Law School, Kate Shaw, professor of law at the University of Pennsylvania Law School, and Melissa Murray, Frederick I. and Grace Stokes Professor of Law and the faculty director of the Birnbaum Women's Leadership Center at New York University School of Law, 11-10-2025 transcription here: https://app.podscribe.com/episode/141034821]

Litman: So I'll start, and I'm not super confident for reasons I'm sure we will get into, but I do think there is a greater than 50% chance that the court is going to invalidate the tariffs, at least some of them. The three Democratic appointees are definitely on board. I think Neil Gorsuch is already there. So really it's just one more of Barrett or the Chief. And I think some Republican justices would view striking down the tariffs as good for them and good for the Republican party because the tariffs and resulting chaos aren't popular. Striking them down is a way of protecting, you know, the right wing legal project. It saves the president, the economy, the Republican party from Trump, and the Justice's emotional support billionaires too.

Murray: Yeah. So before we clap about that, like again, this Supreme Court never does anything that doesn't serve its own purposes. So taking down the tariffs would be a service to all of us, but it would also be a service to this administration that can't seem to get out of its own way. So the court will do it for them and it's also a major service to the court because they really could use a win right now and a win against the president. An extremely high profile case, like the tariffs case could give the court the patina of independence that it really needs right now. So don't clap too hard for this one. I mean, nobody wants to tank the economy, but the court has other things going on.

#### Experts and betting markets agree

Moran 12-29 [Tracy Moran, writer & editor covering international news & politics for National Post, 12-29-2025 https://nationalpost.com/news/its-a-foregone-conclusion-2025-was-the-year-of-the-tariff-the-u-s-supreme-court-will-decide-if-2026-is-the-year-the-tariffs-die]

The high court fast-tracked litigation to hear oral arguments this autumn, and a verdict is now expected early next year. So will 2026 be the year the IEEPA tariffs die, and if so, what will it mean for Canada and Trump’s trade war?

Reading the signals

While the administration has said it expects the court to rule in the president’s favour, most trade experts do not.

Clark Packard, a research fellow in the Cato Institute’s Herbert A. Stiefel Center for Trade Policy Studies, believes there are indications the Supreme Court will rule against the president.

“I think there’s a skepticism on separation of powers grounds — that the president shouldn’t have this much (power),” Packard said, noting how the justices have referred to a tariff as a tax.

“If it’s a tax, then that power resides with Congress to set those rates.”

Packard noted that the betting markets see the decision going this way, but he acknowledged the court might rule in favour of Trump.

#### Prefer ev after oral arguments – they were recent and prove tariffs will be struck down

Brown and Irwin 11-6 [Courtenay Brown is an economics reporter at Axios. She covers the global economy, central banks, financial markets and macroeconomic trends. Neil Irwin is chief economic correspondent of Axios. He reports on and analyzes the U.S. and global economies, the Federal Reserve, economic policy, financial markets, and how they all intersect. 11-6-2025 https://www.axios.com/2025/11/06/trump-tariffs-taxes-revenue-supreme-court]

The big picture: In oral arguments Wednesday, Supreme Court justices — including conservatives on the bench — questioned Trump's authority to unilaterally impose what were effectively taxes.

While Congress has delegated powers to the president to deal with foreign policy, Chief Justice John Roberts said "the vehicle is imposition of taxes on Americans, and that has always been the core power of Congress."

"It's been suggested that the tariffs are responsible for significant reduction in our deficit. I would say that's raising revenue domestically," Roberts said.

Justice Sonia Sotomayor said the law that underpins the lion's share of Trump-imposed tariffs allowed the outright ban of imports. "What it doesn't say is the president can raise revenue," Sotomayor said.

The other side: Solicitor General D. John Sauer, who argued on behalf of the government, said that the tariffs' primary purpose was to regulate foreign commerce, borrowing language from the International Emergency Economic Powers Act.

"These are regulatory tariffs, they are not revenue-raising tariffs. The fact that they raise revenue is only incidental," Sauer said.

Sauer returned to this argument before the hearing concluded for the day: "It is clear that these policies are most effective if nobody ever pays the tariff, if it never raises a dime of revenue."

"When it comes to the trade deficit emergency, if no one ever pays the tariff, but instead they direct their consumption domestically and spur the rebuilding of our hollowed-out manufacturing base, that directly addresses the crisis," he said.

The intrigue: "I think in some ways the solicitor general is hurt by his client," Robert Shapiro, a partner at Thompson Coburn who chairs the international trade practice, tells Axios.

"His point of 'the tariffs would be most powerful without raising money' is hard when you have the president talking about all the money from the tariffs," says Shapiro.

Flashback: During a speech on "Liberation Day," Trump said the tariffs would raise "trillions and trillions of dollars to reduce our taxes and pay down our national debt."

Those remarks came before Trump signed orders imposing the global tariffs that now face global scrutiny.

The bottom line: The Supreme Court sounded skeptical that Trump could enact such far-reaching tariffs, raising the odds that the highest court could curb at least some of Trump's trade agenda.

