# 2AC---DRR---Round 6

## Doctrinal Stability ADV

### AT: CBR Bad

#### 3. It effectively filters claims.

Tanner Bean 19, JD, Research Assistant, Law, University of Illinois College of Law. Baptist Joint Committee for Religious Liberty Fellow, "'To the Person': RFRA's Blueprint for a Sustainable Exemption Regime," Brigham Young University Law Review, Vol. 1, 2019, Nexis Uni. [italics in original]

Analyzing RFRA with "to the person" particularity should be in judges' self-interest. If judges are afraid to grant religious exemptions because "behind every free exercise claim is a spectral march; grant this one, a voice whispers to each judge, and you will be confronted with an endless chain of exemption demands from religious deviants of every stripe," 126then RFRA's track record since *O Centro* shows this fear is unfounded. Additionally, the reemphasis of the "to the person" language provided by *O Centro*, *Hobby Lobby*, and other decisions should comfort judges - instructing (not whispering) that exemptions can be granted to particularized plaintiffs so narrowly that a flood of exemption claims will not ensue. And even if a flood did ensue, RFRA's statutory burdens would shut out the meritless claims.

Moreover, strictly applying RFRA's "to the person" language serves another judicial interest: faithfully interpreting statutes by their plain meaning. 127Not only does this allow courts to avoid mental gymnastics to kick out a possible exemption, but it also allows the court to disengage from political controversy – focusing on the specificity of RFRA's standard of proof. And judges' confidence in the end product of RFRA litigation – the narrowest exemptions possible to otherwise beneficial legislation – should strengthen courts' resolve to apply RFRA's obvious "to the person" language.

[\*31] Thus, judges should demand plaintiff-level "to the person" specificity when evaluating RFRA claims, both on the compelling interest and least restrictive means considerations. Doing so will focus litigation and ensure that RFRA's original purpose is achieved, without disrupting the government's enforcement of otherwise beneficial legislation. Courts should not forget that RFRA, like the legislation from which RFRA may grant exemptions, was also enacted legislatively.

Conclusion

Proper application of RFRA's "to the person" language puts fear, controversy, and speculation to rest. This language, and its intended effect, was contemplated from the beginning of RFRA. After *O Centro*, *Hobby Lobby*, and other cases, the "to the person" standard has finally been applied as RFRA's textual blueprint so obviously intended: equally and separately to both the compelling interest and least restrictive means requirements. This is the basis for RFRA's sustainable exemption framework, which promotes narrow accommodations in the interests of all concerned. These narrow exemptions simply have not swallowed legislative regimes. Rather, RFRA permits religious adherents to live according to their faith while allowing Congress's interests to advance. To sustain RFRA's balance, religious claimants, government defendants, and the judiciary must all play their part. Only then may RFRA be decoupled from controversy.

#### No link. Unions lack unilateral power, substitution solves, AND data proves. That’s Garden.

<<FOR REFERENCE>>

As described above, if accommodations are to be made available to employers with religious objections to bargaining, the accommodations should be structured to eliminate or at least minimize burdens on third parties. One straightforward way of minimizing these burdens is to require employers to substitute something else that is of the same value to the employees, yet does not implicate the employer's religious beliefs. When the employer's religious objection to labor law is the risk that a union will seek an objectionable employment term during bargaining, this substitution can easily occur within the confines of the bargaining relationship itself. That is, the employer can simply tell the union what proposed terms it opposes on religious grounds - say, contraceptive coverage for its employees - and offer a substitute - say, increased compensation. If the union concludes that the two terms are not of equal value, it can propose a different substitute. To be sure, this raises the risk that unions might hold employers hostage, knowing that the value to the employer of remaining true to its religious beliefs is very high. However, this scenario is unlikely - unions cannot unilaterally impose contract terms, and their negotiating leverage comes mainly from the threat of strikes, during [\*159] which employees stand to be permanently replaced by their employers. 268 This strategy is risky, to say the least, and therefore unlikely to create a major obstacle to employers and unions reaching an agreement.

On the other hand, some employers may seek a complete exemption from the obligation to bargain collectively with their employees. One significant burden associated with such an exemption is the employees' lost chance to win improved pay and working conditions. This is not the only burden - employees would also lose the opportunity to exercise voice and self-determination at work - but it is the most tangible and, correspondingly, the most likely to prompt unscrupulous employers to make insincere accommodation claims. However, this burden can be at least partially ameliorated. Good aggregate data exist on the effect of unionization on employees' pay and benefits across a range of variables. Therefore, employers seeking religious exemptions from collective bargaining should be willing to accept that the price of bargaining is paying their employees the wages and other perquisites (such as for-cause protections from termination) typically enjoyed by employees who have had an opportunity to join a union.

#### Multiple checks on entanglement.

Rachel S. Casper 23, JD, Greenfield Fellow, Bredhoff & Kaiser, PLLC, "Hospitals, God, and the NLRB," Northeastern University Law Review, Vol. 15, pg. 507, 2023, Nexis Uni. [italics in original]

The Board's determination of mandatory subjects of bargaining has also raised constitutional concerns.254 "Terms and conditions of employment" are mandatory subjects of bargaining.255 That means employers and unions in collective bargaining relationships are required to bargain over certain matters, specifically issues concerning rates of pay; wages; hours of employment; bonuses; safety practices; seniority; procedures for discharge, layoff, recall, and discipline; and more.256 In *Catholic Bishop*, the Court feared that "nearly everything that goes on in the schools," including religious matters, may be considered a term and condition of employment.257 If a religious matter is a term of employment, it will, consequently, be subject to mandatory bargaining.

It is easy to imagine the constitutional infirmities here. Consider a religiously affiliated hospital that requires its healthcare workers offer religious services to patients. Offering spiritual as well as physical healing is central to the hospital's religious beliefs; giving patients the option for religious services is crucial to its religious practice. The argument posits that if this requirement is considered a term or condition of employment, the NLRA's mandatory bargaining would require the religiously affiliated hospital to bargain over this religious practice. The intrusion of government by mandating such bargaining is not hard to see. Forcing a religious organization to bargain over religious creed, doctrine, or practice clearly intrudes on freedom of religion.

As above, this concern seems reasonable on its face. If religiously affiliated hospital employers did in fact have to negotiate over religious practice or creed, that seems to clearly pose insurmountable First Amendment challenges. Fortunately, that is not the case. Management rights clauses are a common feature of collective bargaining.258 As [\*551] discussed more in depth below, management rights clauses preserve the rights of management to make unilateral decisions over enumerated managerial prerogatives.259 In the religiously affiliated hospital setting, management rights clauses can insulate religious questions from bargaining in complete accord with the requirements of the NLRA. In other words, religion is not a mandatory subject of bargaining and can be avoided by religious employers.

In *Federation of Teachers v. Hill-Murray High School*, the Minnesota high court held that "negotiable terms and conditions of employment are limited to exclude matters of inherent managerial policy . . . [and, accordingly,] matters of religious doctrine and practice at a religiously affiliated school are intrinsically inherent matters of managerial policy and therefore nonnegotiable."260 Although in the context of a religious school and under state law, this principle applies with equal force to religiously affiliated hospitals operating under the NLRA. Mandatory subjects of bargaining exclude inherent managerial policy.261 Inherent managerial policy or decisions are generally "matters that relate to the nature and direction" of the employer.262 While an employer and union may bargain over these topics, the NLRA does not mandate it and the parties "can refuse to discuss them without fear of an unfair labor practice charge."263 Religious creed and religious practice is part of a religiously affiliated hospital's inherent managerial policy. As such, mandatory subjects of bargaining exclude religious creed and questions. To put a finer point on this: although religious hospitals under NLRB jurisdiction must bargain over mandatory subjects of bargaining, religious hospitals need not bargain over religious practice.

In addition, and importantly, the Act merely requires bargaining in good faith. The duty of good faith bargaining includes "the mutual [\*552] obligation of the employer and [union] to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment," as well as "the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached . . ."264 But, the Act imposes no obligation on either party to "agree to a proposal or require the making of a concession . . ."265 Additionally, "the Act does not regulate the substantive terms governing wages, hours, and working conditions because agreement, if reached, is voluntary."266

The NLRA "never requires an employer to accept a bargaining proposal from a union, much less one that conflicts with the employer's religious commitments." 267 Not only does the law not require the employer to agree to anything, but "about 50% of the time they don't [.]" 268 Employers regularly and legally refuse union requests and demands. The NLRA allows an employer who has reached an impasse in the bargaining process to "unilaterally implement its final offer."269 Because the NLRA imposes a duty to bargain in good faith but does not compel agreement on any given term of employment, and because the state's role is to bring the parties to the table but then "leave them alone[,]"270 there is no excessive entanglement created by the duty to bargain and mandatory subjects of bargaining therein.271 Religion is not a mandatory subject of bargaining and a religious employer need never accept a union proposition. Together, this ensures that religious employers maintain control over religious doctrine and practice, thereby protecting First Amendment rights.

#### BUT, chilling effect is inevitable AND only the plan solves.

Dr. Christopher M. Gaul 07, PhD, JD, Associate, Law, Sidley Austin LLP, "Catholic Bishop Revisited: Resolving the Problem of Labor Board Jurisdiction over Religious Schools," University of Illinois Law Review, Vol. 7, No. 5, pg. 1505-1542, 2007, HeinOnline. [italics in original]

Nonetheless, the chilling effect argument is flawed in three crucial respects. Its first shortcoming lies in the fact that exempting religious schools from NLRA jurisdiction avoids the excessive entanglement problem only at the cost of creating even more intractable establishment issues.5 8 When a court grants a religious exemption on the basis of excessive entanglement concerns, this would seem to violate *Lemon*'s second prong, which precludes the government from taking actions that have a primary effect of advancing religion.159 The chief consequence of creating such an exemption would be to promote religion. Moreover, because the court would be exempting church-operated schools from NLRA coverage precisely on account of their religious character, fashioning this exemption may also violate *Lemon*'s first prong, which forbids government actions that have nonsecular purposes.

These establishment concerns intensify when one considers that the NLRA continues to apply to nonreligious private schools. Not only is the appearance of government favoritism of religion inescapable, but the financial burden of such favoritism surely falls on nonsectarian private schools. These types of educational institutions must compete with pub lic schools, which enjoy virtually unconstrained access to the public fisc, and religious schools, which enjoy various exemptions from regulatory laws that apply to their nonsectarian competitors. In this regard, carving out an exemption for parochial schools is tantamount to granting a government subsidy of religious education."6 This subsidy effect raises undeniable establishment concerns. 6'

### Civil War---Impact---2AC

#### Trump is irrelevant.

Miles P. J. Windsor 25, Director of Strategic Campaigns for International Strategies, Religious Freedom Institute, "It's Time to Restore American Leadership on International Religious Freedom," Newsweek, 08/14/2025, https://www.newsweek.com/its-time-restore-american-leadership-international-religious-freedom-opinion-2112599.

He was right, and the landscape of oppression and persecution continues to deteriorate internationally. Regimes, often in the press for their heinous violations of human rights, destabilizing global order and peace, are some of the worst offenders. Russia, China, North Korea, and Iran, leading a rogues' gallery of autocratic villains, constantly attack people of faith and places of worship in order to undermine any allegiance that is devoted to a power higher than their own. Additionally, deadly waves of violent extremism in places like Nigeria and India are devastating whole communities and going unchecked.

There are both humanitarian and deeply strategic reasons for prioritizing international religious freedom in foreign policy. Where such freedoms are safeguarded, democracy is more robust, local and regional conflicts are less likely, cross-border migration is reduced, and prosperity and the prospect of lucrative business and trade opportunities abound. Regimes that do not respect or properly defend the inalienable rights of their citizens to exercise their religious beliefs in freedom are not contributors to international peace and prosperity, and they are not reliable partners. When the United States champions this cause, it strengthens relationships with emerging democracies, builds trust with civil societies, and counters the influence of dictatorships that use religious repression as a weapon of control.

President Trump in his first administration demonstrated resolute leadership in prioritizing religious freedom in foreign policy, founding the International Freedom of Religion or Belief Alliance (IRFBA), establishing and hosting annual ministerial conferences to advance the issue with governments around the world, engaging forcefully with nations that violated this right, and advocating for the release of prisoners of conscience. In his address at the IRF Summit, Vance acknowledged that effort, stating, "The first Trump administration took critical steps to protect the rights of the faithful by rescuing pastors persecuted by foreign regimes or bringing relief to faith communities facing genocidal terror from ISIS."

While the comments of JD Vance, and the appointment of Marco Rubio as secretary of State—a long-devoted champion of the cause—served as encouraging indicators of the new Trump administration's commitment to advancing this issue in foreign policy, the U.S. is not meeting the standard it has set for itself or fulfilling the role the rest of the free world has come to expect.

Other nations are stepping up to the plate. The Czech Republic's Robert Řehák, special envoy for holocaust, interfaith dialogue, and freedom of religion, has been an outspoken and resolute advocate for individuals imprisoned on account of their faith. He has hosted purposeful events on combatting antisemitism and anti-Muslim hate. He will be hosting the annual ministerial for the second time in Prague in November.

The U.K. special envoy has launched a focused religious freedom policy platform at the U.K. Foreign Office. Germany recently made the auspicious appointment of veteran member of the Bundestag, Thomas Rachel, as its new commissioner for freedom of religion or belief following their recent elections. Many other nations are driving forward in collaboration to tackle the scourge of persecution. Nevertheless, the outsized power, influence, and resources the U.S. offers are still needed if lasting progress is to be achieved.

### RF---Impact---2AC

### Terror---Impact---2AC

## Hospitals ADV

### Disease---Impact---2AC

### Urban---Impact---2AC

## Avoidance ADV

### Legitimacy---Impact---2AC

### Governance---Impact---2AC

### Development---Impact---2AC

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### Distinguish CP---2AC

#### The CP confuses lower courts and leads to incoherent doctrine.

Barry Friedman 10, Jacob D. Fuchsberg Professor of Law New York University School of Law, 2010, “The Wages Of Stealth Overruling (With Particular Attention To Miranda V. Arizona),” Public Law & Legal Theory Research Paper Series, No. 10-42.

If likes are treated alike, ultimately it is not because the Court resolves every case according to this ideal, but because it gives sufficiently clear and transparent marching orders to the lower courts that they can dispose of cases in an equivalent fashion.221 Political scientists studying courts often see the lower courts as striving to impose their own preferences on cases despite orders from above.222 As we will see, in the post-Seibert and Patane decisional data, there may be some truth to this. But even assuming the lower courts want to travel in the traces with the Supreme Court, those traces must be clear.223

The first evil of stealth overruling is that in some cases it makes it difficult if not impossible for the lower courts to know what they are being instructed to do.224 When the justices say one thing and do another, or deliberately obscure what they are saying, meaning naturally gets confused and lost. This seems self-evident. The lack of clarity not only ensures likes are often not treated alike, it also undermines the virtue of predictability almost universally thought important in the law.225

This argument about lower court confusion holds despite the fact that the prior section argued lower courts are “getting the message” about Miranda. Superficially, the two arguments may seem to be in tension. However, even though lower courts in some stealth overruling cases do get the general sense of what outcomes should be, there still will be more difficult cases in which those outcomes are uncertain given doctrinal confusion. Moreover, when lower courts do disagree with the trend of the doctrine, they will take advantage of doctrinal confusion in resolving cases, ensuring likes are not treated alike.

### Distinguish CP---AT: Doctrinal Stability

### Distinguish CP---AT: Avoidance

#### Jurisprudential gaps still deck legitimacy.

Charlotte Garden 20, JD, Co-Associate Dean, Research & Faculty Development, Seattle University. Associate Professor, Law, Seattle University, "Avoidance Creep," University of Pennsylvania Law Review, Vol. 168, No. 331, 2020, Nexis Uni.

Conversely, there are at least two additional reasons that militate against the Court's use of constitutional avoidance in these cases. The first is that the use of constitutional avoidance- and especially the use of aggressive forms of avoidance, where the Court applies a clear statement rule or resolves an insubstantial constitutional question- can appear strategic or results-oriented. Scholars, including Richard Hasen, have criticized the Court's selective use or nonuse of avoidance in other cases on precisely this ground.277 This Article's account of avoidance creep highlights this risk: even a principled use of avoidance could be indirectly subject to this criticism if it is used by later courts in unexpected or illegitimate ways. For example, a reader inclined towards cynicism might observe that although avoidance creep in the dues/fees context looks different than avoidance creep in the union picketing context, they do have one thing in common: both versions ultimately work to unions' disadvantage. Perhaps this is because "judges don't like labor unions."278 But even if that isn't the reason, courts risk at least the appearance of partiality.