#### Oral args are key – it’s created a majority for striking down tariffs

Wolfe 11-6 [Jan Wolfe, Thomson Reuters Reporter, 11-6-2025 https://www.reuters.com/legal/government/supreme-courts-gorsuch-leads-conservatives-tough-questions-over-trump-tariffs-2025-11-06/]

President Donald Trump's administration was on the defensive for much of the arguments before the U.S. Supreme Court over his sweeping tariffs. A major reason for that, according to legal experts, was the surprisingly harsh questioning by Justice Neil Gorsuch, a conservative who sometimes defies expectations.

In one notable exchange on Wednesday, Gorsuch said he was concerned by the administration's assertion that the tariffs are permissible because of the president's broad authority in dealing with foreign countries.

If that were true, Gorsuch said, "what would prohibit Congress from just abdicating all responsibility to regulate foreign commerce - for that matter, declare war - to the president?"

A 1977 LAW

The arguments focused on whether a 1977 law called the International Emergency Economic Powers Act, or IEEPA, meant for use during national emergencies gave Trump the power he claimed to impose tariffs. Every lower court to consider that question has ruled against Trump, but they allowed the tariffs to remain in place while the litigation made its way to the Supreme Court.

The Supreme Court has a 6-3 conservative majority, including three justices who Trump appointed during his first term in office. Gorsuch is one of those, appointed by Trump in 2017.

The court has proven receptive to Trump's expansive view of presidential authority in a series of rulings since he returned to office in January. But the court primarily has confronted questions about Trump's power through emergency orders that are not final rulings on the legal merits of his actions.

"Justice Gorsuch indicated more of an opposition than we had initially thought," Walker Livingston, an analyst at the research firm Capstone, said about the tariffs.

The case marks the first time during Trump's second term that the court is due to rule directly on one of his signature policies through its usual procedures, which include written briefings and an oral argument.

'CORE POWER'

Some of the conservative justices signaled skepticism toward Trump's arguments on Wednesday.

In one bad sign for the administration, Chief Justice John Roberts told Solicitor General D. John Sauer, arguing for the administration, that the tariffs are "the imposition of taxes on Americans, and that has always been the core power of Congress."

Conservative Justice Amy Coney Barrett, another Trump appointee, at times also expressed skepticism of Trump's interpretation of IEEPA.

But Gorsuch in particular pushed back against Sauer's arguments.

"Congress, as a practical matter, can't get this power back once it's handed it over to the president," Gorsuch said of tariff authority. "It's a one-way ratchet toward the gradual-but-continual accretion of power in the executive branch and away from the people's elected representatives."

Ashley Akers, a litigator at the firm Holland & Knight, called that a key moment from Wednesday. The exchange "highlighted the lack of a good answer on how Congress could reclaim authority without a veto-proof majority, portraying it as an irreversible shift," Akers said.

Under questioning from Gorsuch, Sauer made some concessions that undermined the administration's case, according to Todd N. Tucker, a political scientist at the Roosevelt Institute, a left-leaning think tank.

"Gorsuch correctly noted, and the DOJ (Department of Justice) agreed, that the president's interpretation of IEEPA powers would allow a future president to declare a climate emergency and heavily tax gas-powered cars," Tucker said.

#### And – established a clear vote count

Garrison 11-6 [Joey Garrison is a White House correspondent for USA TODAY, 11-6-2025 https://www.usatoday.com/story/news/politics/2025/11/06/trump-tariffs-supreme-court-backup-plan/87129251007/]

All three of the court's liberal bloc ‒ justices Elena Kagan, Sonia Sotomayor and Ketanji Brown Jackson ‒ expressed clear resistance to upholding Trump’s power to impose emergency tariffs. And at least three of the six conservative justices – Chief Justice John Roberts and Justices Neil Gorsuch and Amy Coney Barrett – sounded skeptical of the Trump administration’s arguments.

#### Barret, Gorsuch, and Roberts’ questions prove

Totenberg 11-5 [Nina Totenberg is NPR's award-winning legal affairs correspondent. 11-5-2025 https://www.npr.org/2025/11/05/nx-s1-5599537/supreme-court-trump-tariffs]

President Trump's claim of unilateral power to impose tariffs across the globe hit a wall of skepticism at the Supreme Court on Wednesday.

Over the course of an argument that lasted almost three hours, both the court's conservatives and liberals seemed doubtful about the legal authority underpinning Trump's signature economic policy.

Solicitor General D. John Sauer, representing Trump, was first up to the lectern, telling the court that Trump imposed the tariffs to deal with two dire emergencies: a persistent trade imbalance and the flood of fentanyl entering the United States.

But the justices were openly doubtful about the president's claim that he has the power to impose tariffs under the International Economic Emergency Powers Act, known as IEEPA, a statute that, as Chief Justice John Roberts observed, says nothing about tariffs.

Sauer replied that the statute's terms are "capacious," not restrictive, and that Trump has inherent authority as president, under the Constitution, to deal with these national security and foreign affairs threats.

Roberts acknowledged that tariffs involve foreign affairs. But he noted that the statute, as interpreted by Trump, imposes taxes on Americans, and taxes have always been "the core power of Congress."

Under your theory, said Justice Sonia Sotomayor, President Biden could have declared an emergency under global warming, and that would have been enough to justify his environmental policy.