Second, the Court's use of constitutional avoidance in First Amendment cases involving labor is a poor fit with other important and longstanding constitutional values. This is true of both picketing cases and dues/fees cases, but for somewhat different reasons.

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

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

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

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

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

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

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

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

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

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

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

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

*C. Involuntary Associations*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Access prevents extinction.

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

What is overpopulation?

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

Why is overpopulation an issue?

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

What is carrying capacity?

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

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

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

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

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

Increasing Earth’s carrying capacity

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

Decreasing population numbers

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

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

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

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

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

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

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

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

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

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

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

Myth 5 – Population growth is good for the economy

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

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

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

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

What action can each of us take?

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

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

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

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

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

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

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

### NDAA DA---2AC

#### Shutdown inevitable. Disagreements over DHS funding.

Kevin Freking 1/16, reporter for the Associated Press, 16 January 2026, “Senate passes more spending bills, but Homeland Security dispute looms,” *Associated Press*, https://federalnewsnetwork.com/congress/2026/01/senate-passes-more-spending-bills-but-homeland-security-dispute-looms/.

The biggest hurdle ahead is the funding bill for the Department of Homeland Security. The plan was to bring that bill before the House this week, but Rep. Tom Cole, the chairman of the House Appropriations Committee, said the decision was made to pull the bill and “buy some time” as lawmakers respond to the Minneapolis shooting.

Democrats are seeking what Rep. Rosa DeLauro called “guardrails” that would come with funding for ICE.

“We can’t deal with the lawlessness and terrorizing of communities,” said DeLauro, the top Democrat on the House Appropriations Committee. “We’re going back and forth with offers, and that’s where we are.”

Trump’s deportation crackdown, focused on cities in Democratic-leaning states, has incensed many House Democrats who demand a strong legislative response. Last week, an Immigration and Customs Enforcement officer shot and killed Renee Good in a shooting that federal officials said was an act of self-defense but that the mayor described as reckless and unnecessary.

Some 70 Democrats have signed onto an effort to impeach Homeland Security Secretary Kristi Noem. Others are seeking specific changes to how the agency operates, such as requiring ICE agents to wear body cameras.

“There are a variety of different things that can be done that we have put on the table and will continue to put on the table to get ICE under control so that they are actually conducting themselves like every other law enforcement agency in the country, as opposed to operating as if they’re above the law, somehow thinking they’ve got absolute immunity,” said Democratic leader Hakeem Jeffries.

#### Shutdown doesn’t matter.

Zachary Schermele 1/5, congressional reporter for USA Today, 5 January 2026, “Will the government shut down again? Bills due for vote to avoid rerun,”

Yet even if lawmakers failed to pass more appropriations measures by then, the government would only partially shut down. Congress already approved a series of full-year funding measures in November.

AT: Readiness Impact

#### It won’t impact readiness.

Daniella Cheslow & Giselle R. Ewing 25, National Security Daily Anchor, POLITICO; National Security Reporter, POLITICO, "What a Shutdown Means for National Security," POLITICO, 09/26/2025, https://www.politico.com/newsletters/national-security-daily/2025/09/26/what-a-shutdown-means-for-national-security-00582836.

An impending government shutdown could throw sand in the gears of national security work across multiple agencies — but they will keep grinding on, including around priorities like the wars in Ukraine and Gaza.

Congress was no closer Friday afternoon to reaching a deal to pass a continuing resolution to fund the government. NatSec Daily pulsed insiders about how a shutdown might play out for the people handling defense, diplomacy and intelligence — and found that while it won’t stop daily work, it will likely interrupt training, limit advance planning and hurt morale.

The Pentagon’s weapons pipeline: The Defense Department has furloughed as much as half of its civilian workforce in previous shutdowns, according to ELAINE McCUSKER, former acting DOD comptroller under Trump 1.0. That can be up to 400,000 people.

Uniformed personnel and essential employees would keep working, but support functions like financial management or public affairs could shut down. That could affect contract work including on weapons, McCusker said.

“The day-to-day work on major weapons platforms continues,” she said, “but if you need contract modification, if you have an oversight visit planned or inspections, it’s uncertain, you don’t know who’s going to be available and who’s not.”

The diplomatic corps: American embassies usually stay open in a shutdown, but diplomat training would be interrupted for foreign languages and area studies. In the past, offices that issue visas and passports stayed open.

BRIAN McKEON, who served as former President JOE BIDEN’s deputy secretary of State for management and resources, said he had observed the State Department managing to keep full operations going through a shutdown “at least 7-10 days.”

The union representing feds at the State Department argued Thursday that the threat of layoffs alongside a shutdown “undermines trust, weakens morale and disrespects the professionalism of those who ensure continuity of government in times of crisis.”

A shutdown could also snarl advanced preparation for meetings next month. President DONALD TRUMP has said he will meet China’s President XI JINPING in South Korea during the Asia-Pacific Economic Cooperation Summit, scheduled for late October.

Keeping intelligence collection afloat: LARRY PFEIFFER, who held several senior roles at intel agencies over 32 years, said the intelligence community probably “suffers less” than other branches of government, but a shutdown could still be disruptive.

“Anything that’s producing intelligence is going to continue to work during a furlough period,” he said — but not people handling HR, acquisitions or long-term planning. “Many of those people are not producing intelligence, but they’re supporting it.”

Even so, he said work on high-priority intel targets like the Iran nuclear program, the southern U.S. border, counternarcotics and the wars in Ukraine and Gaza is unlikely to be affected.

#### OR will be swiftly fixed.

Leo Shane 23, Covers Congress, Veterans Affairs & the White House for Military Times, "Government Shutdown Could Hinge on Fight Over 'Woke' Military Policies," Defense News, 08/22/2023, https://www.defensenews.com/news/pentagon-congress/2023/08/22/government-shutdown-could-hinge-on-fight-over-woke-military-policies/

House Speaker Kevin McCarthy, R-Calif., has publicly promised not to allow any budget extension to go past early December, vowing to complete a full-year budget plan for fiscal 2024 before the end of the calendar year.

The last partial government shutdown began in December 2018 and lasted 35 days. But Defense Department personnel were largely exempt from the effects of that stalemate, because funding for military operations had been approved by Congress separate from other agencies.

#### No readiness impact. Other factors check rogue states.

John Mueller 21, Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies, "Proliferation, Terrorism, Humanitarian Intervention, and Other Problems," in The Stupidity of War: American Foreign Policy and the Case for Complacency, Chapter 7, 02/17/2021, pg. 183-184.

Over the course of the last several decades, alarmists have often focused on potential dangers presented by rogue states, as they came to be called in the 1990s. These were led by such devils du jour as Nasser, Sukarno, Castro, Gaddafi, Khomeini, Kim Il-sung, Saddam Hussein, Milosˇevic´, and Ahmadinijad, all of whom have since faded into history’s dustbin.66 Today the alarm has been directed at Iran as discussed in Chapter 6 and also at North Korea as discussed in this one. However, neither country really threatens to commit major direct military aggression. Iran, in fact, has eschewed the practice for several centuries.

Nonetheless, it might make some sense to maintain a capacity to institute containment and deterrence efforts carried out in formal or informal coalition with concerned neighboring countries – and there are quite a few of these in each case. However, the military requirements for effective containment by their neighbors, by the United States, and by the broader world community are far from monumental and do not necessarily require the United States to maintain large forces-in-being for the remote eventuality.

This is suggested by the experience with the Gulf War of 1991 when military force was successfully applied to deal with a rogue venture – the conquest by Saddam Hussein’s Iraq of neighboring Kuwait. As noted earlier, Iraq’s invasion was rare to the point of being unique: it was the only case since World War II in which one United Nations country has invaded another with the intention of incorporating it into its own territory. It scarcely appears, as laid out in Chapter 3, that Iraq’s pathetic forces required a large force to be thrown at them to decide to withdraw: over a period of half a year, they did not erect anything resembling an effective defensive system and, when the chips were down, they proved to lack not only defenses, but strategy, tactics, leadership, and morale as well.