And Justice Amy Coney Barrett asked, "Can you to point to any other place in the code or any time in history where the phrase…'regulate importation' [the words in the statute] has been used to confer tariff-imposing authority?"

When Sauer repeated that emergency situations justify the Trump tariffs, Justice Elena Kagan replied caustically, "It turns out, we're in emergencies…all the time, about, like, half the world."

Justice Neil Gorsuch posed perhaps the most vociferous challenge to the solicitor general, contending that the president's position in essence, could cover anything, including the power to declare war specifically given to Congress in the Constitution.

"You're saying inherent authority in foreign affairs, all foreign affairs, to regulate commerce, duties, and tariffs and war. Its inherent authority all the way down, you say. Fine," he said. "Congress decides tomorrow, well, we're tired of this legislating business. We're just going to hand it all off to the president. What would stop Congress from doing that?"

Sauer replied that the court in past opinions has said that the president's powers apply with "much less force, more limited force."

Indeed, he said that Congress can always change the law, and take back the power he claims it ceded under the IEEPA statute. But Gorsuch wasn't buying the argument, noting that even if Congress passed a new law, the president could veto it, and it would take a two-thirds vote in both the House and Senate to override the veto and prevail.

"As a practical matter," said Gorsuch, that would be impossible. "Congress can't get its power back once it is handed over to the president."

### 2NC---Tariffs I/L---AT: Past Tariffs

#### Tariffs are existential for business---it throws the international financial market into disarray both via the tax and the uncertainty generated by Trump’s singular control of tariff policies. 1NC Khadori

#### Their ev doesn’t assume the unlimiting effect of upholding Trump’s tariffs. It would give the executive unprecedented fiscal authority.

Willis 25 [Alexander, staff writer at RAWSTORY, interviewing **John Brooks**, professor of tax law at Fordham University, “'No end to uncertainty': Supreme Court’s next case could hand Trump unprecedented power”, 9-10-2025, <https://www.rawstory.com/supreme-court-2673979738/>]

An impending case before the Supreme Court could end up granting President Donald Trump “sweeping fiscal authority” that has historically been held exclusively by Congress, a precedent that, once set, could expand the power of the executive branch indefinitely.

That case is related to Trump’s tariffs, which were ruled illegal and blocked by a federal court last month. Trump fought for the Supreme Court to take up the matter, a wish that was ultimately granted on Tuesday after the court agreed to hear the Trump administration’s case in November.

Now, on the eve of that case being taken up and decided upon, one commentator is sounding the alarm that the court’s decision could end up undoing the American system as imagined by the framers of the Constitution.

“The Constitution grants Congress authority over both taxes and tariffs,” wrote commentator Greg Ip in an analysis published in the Wall Street Journal Wednesday.

“This was central to the framers’ systems of checks and balances. James Madison argued that the president couldn’t become king because the ‘purse is in the hands of the representatives of the people.’”

The authority to impose tariffs has historically been held by Congress, which under Article I of the Constitution, limits government spending to acts of law, which only Congress may enact. This standard has been softened, however, over the past century, with new laws granting limited power to the executive branch to enact tariffs, largely as a tool to coerce or punish foreign nations, and not to generate revenue.

Trump, however, has openly characterized his sweeping tariff policy as a revenue builder, while in the courts, arguing it to be a matter of national security.

If Trump gets his wish, Ip warned, not only would his authority to impose sweeping tariffs be cemented, but it could also be argued that Trump – or subsequent president – could impose taxes on Americans of any kind.

“There would also be no end to uncertainty,” Ip wrote. “...And then there are all the other taxes, besides tariffs, Trump could feel free to use.”

John Brooks, a professor of tax law at Fordham University, concurred with Ip’s assessment, telling Ip that if the Supreme Court were to rule in Trump’s favor on tariffs, there was no reason to believe his newfound authority wouldn’t extend to domestic taxes.

“Any tax with foreign-policy implications would be within his authority,” Brooks said, speaking with the Wall Street Journal. “Why wouldn’t that apply to any tax he can conceive of, not just the tariffs?”

#### Effects from Trump’s tariffs are delayed but will come in 26 absent SCOTUS reversal

Frankel 12-29 [Jeffrey Frankel is a professor of capital formation and growth at Harvard University. He served as a member of President Bill Clinton’s Council of Economic Advisers. 12-29-2025, “Why haven’t Trump’s tariffs crashed the US economy?” https://www.theguardian.com/business/2025/dec/29/donald-trump-tariffs-us-economy-inflation-employment-2026]

But this does not mean economists got their predictions all wrong. There are good reasons to think that many of the adverse effects of Trump’s tariffs have simply been delayed, and we should expect them to show up in 2026.

This brings us to the third point: as soon as Trump was elected in November 2024, companies began front-loading imports, in order to accumulate stocks of goods – especially gold from Switzerland and weight-loss drugs from Ireland – before the anticipated tariffs were introduced. The Penn Wharton Budget Model estimates that this strategy saved US importers as much as $6.5bn (£4.8bn) – equivalent to 13.1% of the new tariff bill – through May 2025.

After the tariffs entered into effect, most retailers still didn’t raise prices, as they had not depleted their pre-tariff inventories. This is common practice among retailers, though an economist might say that it violates the principle of profit maximisation. Even today, many importers have still not fully passed along the added costs to their customers.