Countries opposed to provocative rogue behavior do not need to have a large force-in-being because there would be plenty of time to build one up (should it come to that) if other measures such as economic sanctions and diplomatic forays (including appeasement) fail to persuade.

Court Shields

#### Court shields.

Dr. McKinzie Craig & Dr. Joseph D. Ura 25, PhD, Assistant Director, Law, Louisiana State University, Former Executive Cabinet, American Moot Court Association; PhD, Professor of Political Science & Chair of the Department of Political Science, Clemson University, "Policy, Position-Taking, and Congressional Voting Under Judicial Review," American Politics Research, Vol. 0, No. 0, pg. 1-16, 2025, SAGE. [italics in original]

The possibility of judicial review tilting legislative decision-making like this has been recognized among scholars of constitutional theory (Thayer, 1893), American political development (Graber, 1993; Whittington, 2005), and separation of powers politics (Fox & Stephenson, 2011; Rogers, 2001) for some time, though not always in conversation with one another. Here, we join and extend the literature on the consequences of judicial review for legislative decision-making by developing an individual-level theory of judicial review’s influence on congressional voting and testing its empirical implications. A comparative analysis of Senate votes on statutory and constitutional flag burning bans in 1989 in response to the Supreme Court’s decision in *Texas v. Johnson* (1989) shows evidence of sophisticated voting consistent with our theoretical claims. We conclude by discussing some implications of these results for American national politics and suggest directions for future research.

Congress and the Courts in the Separation of Powers

Although Congress and the federal courts influence one another in a number of complex ways in the constitutional system of checks and balances, the influence of judicial review on congressional behavior has been a topic of particular concern in political science, law, and related fields. At a basic level, judicial review operates as a check on use of legislative power (e.g. *Federalist 78* [Hamilton, 1996]). This has implications for law-making: policy-minded members of Congress must attempt to appease the Supreme Court as they legislate in order to avoid a judicial veto (e.g. Tsebelis, 2001). Pickerill, for example, shows members of Congress expressly deliberate about the constitutionality of legislation, attempting to tailor legislation to be acceptable to the Supreme Court (Pickerill 2004, p. 462). Rogers and Vanberg argue further legislating in the presence of judicial review is socially desirable, inducing “more equitable and efficient policies than they would in [its] absence” even if that review is “unprincipled…[and] based on the narrow self-interest of the judges” (2007, p. 462).

Scholars have also identified a number of deeper, more subtle ways that institution of judicial review influences congressional behavior. Thayer (1893), for example, argues that judicial review insures against unpalatable policy outcomes, creating a moral hazard for members of Congress. He writes, “No doubt our doctrine of constitutional law has had a tendency to drive out questions justice and right, and to fill the mind of legislators with thoughts of mere legality…‘if we are wrong,’ they say, ‘the courts will correct it’” (1893, pp. 155- 156). Rogers (2001) similarly argues that legislators’ knowing courts will ultimately review their decisions induces them to enact riskier laws than they would have in the absence of subsequent judicial scrutiny. Fox and Stephenson (2011) likewise claim judicial review creates incentives for legislators to “posture by taking some bold, dramatic action in order to appear competent to voters” even if the legislature is “insufficiently confident that such dramatic action is warranted” (p. 398). Graber’s (1993) also describes how Congress effectively delegates some politically fraught policy choices to the judiciary so its members can avoid taking controversial or unpopular political positions (see also Whittington, 2005).1

This latter set of studies broadly shares Thayer’s (1893) perspective that judicial review acts as a kind of safety net or backstop for difficult political choices in legislatures. Congress makes law knowing the Supreme Court may rescue it and the country from decisions to enact risky, unreasonably bold, or otherwise imprudent policy choices.2 At least in some cases, the possibility courts may cushion the blow of bad policy may lead Congress to make different decisions than it would have in the absence of judicial review.

The Micro-Mechanics of Legislative Voting under Judicial Review

These ideas have largely been developed from a macro-level view of interactions between institutions—between Congress and the Supreme Court, for example—rather than the decisions of individual actors within these institutions. Rogers (2001) models interactions between a “legislature” and a “court” (see also Fox and Stephenson, 2011). Graber (1993) analyzes the political choices of “prominent elected officials” who are part of the “dominant national coalition” in relation to the federal judiciary, and Whittington likewise describes the political interactions between various “powerful officials within the current government” and the Supreme Court that explain political tolerance for judicial review (2005, p. 584; see also Dahl, 1957). However, Congress’s collective decisions to make electorally expedient policy choices in the presence of judicial review (which would not have been made in the absence of judicial review) must emerge from the actions of its individual members, whose voting choices are influenced by their expectations about judicial responses to legislative enactments.

*Considerations in Congressional Voting*

There is wide agreement that members’ of Congress electoral goals are generally preeminent in their decision-making (Mayhew, 1974; see also, e.g., Ansolabehere et al., 2001; Canes-Wrone et al., 2002). However, scholars of congressional behavior also recognize that members of Congress pursue numerous goals in office—including changing public policy, gaining authority in their institutions, and, perhaps, seeking higher office (Fenno, 1973; Kindgon 1989)—and are often subject to pressure exerted by political parties (e.g. Cox & McCubbins, 1993; Rohde, 1991). There is also evidence that members of Congress may develop personal or private policy views that are inconsistent with prevailing preferences among important elements of their constituency (Fenno, 1978). Members of Congress may, for example, cultivate expertise in particular policy areas, which constitute a kind of private information about the quality of proposed policy choices that may not be available to ordinary voters (Matthews & Stimson, 1975).

In deciding how to vote on legislation, members of Congress, therefore balance at least two core and potentially competing considerations: the electoral consequences of their *votes* and the policy effects of *legislation*. 3 In other words, members of Congress must use their single roll call vote on a particular bill to play in the electoral arena in their states and districts and in the arena of national policy (Fenno, 1978). As the popularity of a proposal increases among a legislator’s constituents, so does the position-taking value of supporting the bill. Likewise, as the content of a bill approaches a legislator’s most preferred policy, the return from successfully passed legislation also increases.

A Baseline: Legislative Voting without Judicial Review

As a baseline, in a hypothetical world without judicial review, members of Congress consider both their constituents’ views (position-taking) and their private information and judgment about the quality and consequences of a bill in their legislative voting decisions (policy).4 Often, the valence of these factors is the same: a bill is both popular among the member of Congress’s constituents and wise public policy in her estimation (or both unpopular and judged unwise).

Alternatively, members of Congress may be crosspressured by position-taking and policy considerations, pushed by their constituents to support a bill they do not privately support or to oppose legislation they would like to see enacted. In these instances, members of Congress should weigh these factors against one another: do their private views about a bill’s policy costs (or benefits) outweigh the position-taking rewards (or punishments) they expect to receive from their constituents?

This balance will vary from member to member and over time. For example, someone in a relatively safe seat may place more emphasis on policy than a member in a marginal district. Another member may place greater weight on position-taking as her next election nears. However, for each member of Congress on any given bill, there exists some threshold level of electoral reward for voting for a bill she privately opposes that would flip her prospective “nay” vote to a “yay” vote. Conversely, of course, there is some pivotal level of policy loss that would lead a member of Congress to oppose a bill despite the electoral costs of doing so.

*The Consequences of Judicial Review*

Judicial review is not part of the legislative process, but it can alter or upend its results. A court’s decision to restrict a law’s application or to invalidate it altogether on constitutional grounds can reduce or even eliminate its policy consequences moving forward. Members of Congress are aware at least some of the laws they craft will wind up before the courts (Pickerill, 2004), and that awareness implies members of Congress also recognize the risk that some laws ultimately will not survive judicial review at full strength—if they survive at all. When considering bills that are likely to be subject to judicial review if passed into law, members of Congress should discount their effects on policy by the likelihood a court diminishes or removes its effects. In other words, judicial review should attenuate or weaken the expected policy costs or benefits of a prospective law by placing them under risk.

However, even if a court strikes down a law altogether, judicial review does not erase the fact of a member’s of Congress vote for or against it. As a result, the position-taking consequences of a legislative vote persist even if a law it contributes to creating does not. By putting the policy consequences of a bill at risk, but leaving members’ of Congress voting records on the bill intact, the net effect of judicial review is to increase the relative importance of position-taking in legislative decision-making against policy in legislative decision-making.

Figure 1 illustrates the influence of legislators’ private policy judgments, position-taking demands, and judicial review on legislative voting. The diagram relates to a hypothetical bill that is uniformly popular among members’ of Congress constituents but about which congresspeople have varying private judgements ranging from strong opposition to strong support. The horizontal line represents members’ of Congress private policy judgements on the bill, ranging from strong support on the right to strong opposition on the left.

Starting from the right side of the policy space: members who privately believe the bill is good public policy experience no cross-pressure between their electoral incentives— the bill is popular by assumption—and their personal convictions. Moving to the left along the continuum of support, at some point, members of Congress begin to oppose the bill based on their personal or private policy judgments. The threshold separating those who support and oppose the bill on policy considerations alone is labeled “Neutral on the merits” in Figure 1. Members of Congress on the left side of this cutpoint are pulled in opposite directions by their private policy judgments against the bill and the positive electoral returns available to them for supporting it, and they must weigh the policy loss against the position-taking gain to reach a final voting decision.

[Figure omitted]

Votes from members of Congress who only mildly oppose the bill on policy grounds fall in favor of it due to its popular support. The electoral rewards of voting in favor of the bill induce them to overlook their private reservations about its policy consequences to vote yes. However, moving out toward members who are more forcefully opposed to the bill (again, to the left in Figure 1), the mass of policy objections begins to approach the magnitude of available electoral rewards until—at some moment along that continuum of private policy support for the bill—there is a tipping point. The positive electoral benefits of supporting the bill no longer outweigh their policy objections to the bill. Members of Congress at or to the left of that point on the spectrum of policy support for the bill in Figure 1 will vote “no” while those on the other side of the cut-point will vote “yes.”

Judicial review shifts this cut point, which is illustrated by a dashed arrow in Figure 1. By reducing the likelihood a bill’s policy consequences will come into effect, legislators’ expectations a court will invalidate or narrowly construct a law reduce the relative weight given to policy considerations in their voting calculus, increasing the relative weight of position-taking considerations. This moves the threshold separating yes voters from no voters out toward those with stronger personal policy objections to a proposed law. The size of the shift varies according to the degree of change in expectations about judicial review and individual members’ of Congress valuation of the bill’s position-taking opportunity.5 A unit change in expectations about judicial review produces a larger change in the voting threshold for members of Congress who value a position-taking opportunity more highly than for members who value it less. Expectations about judicial review should weigh equivalently on members’ voting calculations in both the House and the Senate.

Between the cut-point separating “yes” votes from “no” votes in the absence of judicial review and the new threshold established by increasing the possibility a court might invalidate a law, there exists an interesting interval of members of Congress whose voting decisions hinge on a strategic calculation about judicial review. These legislators may be induced to vote “yes” for a bill as long as their expectations it will not survive judicial review are sufficiently strong. If a pivotal voter for a given bill falls in that interval, then the fate of the bill’s passage depends on expectations about judicial review. In that circumstance, the prospect of judicial review changes Congress’s collective decision to pass or defeat a bill—for example, allowing a bold or risky bill proceed into law rather than defeating it.

Assessment

Some empirical implications of these micro-foundations of the theory of legislative moral hazard under judicial review are straightforward. For a bill returning positive position taking benefits, changes in expectations about judicial review should shift the cut-point separating those voting for the bill from those voting against the bill along continuum of individual members of Congress arrayed by their relevant policy ideal points. In particular, heightened expectations that a bill would be completely or partly invalidated by the judiciary should shift the cut-point out toward the edge of the policy space, deeper into the set of congresspeople who oppose the bill on policy grounds. Conversely, a greater sense a bill will mostly or completely survive judicial scrutiny would leave the cut point closer to the neutral point separating those who support or oppose the bill based only on its policy merits.

A difficulty, of course, arises in identifying test cases in which members of Congress cast a series of roll call votes in which expectations about judicial review vary while other factors weighing on legislative decision-making are held constant. As with other dimensions of legislative behavior, “empirically identifiable” instances of strategic voting behavior in Congress due to judicial review may be rare in practice (e.g. Krehbiel & Rivers, 1990). Even in a system with robust, independent judicial review, the proportion of bills facing serious risks of being invalidated or substantially limited in their implementation by the judiciary is likely small (e.g. Hall & Ura, 2015; Harvey & Friedman, 2009). Moreover, members of Congress are mindful their electoral actions are being observed, and so they will craft legislation and legislative agendas in ways that avoid revealing voting on the basis of strategic considerations that would “place [them] in awkward positions vis-a-vis their constituents” (Krehbiel & Rivers, 1990, pp. 550-551 ).

We nevertheless recognize at least one opportunity to observe this kind of variance in congressional behavior as a function of changing expectations about judicial review: comparing roll call votes on a popular statute that is likely to be overturned by the Supreme Court and a popular constitutional amendment concerning the same substantive issue considered by the same session of Congress. Under these conditions, the theory advanced here predicts broad voting support for the statute since position-taking benefits from voting “yes” would outweigh the proposal’s sharply reduced policy considerations given the likely negative reaction from the Court. However, support for the amendment should be less widespread (depending on the distribution of members’ of Congress sincere policy preferences), since those votes would reflect a balance of both policy concerns and positiontaking considerations. In other words, members of Congress whose underlying policy preferences fall between the support threshold established by expectations about judicial review for the statute and the less extreme cut point related to the amendment should vote differently in the two cases as expectations about judicial review vary.

In 1989 and 1990, both houses of Congress considered various proposals to institute federal bans on flag burning. These were precipitated by the Supreme Court’s 1989 decision in Texas v. Johnson, which protected flag burning under the First Amendment and invalidated state laws banning it. Among the proposals Congress considered were both statutory and constitutional flag burning bans. Two of these in the Senate—roll call votes on the Flag Protection Act (October 5, 1989) and a flag burning amendment (October 19, 1989)—can support a quasiexperimental test of moral hazard theory’s principal individual-level predictions.

The votes addressed proposals with substantially similar policy consequences and were conducted only two weeks apart without material change in the state of public opinion on the flag burning issue. Further, contemporary survey data suggests that overall opposition to Texas v. Johnson was roughly the same as public support for a constitutional amendment prohibiting flag burning (Hanson, 2008). The most salient difference between the votes was the different constitutional standings of the proposals and, thus, senators’ different expectations about judicial review. The Flag Protection Act was likely to be struck down by the Supreme Court; the flag burning amendment was likely to be ratified and go into effect without facing the threat of a judicial veto.6

Below, we provide background on the national flag burning controversy that unfolded after Texas v. Johnson and congressional action on the statutory and constitutional flag burning bans. We also outline specific theoretical expectations about the ways senators’ votes should vary between the two roll calls as a function of their relevant policy preferences an electoral circumstances. We additionally estimate statistical models of senators’ votes on these two proposals in order to make precise comparisons between senators’ voting behavior on these two proposals and evaluate their consistency with our theoretical predictions.

*The Flag Burning Controversy*

In August, 1984, Gregory Johnson was arrested for violating Texas’s flag desecration statute by burning an American flag outside the Republican National Convention in Dallas.7 He was convicted and sentenced to a year in prison and a US$2,000 fine. Johnson appealed his conviction, and the Texas Court of Criminal Appeals overturned it on First Amendment grounds. Texas appealed to United States Supreme Court, and, in March, 1989, the Supreme Court heard arguments in Texas v. Johnson. In June, the Court announced its decision.

By a 5 to 4 vote, the Supreme Court held that flag burning is expressive speech protected by the First Amendment. However, the American public overwhelmingly disapproved of Texas v. Johnson. A poll conducted the day after the Court handed down its decision found that 71% of adults would “support a new constitutional amendment to make flag burning illegal.” Only 24% opposed the amendment.8 Goldstein (1996) writes, “no Supreme Court decision within recent memory, if ever, was so quickly, bitterly, and overwhelmingly denounced by the American public and political establishment” (p. 113; see also Hanson, 2008). Support for a response to the Supreme Court’s ruling prompted swift action in Congress.