In fact – and this is the final and most important point – importers have continued to absorb much of the cost increase, even after depleting their pre-tariff inventories. Using real-time data from large US retailers, Alberto Cavallo and his co-authors find that the prices of goods subject to the new tariffs – the imported products and their US-made substitutes – have been rising since April. The increase, which amounted to about 5.4% at the retail level, has been enough to raise the inflation rate on the overall CPI basket by 0.7 percentage points above where it otherwise would have been. But it represents a small fraction of the costs that could potentially be passed through, at current tariff levels.

To be sure, the prices importers pay have risen proportionately with tariffs, contrary to Trump’s claims that foreign exporters cover the costs of the duties by lowering their prices. It is US companies that have been absorbing the costs, much as they typically do when the dollar depreciates. This partly reflects the fact that they have no idea how long the tariffs will be in place. Trump might change his mind, or perhaps the supreme court will decide to adhere to the law and strike them down. This uncertainty also helps to explain why many affected companies have so far refrained from laying off workers.

But companies will not let tariffs erode their profit margins indefinitely. Assuming the tariffs remain, the US can look forward to more price increases, and downward pressure on real incomes, in 2026.

#### The hidden cliff is about to hit

Donnan 25 [Shawn Donnan, writer for Bloomberg, How Affordability Disrupted Trump’s Economic Case for Tariffs, Nov 17th 2025, https://www.bloomberg.com/news/newsletters/2025-11-17/tariffs-and-trump-and-affordability?srnd=homepage-americas&embedded-checkout=true]

Until recently, one conundrum in the US has been why the economic impact of tariffs hasn’t been more evident after all the spring warnings of looming doom. But all along there have been three easy answers for anyone paying attention.

The first is that the new tariffs have been doing their job and raising the cost of imports and related domestic goods as well. Harvard economist Alberto Cavallo and colleagues have been using high-frequency data to track the daily impact at their Pricing Lab.

They show that by October the price of imported goods in the US was up more than 6% from where it would have been otherwise while domestic goods had risen 3.5%. Before the pandemic inflation episode, it’s worth remembering, those would have been dramatic increases.

There’s interesting and varied data on specific categories in the Pricing Lab’s tracker. Imported carpets and floor coverings are up almost 50% from pre-tariff trends. Also higher are the costs of imported meat (up 9%), fish and seafood (10.6%), milk and cheese (9.7%) and major household appliances (5.9%). Perhaps in sympathy there are some notable declines in the price of imported spirits (-8.5%) and beer (-12.3%).

Front-Loaded Imports

The second explanation is that it takes time for tariffs to have their full effect and there are more price hikes to come. The first quarter of this year saw a surge in imports by companies to build up inventories ahead of Trump’s tariffs and CEOs on recent earnings calls have clearly signaled price hikes lie ahead. Hitting consumers takes time. When the US raised tariffs on imported wine in Trump’s first term, it took a year for higher retail prices to materialize, a recently published study found.

The reality is also that Trump has from the beginning dampened the impact by exempting many imports from his tariffs. By this summer more than $1 trillion of the $3.2 trillion in goods the US buys from abroad each year were exempted partly as a consequence of a lobbying boom that saw companies spend almost $1 billion in the first half of this year to push for tariff reprieves. And that universe of exemptions has only continued to grow with Trump adding to it on Friday.

Essay: Janet Yellen Says the US Is Undermining Its Economic Success

The third is that the biggest impact of tariffs isn’t actually on prices in the long run. It’s on growth. Which ought to be more worrying.

A study of tariff hikes going back to 1870 published by economists at the Federal Reserve Bank of San Francisco earlier this month found tariff shocks through history have actually been aggregate demand shocks rather than price ones. They’ve led to higher unemployment and, ironically given current discussions in the US, lower inflation.

“A possible explanation relies on the effects of uncertainty: a tariff shock creates (or coincides with) an uncertain economic environment, which by itself depresses economic activity” and “puts downward pressure on inflation,” economists Régis Barnichon and Aayush Singh write. “Another possible channel is a wealth channel, whereby an adverse tariff shock leads to a drop in asset prices, which then depresses aggregate demand and leads to higher unemployment and lower inflation.”

“We find evidence for both channels,” the economists add.

Slower Growth

We already know the US labor market is softening. At some point in the coming weeks we will also get the first reading of GDP data for the third quarter, which was originally due to be released Oct. 30 but was delayed by the government shutdown.

All of which will be complicated by the caveat that the AI-related investment boom in data centers and related infrastructure has been covering up weakness elsewhere in the economy, including in manufacturing and other sectors hit by tariffs. The irony being that AI servers and other key components in those data centers are largely absolved from Trump’s tariffs.

What’s the takeaway from all this?

Perhaps it’s that Trump responds to economic and political signals. Which bolsters the case for his tariffs having peaked and the Trump Always Chickens Out (TACO) theorem. Then again, it could be that worse things lie ahead. Especially if what a growing number of investors appear to see as an AI bubble bursts and the US economy feels the full impact of this tariff shock like it has through history.

### 2NC---Tariffs I/L---AT: !/T---Removal Causes Econ Instability [Brusuelas]

#### Their arg is a Trumpian talking point – on balance, removal is much better for the economy and negative effects of removal will be limited

Hurley 25 [Lawrence Hurley is a senior Supreme Court reporter for NBC News. 10-24-2025 https://www.nbcnews.com/politics/supreme-court/trumps-dramatic-rhetoric-tariffs-ramps-pressure-supreme-court-rcna238207]

Trump's remarks over the course of this year reflect a consistent theme: In his view, the tariffs are raising so much revenue and are so important to the country that a court ruling saying that he does not have the authority to impose them would be cataclysmic.

"If we win the tariff case, which hopefully we will, it’s vital to the interests of our country. We’re the wealthiest country there is. If we don’t, we’ll be struggling for years to come,” Trump said on the Fox News show "Sunday Morning Futures" on Oct 19.

He has also weighed in on the litigation via his Truth Social feed.

On Aug. 8, he said there would be a "Great Depression" if the tariffs were not upheld. Later that month, he said that it would be a "total disaster for the country" if they were struck down.

Trump is also quick to accuse others of seeking to put pressure on the justices. On Thursday night, he posted that he was ending trade negotiations with Canada because he thought the country was trying to influence the Supreme Court to rule against him on tariffs via an ad sponsored by the province of Ontario.

“They only did this to interfere with the decision of the U.S. Supreme Court, and other courts,” Trump wrote.

Tariff revenues for the year have raised $174.04 billion, according to the most recent Treasury Department numbers. Treasury Secretary Scott Bessent, on Sept. 7, told "Meet the Press" that the government would have to issue refunds for about half the tariff revenues it has collected if the administration loses at the Supreme Court.

To some lawyers who oppose the tariffs, Trump's remarks are easy to label.

"It's partial intimidation, it's mostly trying to scare them in terms of consequences," said Thomas Berry, a lawyer at the libertarian Cato Institute.

"Presumably he hopes these statements will influence the Supreme Court," said Elizabeth Goitein, a lawyer at the left-leaning Brennan Center for Justice.

Oregon Attorney General Dan Rayfield, a Democrat who, along with other state attorneys general and some small businesses, challenged the tariffs in court, said in a statement that Trump was only "right about one thing" in his public statements: It is a significant case on the scope of presidential power.

"We can't normalize this behavior. We have to draw a line in the sand and hold him accountable," Rayfield added.

Trump's characterization of how bad the consequences would be if he loses the case is massively overstated, according to Maury Obstfeld, a senior fellow at the Peterson Institute for International Economics, a nonpartisan think tank.

"The rhetoric and hyperbole have no basis in fact," he said. "Large swaths of the economy and all consumers would benefit if tariffs were lowered."

Goldman Sachs recently said that American consumers are bearing more than half the cost of tariffs, while companies have warned prices will start to increase as the impact of the tariffs are felt.

Major companies like General Motors and Mattel have said they expect to take financial hits as a result of tariffs, while the impact on small businesses is even greater.

The administration has both overestimated potential revenue from tariffs and used those projections to claim that Trump's signature legislative victory, the "big, beautiful bill," is largely revenue neutral, Obstfeld added.

"The job of the courts is to interpret the law, not to save the government from the consequences of its own bad decisions," he said.

Trump's focus on the potentially drastic consequences of a loss are echoed in court papers filed by Solicitor General D. John Sauer, who was previously one of the president's personal lawyers

The opening paragraphs of the brief he filed outlining the government's arguments use language that is just as colorful as Trump's and sometimes quotes the president.

His tone departs from the usual dry style of the Justice Department, which traditionally focuses on the technical legal arguments rather than colorful rhetoric.

The tariffs, Sauer wrote, are "necessary to rectify America’s country-killing trade deficits" and limit the distribution of illegal drugs across the border by targeting countries including Mexico and Canada that, the administration alleges, have failed to stem trafficking.

Sauer’s filing included a quotation from Trump saying that before he imposed the tariffs, the United States was “a dead country" but is now booming.

"To the president, these cases present a stark choice," Sauer wrote. "With tariffs, we are a rich nation; without tariffs, we are a poor nation."

#### It’s a ludicrous claim that overstates benefits – the consensus of qualified experts is that removal is comparatively better

Lincicome 25 [Scott Lincicome is vice president of general economics and trade at the Cato Institute. BA in political science from the University of Virginia and a JD from the university’s School of Law 10-28-2025 https://www.washingtonpost.com/opinions/2025/10/28/ieepa-scotus-tariffs-case-economy-trump/]

In both legal filings and in public, President Donald Trump and his team have made fantastical claims about the calamities that would befall the nation should the Supreme Court curtail his authority to implement global tariffs under the International Emergency Economic Powers Act. They allege, in the government’s opening brief for a case that will be argued before the court in November, that an adverse decision would devastate the U.S. economy, the federal government’s fiscal position, and the president’s ability to effectuate trade and foreign policy. The goal, it appears, is to pressure the court into issuing a favorable opinion for prudential and institutional reasons, even if the law demands otherwise.

Given the legal deficiencies in the Trump administration’s case, this shock-and-awe approach is understandable. Yet it suffers from a serious flaw: The underlying policy claims are ridiculous.