Republican leaders pushed for a constitutional amendment to empower Congress to prohibit flag burning, arguing the Supreme Court’s decision in Texas v. Johnson made it clear that it would not tolerate a statutory ban (e.g. Dole, 1989). Democrats—who held majorities in both the House and the Senate—publicly counseled a moderate, two-step approach, advocating a statutory solution until the Supreme Court could reconsider the issue and returning to a constitutional solution later if the Court did not reverse course.9 By October 1989, both houses of Congress had overwhelmingly passed the Flag Protection Act. Democratic leaders maintained control of the House’s agenda and prevented a vote on the constitutional amendment until the following year—after the Supreme Court invalidated the Flag Protection Act in U.S. v. Eichman (1990). However, just two weeks later, Republican senators, led by Minority Leader Bob Dole (R-KS), forced a vote on a flag burning amendment.

The Senate vote on the statutory flag burning ban was 91 for with 9 against. Three conservative senators, Robert Dole (R-KS), Charles Grassley (R-IA), and Orrin Hatch (R-UT) voted against the statute to demonstrate their preference for a constitutional amendment. Gordon Humphrey (R-NH), who was about to retire from the Senate, called the flag issue “an exercise in silliness” and voted against the bill (Lewis, 1989). The remaining no votes came from civil libertarians: John Chafee (R-DE), Edward Kennedy (D-MA), Bob Kerrey (DNE), Howard Metzenbaum (D-OH), and Daniel Patrick Moynihan (D-NY). Aside from the pro-amendment “no” votes, along with Sen. Humphrey’s esoteric “nay,” all opposition to the statute came from the most senators with strong records as civil libertarians.

Two weeks later, the Senate voted on a constitutional amendment empowering Congress to ban flag burning. The vote was 51 to 48 for the amendment, failing to achieve the two-thirds support required for passage.10 Forty-two senators switched sides between the two roll calls, voting against the constitutional ban on flag burning despite casting a vote in favor of the Flag Protection Act. Sen. Pete Wilson (R-CA), who had voted for the flag burning statute, did not cast a vote on the amendment.11

Expectations

Focusing on the two Senate flag burning votes in October 1989, our theory of legislative voting under judicial review suggests comparative predictions about senators’ votes on the statute and the constitutional amendment. The baseline model of legislative decision-making we describe above indicates two key individual variables. The first is senators’ underlying policy preferences on flag burning and civil liberties, which corresponds to their positions in the policy space illustrated in Figure 1. The second is senators’ valuation of the positiontaking opportunity presented by the flag burning vote.

We expect, first, a negative relationship between support for civil liberties and voting for the proposed the flag burning bans. Those members of Congress with the highest levels of support for civil liberties should be the most likely to oppose the ban in both statutory and amendment form. Those with the lowest level of support for civil liberties should be the most likely to support the ban on both votes. We additionally expect that senators’ who valued the position-taking opportunity in the flag burning votes more highly are also more likely to have cast votes in favor of the two flag burning proposals.

Importantly, though, we expect the strength of the observed relationships between civil liberties preferences and position-taking values and flag burning votes to vary between the statute roll call and the amendment roll call. In particular, senators’ differing expectations about the persistent policy consequences of the two flag burning bans—one they could reasonably expect would not survive judicial review and the other etched into the Constitution beyond the reach of judges—should change the threshold separating “yes” voters from “no” voters, systematically altering the relationships between policy preferences and position-taking needs, respectively, and votes for passage.12

Additionally, the association between civil liberties preferences and flag burning ban votes should be weaker for the statute than for the amendment. In other words, if we follow the continuum of senators arrayed from those who most strongly disapprove of the flag burning ban to its strongest supporters, we should encounter the statute cutpoint first—among stronger civil libertarians. The tippingpoint on the amendment vote should appear later along the preference continuum, among senators less deeply opposed to a flag burning ban on its policy merits.

*Data and Methods*

In order to evaluate these expectations, we estimate separate logit models of individual senators’ roll call votes on each of the Flag Protection Act and the anti-flag burning amendment from October 1989 as a function of their policy preferences and valuation of the position-taking opportunity presented by the votes.13 We measure senators’ policy preferences on flag burning using American Civil Liberties Union (ACLU) scores for the 1989-1990 congressional term.14 These scores indicate senators’ general degree of support for civil liberties protections and are a reasonable indicator of their policy preferences in that latent issue space. The data are coded so that high scores represent greater civil liberties support. Second, senators’ values for position-taking are measured a with dummy variable for senators seeking reelection in 1990. Senators closest to reelection should attach greater importance to position-taking since they have less time and fewer opportunities to distance themselves from unpopular votes than their peers with most distant electoral horizons. In addition to estimating the effects of policy preferences and position-taking needs for individual senators’ votes, this approach also lets us recover point estimates for the thresholds separating “yes” voters from “no” voters on the statute and amendment roll calls. Estimating these quantities of interest allows for a direct mapping of the theoretical predictions onto the empirical observations.15

Results and Analysis

In Table 1, we report the votes of senators on the Flag Protection Act of 1989 and 1989 Flag Burning Amendment tabulated by ACLU rating quintiles. Votes for the statutory flag burning ban are effectively unanimous across the range of senators’ civil liberties preferences. However, the pattern of voting on the flag burning amendment support the notion that senators were substantially more reserved about adopting a measure limiting the scope of free speech in the absence of judicial review. Opposition to the amendment is strongly positively correlated with higher ACLU scores (0.79). This pattern is also evident in the results of the logit models of senators’ votes on the flag burning statute and amendment reported in Table 2.

The predicted effects of civil liberties preferences on the flag burning votes support the moral hazard theory of legislative voting under judicial review. We observe, first, that ACLU scores have zero predicted effect on senators’ propensity to vote in favor of the Flag Protection Act. A very popular bill with reasonable weak expected policy consequences—due to strong expectations the law would not survive judicial review—is a recipe for extensive roll call support, which we observe in the nearly unanimous vote for the statutory flag burning ban. There is some evidence that senators who were up for re-election in 1990 were more likely to vote for the bill than those with more distant electoral horizons, but this effect is not statistically significant. One way to read the results is that the theoretical threshold separating opponents and supporters of the Flag Protect Act is simply not in the observed range of the data; therefore, senators’ commitments to civil liberties and electoral circumstances cannot reasonably inform a model of where that cut-point might be.

However, by recasting the flag burning ban as a constitutional amendment and, by extension, removing the prospect it would be undone by the courts, the threshold for supporting the flag burning ban shifts into view. ACLU scores are a significant, negative predictor of voting for the 1989 flag burning amendment. Conversely, a forthcoming reelection bid is a significant, positive predictor of voting “yes” on the amendment. Based on the estimates reported in the second column of Table 2, the ACLU score threshold at which the predicted probability of voting “yes” on the flag burning amendment reaches fifty percent is approximately forty-four for senators not up for re-election in 1990 and about fifty-nine for senators with re-election looming. These results precisely correspond with our theoretical expectations.

[Table omitted]

To clarify the differences in predicted Senate voting patterns for the Flag Protection Act and the 1989 flag burning amendment, Figure 2 illustrates the predicted probability of voting yes on each of these two roll calls. The left panel shows predictions for senators who are up for re-election in 1990, and the right panel shows predictions for senators with more distant re-election bids. The solid bars show the ninetyfive percent confidence interval around statute vote predictions, and the dashed bars show the confidence interval around predicted amendment votes.

As we explain above, the statistical model predicts senators will vote “yes” on the statutory flag burning ban across the observed range of civil liberties commitments. This holds for senators in both electoral profiles. Neither ACLU scores nor the proximity of the next election separates senators in the propensity to cast a vote fore the Flag Protection Act. The combination of high position-taking gains and low expected policy consequences due to judicial review induces near unanimity in the Senate roll call. The policy-based cut-point separating the bill’s opponents from its supporters is not observable in these data.

Absent the judicial backstop, senators’ voting behavior changed significantly on the question of amending the Constitution to carve out a flag burning exception to free speech protections. Both ACLU scores and electoral proximity are significant predictors of flag burning amendment votes. Moreover, the threshold separating “yes” voters from “no” voters on the flag burning issue have shifted from some observably strong level of civil liberties commitments on the statute to relatively moderate levels of civil liberties support among sitting senators for the amendment. We additionally observe different threshold values for senators in different electoral circumstances. Those facing more proximate reelection more readily gave “yes” votes to the flag burning amendment than their colleagues with more distant re-election bids. All of these results follow directly from the moral hazard theory of legislative voting under judicial review.