First, a ruling against the tariffs would not “lead to financial ruin,” as the government’s attorneys asserted in a letter to an appeals court. Between May and September, the tariffs were only around 4.5 percent of federal receipts. But even this effect is overstated because it ignores the slower economic growth and smaller tax base that the tariffs create.

In its Supreme Court brief, the government claims that “with tariffs, we are a rich nation; without tariffs, we are a poor nation.” The reality is that the United States is drowning in debt either way. The government’s fiscal trajectory is determined by other policies — in particular, social insurance entitlements — that dwarf the tariffs’ effects. Dynamic calculations from the Tax Foundation show that, between 2025 and 2054, public debt will rise from 99.9 percent of gross domestic product to 164.1 percent with the tariffs and to 171.5 percent without them. That’s one fewer deck chair on the Titanic, at best.

Warnings of massive harm to the broader economy — even another Great Depression — are similarly nonsensical. Tariff policy matters on the margins and can be especially painful for small businesses like those now before the Supreme Court. For the U.S. economy overall, however, trade policy isn’t transformative because — contrary to conventional wisdom — the United States is one of the least globally integrated countries in the world. Total trade is 25 percent of GDP, ranking us 191st among the 195 nations with data available.

Meanwhile, revenue from the tariff collections under consideration by the court are just $89 billion thus far — a rounding error in a $30.5 trillion economy. The tariffs’ modest fiscal effects mean that invalidating them would have a modest effect on the market for government debt and related securities.

And virtually all professional economic analyses have concluded that unilateral tariffs — and related policy uncertainty — harmed the economy during Trump’s first term. In short, it would be impossible for the “catastrophic consequences” warned of during an earlier appeal to result from invalidating the new tariffs. If anything, we should expect a small but real boost to the economy — a conclusion that rising equity markets confirmed when lower courts found the tariffs to be illegal.

### 2NC---Econ !---AT: BLS T/

#### Shutdown thumps---BLS workers will never put out a report but the economy is fine

Gould 25 [Elise Gould, “Without today’s jobs report, next-best data indicate a weakening labor market,” 12-5-2025, https://www.epi.org/blog/without-todays-jobs-report-next-best-data-indicate-a-weakening-labor-market/]

In normal times, today would have been a jobs day. However, the Bureau of Labor Statistics (BLS) has been forced to[delay the release](https://www.bls.gov/bls/2025-lapse-revised-release-dates.htm) until December 16 due to the lingering impacts of the Trump administration radically restricting BLS operations during the government shutdown. Further, BLS has announced that we will never have data from the monthly survey of households for October. This means that valuable information for that month—like the overall unemployment rate or the unemployment rate for various demographic groups—will never be known. During the last federal shutdown in 2018–2019, [BLS did not suspend its activities](https://www.bls.gov/bls/shutdown_2019_empsit_qa.pdf) and released its [employment situation report as normal](https://www.bls.gov/news.release/archives/empsit_01042019.pdf). In fact, this is the first time in [12 years](https://www.bls.gov/bls/updated_release_schedule.htm) that a jobs report was delayed and the first time a month of household data will be missed completely.

#### AND no CBRs since January 2025

#### Our internal link is prior---BLS would just tell us that tariffs blew up the economy, but doesn’t disprove that they have

#### Other countries and private companies fill in for data---anyone can do math!

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#### Aff ev is fearmongering---safeguards prevent total takeover and the aff doesn’t even solve for the legal firing of agency heads?

Casselman 9/5 [Ben Casselman; chief economics correspondent for The New York Times. Teach economics reporting at the Craig Newmark Graduate School of Journalism, 9-5-2025, "Is the Jobs Data Still Reliable? Yes, at Least for Now.", No Publication, https://www.nytimes.com/2025/09/05/business/jobs-data-reliability.html]

When last month’s jobs report showed unexpected weakness in the labor market, President Trump fired the head of the agency that produces the data and named a loyalist to run the department that produces those numbers.

That prompted a natural question ahead of Friday’s jobs report: Can this month’s numbers be trusted?

The answer, according to economists and experts in government statistics, is yes — but with all the same caveats that always apply to the data.

Economists across the political spectrum have criticized Mr. Trump’s decision to fire the head of the Bureau of Labor Statistics, Erika McEntarfer, and his choice to replace her. The president tapped E.J. Antoni, a conservative economist with a history of distorting statistics to support his political arguments.

Mr. Antoni has not yet been confirmed by the Senate — Mr. Trump didn’t even formally nominate him for the position until Wednesday — so he isn’t yet in charge of the agency. In the meantime, it is being run by its deputy commissioner, William J. Wiatrowski, who served as acting commissioner twice before.

Erica Groshen, who led the bureau under President Barack Obama, described Mr. Wiatrowski as a “B.L.S. lifer” who is committed to the agency’s mission of producing statistics that are free of political influence. She and others who know him said they were confident that he would speak up — or resign — rather than allow anyone to interfere improperly in the agency’s work.

In any case, Ms. Groshen and other experts said, even a commissioner with ill intentions would not be able to meddle with the data, at least not in the short run and not without anyone’s noticing. The monthly jobs report is produced on a tight schedule using a highly automated and decentralized process. Most of the data that underlies the monthly payroll figure is reported directly by companies through an electronic system that is subject to strict access limitations. The commissioner, who is the agency’s only political appointee, does not have access to the numbers until they have been made final.

“There’s not like one person in a room who can manipulate things,” said Aaron Sojourner, an economist at the W.E. Upjohn Institute for Employment Research. “There are safeguards in place.”

### 2NC---Econ !---AT: !/D---08/COVID Thump

#### 08 and COVID don’t thump---each recession is a unique risk because of changing geopolitical dynamics---Wishart prices in past recessions.

#### High debt levels make it harder for governments to cushion the blow---that’s Wishart.

< FOR REFERENCE, 1NC Wishart >

Heavily indebted countries are also exposed to these economic conditions. The risk of sovereign debt defaults is rising but notably, even with a strong US dollar, larger emerging economies such as Mexico and Brazil have largely avoided debt distress to date.65 This has been attributed to structurally different conditions in these markets than in the past, including central bank independence and the accumulation of large foreign-exchange reserves.66 In other parts of the world, like in Egypt, Ethiopia, Ghana, Lebanon, Pakistan, and Tunisia, the risks are much higher. The impacts of tighter financial conditions will build over time, and pressures on fiscal balances will rise. Given historically high debt loads, many governments might be unable or unwilling to help cushion economic impacts to the same degree as they have in recent years, sharpening the slowdown for companies and individuals.

#### Past crises don’t disprove---cooperation mitigated those recessions, but it’s disintegrating, now is the brink.

Alden ’22 [Edward Alden; 06-14-2022; “Why This Global Economic Crisis is Different”; Foreign Policy; Columnist at Foreign Policy, a visiting professor at Western Washington University, and a senior fellow at the Council on Foreign Relations; https://foreignpolicy.com/2022/06/14/inflation-stock-market-economic-crisis-trade-wto-ukraine-energy-food-shortages-fed-central-banks/]

More than two relatively uneventful decades later, the G-20 was born out of a series of destabilizing financial crises, including the 1994-1995 Mexican peso crisis, the 1997-1998 Asian financial crisis, and the 1998 Russian currency collapse. By that time, significant new economic powers had emerged, and the creation of the G-20 recognized that changing reality. The group includes China, India, Brazil, Russia, Mexico, and Indonesia, among others—broadening the rich nations’ club to one that was more representative of the 1990s economy. Like the G-7, the G-20 began as a regular meeting of finance ministers and was upgraded to an annual leaders’ summit during the 2008 global financial crisis. Amid the crisis and its aftermath, the G-20 became the focal point for global efforts to restore economic growth, helped jump-start the global economy through coordinated stimulus measures, worked to strengthen financial regulations, and expanded the lending capacity of the International Monetary Fund.

To be sure, such cooperative efforts have rarely been transformational. Both the G-7 and the G-20 lack decision-making authority, serving more as an effort to nudge countries to undertake mutually supportive policies. The purpose of such organizations is often less about developing grand schemes for recovery and more about keeping matters from getting worse. One of the key accomplishments of the G-20 during the global financial crisis was to get strong pledges from member states to avoid protectionist responses, which would have worsened the global slowdown—pledges that were mostly met. Even such modest accomplishments are vastly better than countries working at cross-purposes or actively undermining one another’s economic interests.

So if the WTO is handcuffed by consensus and if the G-7 and G-20 lack authority, what group or body might ride to the rescue this time? Merely asking the question shows how hard it will be to coordinate a global response to the current set of crises. The United States and its allies are actively working to damage Russia’s economy through the broadest sanctions ever levied, and Russia is responding by blocking shipments of Ukrainian grain through its Black Sea ports. This leaves the G-20 divided and powerless. U.S. Treasury Secretary Janet Yellen has called for Russia’s expulsion from the group and threatened to boycott meetings if Russia attends. Along with finance ministers and central bankers from several countries, she walked out of an April G-20 meeting in Washington when the Russian delegation was speaking. The meeting ended without the usual communique indicating areas of agreement. But removing Russia from the group is unlikely to happen; only Canada and Australia have formally joined the United States’ demand to do so. This year’s summit host, Indonesia, has already invited Russia to the planned November meeting (and issued a one-time invitation to Ukraine, which is not a member). Russia’s participation alone might be enough to neuter the G-20, but other members are also unlikely to get on board any strategy premised on strengthening the global economy while isolating Russia. China, in particular, has refused to break ties with Russia and is focused on greater self-sufficiency to protect its economy from the sort of sanctions levied against Russia by Western economies.

These Western economies, through the G-7 and other fora, are more united than they have been in years, even if there are continued differences over how far to ratchet up sanctions against Russia. This is no small achievement: The G-7 economies still account for nearly half of the global economy and lead in the most sophisticated technologies. The United States and Europe have largely moved past disputes over trade in steel, aluminum, and aircraft that now look trivial in the current environment. But the scale of the current challenges is beyond what the G-7 countries can meet on their own. For example, the G-7 has developed a potentially robust plan, supported by more than 50 nations, for addressing food security issues by expanding financial and technical support in exchange for countries agreeing to forego export bans and other measures that would further distort global food markets. But India, which banned wheat exports last month, has so far blocked the initiative. New Delhi is also resisting other measures to free up food stocks for poorer nations to pursue greater self-sufficiency in agricultural production.