[Figure omitted]

Conclusions

Scholars proceeding from multiple analytical perspectives in political science and law have long-recognized that judicial review feeds back into legislative decision-making in ways that lead members of Congress to discount the negative policy consequences of the bills they consider. Legislators operate over a judicial safety-net that—probabilistically—catches and corrects laws with damaging consequences. This creates a kind of moral hazard for Congress and other similarly situated legislatures, inducing it to pass riskier legislation than it would have in the absence of judicial review, among other kinds of political buck-passing to courts (e.g. Thayer, 1893). Careful theoretical and historical analysis provide a strong logical foundation and aggregate-level evidence of this aspect of legislative-judicial relations in the American separation of powers system (e.g. Graber, 1993; Rogers, 2001; Whittington, 2005; see also Rogers & Ura, 2020).

Intrinsic

Fiat = Instant

AT: Bipart I/L

#### Bipart is impossible. Empirics AND election year prove.

Orion D. Smith 12-30, Contributor, The Spokesman-Review, "Congress Heads Into 2026 With Unfinished Business. Here's a Look at What's Ahead," Chronline, 12/30/2025, https://www.chronline.com/stories/congress-heads-into-2026-with-unfinished-business-heres-a-look-at-whats-ahead,393585.

The high cost of health care isn't the only issue facing Congress this year. Regulating artificial intelligence, updating immigration laws that haven't been overhauled since 1986, protecting kids' safety online and restricting how companies can collect and use Americans' personal data are exactly the kind of challenge that demands action by federal lawmakers, not just state legislatures.

But Congress has failed to act on those issues and many more for years, and that doesn't appear likely to change in 2026. One reason is that both parties already have an eye on November's midterm elections, when control of the House — and maybe even the Senate — could change hands.

Polling and historical precedent suggest Democrats have a good chance to win the House majority, so they're less likely to compromise with Republicans on major legislative issues when they have a potentially stronger negotiating position in sight. Republicans, meanwhile, see this year as potentially their last chance for the foreseeable future to pass partisan legislation while they control the House, Senate and White House.

Thumper

#### Thumpers. Laundry list.

Andrew Desiderio 1/13, senior congressional reporter; et al., 13 January 2026, “What’s on tap ahead of the Senate recess,” *Punchbowl News*, https://punchbowl.news/article/senate/senate-on-tap/.

The Senate is racing to pass a three-bill funding package and finish processing the Venezuela war powers resolution ahead of a scheduled recess.

But it’s going to take a lot of cooperation from both sides and deft maneuvering by Senate Majority Leader John Thune, who will likely need to allow a number of amendment votes in order to speed up final passage of the FY2026 funding measure.

“We’re going to stay here until we get it done,” Thune told us Monday.

A bipartisan group of senators is heading to Denmark on Thursday evening amid President Donald Trump’s threats toward Greenland. Other CODELs are planned, too.

War powers. After five Republicans joined Democrats in voting to advance a war powers resolution for Venezuela last week, there was some concern that completing the floor process would complicate Thune’s bid to pass the minibus funding bill before the recess.

But Democrats signaled on Monday that they’re willing to move more quickly to final passage.

Sen. Tim Kaine (D-Va.), who’s leading the war powers resolution, said Democrats may not offer any amendments as part of a limited vote-a-rama that comes before final passage of any war powers measure. Thune said he expects this to happen on Wednesday.

Kaine said he’s spoken with all five Republicans — who drew Trump’s wrath last week — and didn’t expect any defections on final passage. Sen. Susan Collins (R-Maine), for example, said her position was unchanged after Trump fumed at her over the phone.

But Sen. Josh Hawley (R-Mo.) said he got calls from Trump and Secretary of State Marco Rubio, who tried to sway his vote. Hawley wouldn’t say if he plans on switching his position, but sounded more amenable to some of the administration’s arguments.

Funding. Thune will likely need to hold votes on a number of amendments to the minibus — which includes the Energy and Water, Commerce-Justice-Science and Interior bills — in order to secure a time agreement to pass it by Thursday.

An amendment from Sen. Martin Heinrich (D-N.M.) could be problematic. Heinrich wants to strike a previously-passed provision that allows senators to sue for $500,000 if their phone records are surveilled.

There’s broad bipartisan support for scrapping that provision, but passing Heinrich’s amendment would mean the funding package needs to be sent back to the House. GOP leaders want to avoid this.

Collins, who chairs the Senate Appropriations Committee, said she supports repealing that provision but also doesn’t want to trigger a House re-vote.

Meanwhile, the fatal shooting of Renee Good by an ICE agent in Minneapolis is making it much harder for appropriators to agree on a Department of Homeland Security spending bill. Sen. Chris Murphy (Conn.), the top Democratic appropriator for DHS, said Democrats should demand that any money DHS spends will be spent lawfully.

#### Unsustainable megacities cause eco-terrorism.

Ashok **Vaseashta &** Surik **Khudaverdyan 13**. Vaseashta is an Independent Researcher with expertise in Materials Engineering, Combat Engineering, Electronic Engineering. Khudaverdyan is Associate Professor @ State Engineering University of Armenia, Yerevan, Armenia. 07/30/2013. Advanced Sensors for Safety and Security. Springer. \*\*\*OCR by ABBYY

Water is fundamental to sustaining life. Despite its essential nature, drinking water distribution systems are vulnerable to intentional and/or inadvertent introduction of contamination. Such contaminants can be known traditional and non-traditional agcnts/compounds/chcmicals. The current threat environment requires detection of complex contaminant signatures in addition to recycled pharmaceuticals present in water supplies. Л growth in human population and associated increased demands on water poses a significant challenge in maintaining adequate, yet acceptable water quality tor various sectors. Emergence of mega-cities and regions has caused severe water-stress levels accompanied by global water shortage. The problem is becoming more widespread with population growth, drought, and industrial expansion. There are increasing concerns about the availability of usable water, and many communities and industries alike are faced with dramatic reductions in fresh water supplies and deteriorating water quality from contaminated wells, aquifers, runoffs, and sources of ground water supplies. Global water scarcities increase the urgency for the preservation of fresh water resources and increased water reclamation efforts, viz. management of global water resources is critical to creating sustainable water supplies for residential, agricultural, commercial, energy conservation, and improved quality of life. It is critical to observe the association between the basic need for clean drinking water and water resources, and national security concerns and policy, generally referred to as eco-terrorism - defined by the Federal Bureau of Investigation (FBI) as “the use or threatened use of violence of a criminal nature against people or property by an environmentally oriented, subnational group for environmental-political reasons, or aimed at an audience beyond the target, often of a symbolic nature”. Ecological sabotage (ecotage) is often seen as indistinguishable from ecoterrorism. In the context of challenges, ecological terrorism and ecotage are used as intentional contamination of the environment to cause harm to the population, infrastructure, and/or denial-of-service.

#### Extinction.

Emile **Torres &** Martin **Rees 17**. Torres is a biologist and science communicator based in New York City, Rees is a British cosmologist and astrophysicist. 09/12/2017. Morality, Foresight, and Human Flourishing: An Introduction to Existential Risks. Pitchstone Publishing (US&CA).

Both these excerpts specifically single out weaponized biology: designer bugs that could wipe out the human species. But as the emerging technologies of subsection 4.2.2 reach fruition, ecoterrorists may find non-biotech weapons even more attractive. For example, self-replicating nanobots that target Homo sapiens wouldn’t be subject to genetic mutations and thus could potentially offer a more reliable way of satisfying the “species-specific” condition. A vial of nanobots released in a few major urban centers could initiate a nearly unstoppable human extinction event that, at least in theory, would minimally disrupt natural ecosystems. Ecoterrorists could also try to discharge a deadly horde of AI drones in multiple megacities around the globe in an attempt to [destroy] ~~cripple~~ modern society. This is an issue that we will return to at the end of subsection 6.3.3.