The Biden administration has been creative in trying to find workarounds and build coalitions of like-minded countries. The U.S.-EU Trade and Technology Council has been coordinating responses on issues related to export controls, data sharing, and resilience in critical technologies. During his visit to Tokyo last month, U.S. President Joe Biden launched a new Indo-Pacific Economic Framework, which includes Japan, South Korea, and India. Although details are vague, the new forum is intended to promote cooperation on issues such as digital trade, decarbonization, and tax coordination. At last week’s Summit of the Americas in Los Angeles, the United States unveiled its Americas Partnership for Economic Prosperity with a similar agenda. But the meeting was not attended by Latin America’s second-largest economy after Brazil: Mexican President Andrés Manuel López Obrador boycotted the summit after the Biden administration excluded Cuba, Venezuela, and Nicaragua.

Although admirably creative, none of these initiatives are remotely equal to the urgency of the moment. During previous crises, the world’s leading governments were able to set aside enough of their differences to come up with robust responses. This time around, that is nowhere in sight. This breakdown of cooperation may be the most lasting and worrisome effect of the current series of overlapping crises. So far, the disruptions have not significantly harmed global trade as a whole: Trade values hit record level in 2021, though they are slowing this year, and sectors like food and energy have been significantly disrupted. But the current crises have brought a hard stop to the confidence that, whatever their differences, the world’s leading economies are united on the importance of economic growth and stability and can work together to the greatest extent possible to achieve those goals. This time, there is no one steering the ship.

#### **Short term crises don’t thump---sustained slowdowns uniquely undermine security AND incentivize expansion abroad**

Beckley 23 [Michael Beckley, Associate Professor of Political Science at Tufts University, Nonresident Senior Fellow at the American Enterprise Institute, and Director of the Asia Program at the Foreign Policy Research Institute, “The Peril of Peaking Powers: Economic Slowdowns and Implications for China's Next Decade,” International Security, 07-01-23, https://direct.mit.edu/isec/article/48/1/7/117122/The-Peril-of-Peaking-Powers-Economic-Slowdowns-and]

I focus on severe and sustained slowdowns, rather than short-term crises, because extended slumps are especially threatening to a great power and its leaders. If a country's growth rate dips for a few quarters, then its leaders can reasonably hope that the downturn will pass quickly or that they can jumpstart the economy with stimulus spending or minor reforms. If growth rates decline year after year, however, then tangible signs of economic malaise will accumulate (e.g., stagnant wages, shuttered factories), hope will fade, and leaders will realize that they face a fundamental choice: accept the “new normal” of sluggish growth or take decisive action to turn the tide.

peaking powers are proactive

Great powers are unlikely to choose the first option—doing nothing—because that would be geopolitically risky, domestically unpopular, and psychologically painful. For starters, a severe growth slowdown, if left unchecked, may cause the country to fall behind rivals economically and militarily. Great power competition is typically fierce, so significant slippage in a nation's growth rate can undermine its security.18 That may be especially true for a peaking power, because its rapid ascent has likely alarmed its rivals, and the subsequent slowing growth gives those enemies a chance to pounce. Even if rivals espouse friendly intentions, they may be unable to convince the peaking power that they will refrain from exploiting its economic woes in the future, a classic commitment problem.19 As a window of vulnerability opens for the peaking power, windows of opportunity to rekindle its rise or achieve historic aims start to close.20 Faced with impending stagnation and foreign predation, a peaking power is apt to try to beat back unfavorable trends by any means necessary.21

Domestic political factors accentuate this temptation. During an extended economic boom, many segments of a society become accustomed to an expanding pie: businesses to swelling profits, government agencies to growing budgets, ordinary citizens to improving living standards, and all of the above to greater international power and prestige. Leaders of rising powers usually feed these ambitions, promising the citizens that they will be rewarded with national rejuvenation and historical greatness if they continue to support the regime.22 Slowing growth dashes those ambitions and tarnishes the government's legitimacy.23 Leaders struggle to fund the patronage networks that sustain their rule or satisfy societal demands on pocketbook issues, such as job security and social services. Fearful of unrest, they become determined, even desperate, to revitalize the economy and contain political opposition.24

Psychological factors further incline leaders to be proactive during a slowdown. Psychologists have shown that humans are often willing to gamble recklessly to avoid losses.25 When confronted by negative trends, people tend to exaggerate the risks of inaction while overestimating their ability to turn things around with bold moves. This combustible combination—threat inflation, loss aversion, and overconfidence in one's own capabilities—is pervasive in world politics. It seems particularly applicable to the leaders of a peaking power because an era of rapid growth has inflated their egos and given them something to lose. A protracted slowdown thus threatens their power, historical legacy, and perhaps even their lives.26 Retrenchment and austerity might be the rational responses to slowing growth, but rulers can become irrationally addicted to rising power and arrogant about their capacity to control events.27 Rather than meekly adapting to harder economic times, they may gamble for resurrection by adopting ambitious new policies.28