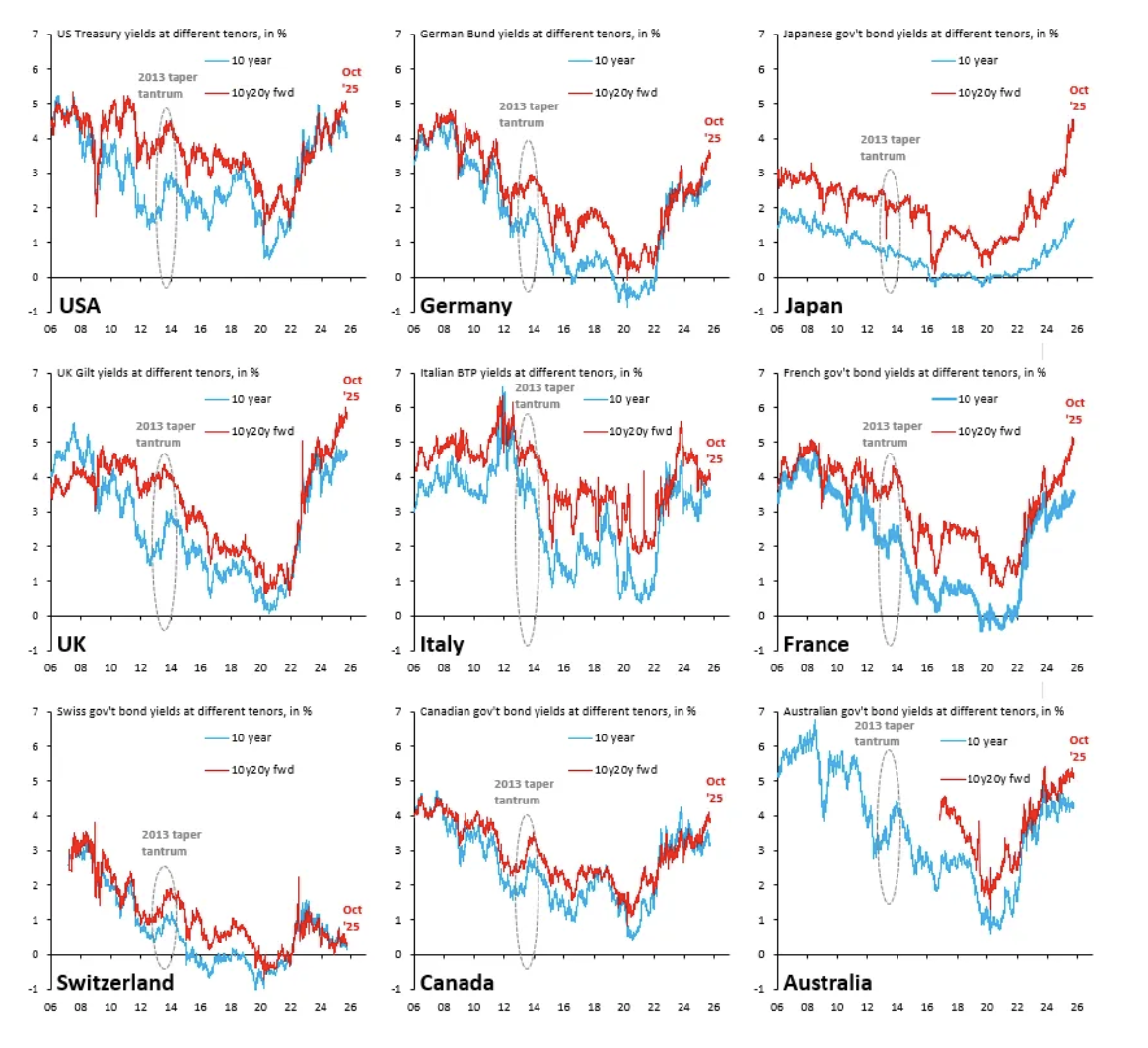
### Debt DA---2AC

#### Bond instability inevitable.

Robin J. Brooks 25, Senior Fellow at the Brookings Institution, 7 October 2025, “The Global Debt Crisis,” https://robinjbrooks.substack.com/p/the-global-debt-crisis.

The global debt crisis that’s unfolding has three ingredients. First, global debt levels are at very high levels, the result of massive COVID fiscal stimulus. Second, budget deficits all over the place remain exceptionally wide, which means markets have to absorb a lot of net new debt issuance all the time. Third, there’s idiosyncratic trouble spots that periodically blow up, causing contagion to the rest of the world.

Yesterday was a very bad day in global bond markets and it was all about the last point. Japan’s likely new prime minister has a reputation as a fiscal dove, causing long-term Japanese yields to spike in remarkable fashion. And the French prime minister resigned after less than a month on the job, a symptom of the fiscal impasse France is facing. French long-term yields also spiked. The global debt crisis that’s unfolding will proceed in fits and starts. Yesterday is took another big step forward.



I last showed this panel of charts in a post I wrote almost a month ago. Each chart shows the 10-year government bond yield in blue and the 10y20y forward yield in red. The latter is what markets price for the 10-year yield 20 years from now, which I back out from 20- and 30-year government bond yields. Longer-term yields have risen in dramatic fashion everywhere, which means markets are demanding higher and higher risk premia to hold long-term debt. This spike in yields is the flip side to the dramatic - and worrying - rise in gold prices that’s been playing out this year. It’s clear markets are in a desperate search for safety from debt monetization and currency debasement.

Japan’s 10y20y yield yesterday jumped to 4.52 percent, up from 4.26 percent on Friday. That’s a massive move for longer-term yields, which was accompanied by a sharp fall in the Yen. Rising yields with a falling currency are tell-tale signs of mounting fiscal stress. For perspective, Japan’s simple 10-year yield was 1.69 percent yesterday. The risk premium for Japan’s longer-term trajectory is scary.

France’s 10y20y forward yield yesterday jumped to 5.03 percent, up from 4.96 percent on Friday. Its simple 10-year yield is 3.57 percent. A massive risk premium is building, the result of a deeply divided electorate and a President who’s trying to hang on to keep the extreme right out of power.

The global debt crisis will unfold in fits and starts. It will advance when idiosyncratic trouble spots blow up, causing contagion to vulnerable bond markets elsewhere. This is what happened yesterday and there will be - inevitably - more days like this ahead.

#### Unions lack unilateral power, substitution solves, AND data proves. That’s Garden.

<<FOR REFERENCE>>

As described above, if accommodations are to be made available to employers with religious objections to bargaining, the accommodations should be structured to eliminate or at least minimize burdens on third parties. One straightforward way of minimizing these burdens is to require employers to substitute something else that is of the same value to the employees, yet does not implicate the employer's religious beliefs. When the employer's religious objection to labor law is the risk that a union will seek an objectionable employment term during bargaining, this substitution can easily occur within the confines of the bargaining relationship itself. That is, the employer can simply tell the union what proposed terms it opposes on religious grounds - say, contraceptive coverage for its employees - and offer a substitute - say, increased compensation. If the union concludes that the two terms are not of equal value, it can propose a different substitute. To be sure, this raises the risk that unions might hold employers hostage, knowing that the value to the employer of remaining true to its religious beliefs is very high. However, this scenario is unlikely - unions cannot unilaterally impose contract terms, and their negotiating leverage comes mainly from the threat of strikes, during [\*159] which employees stand to be permanently replaced by their employers. 268 This strategy is risky, to say the least, and therefore unlikely to create a major obstacle to employers and unions reaching an agreement.

On the other hand, some employers may seek a complete exemption from the obligation to bargain collectively with their employees. One significant burden associated with such an exemption is the employees' lost chance to win improved pay and working conditions. This is not the only burden - employees would also lose the opportunity to exercise voice and self-determination at work - but it is the most tangible and, correspondingly, the most likely to prompt unscrupulous employers to make insincere accommodation claims. However, this burden can be at least partially ameliorated. Good aggregate data exist on the effect of unionization on employees' pay and benefits across a range of variables. Therefore, employers seeking religious exemptions from collective bargaining should be willing to accept that the price of bargaining is paying their employees the wages and other perquisites (such as for-cause protections from termination) typically enjoyed by employees who have had an opportunity to join a union.

#### Multiple checks prevent abuse.

Rachel S. Casper 23, JD, Greenfield Fellow, Bredhoff & Kaiser, PLLC, "Hospitals, God, and the NLRB," Northeastern University Law Review, Vol. 15, pg. 507, 2023, Nexis Uni. [italics in original]

That employers are never required to accept a bargaining proposal from a union and can "unilaterally implement its [own] final [\*554] offer,"279 illustrates not only why mandatory subjects of bargaining pose no constitutional problem, but also why employers' managerial prerogatives remain safe from government intrusion. This bears repeating: a religious employer never need accept a union's bargaining proposal. A religious employer can *unilaterally* implement its own proposal. Moreover, a religiously affiliated hospital can insist on a "management rights clause which reserves exclusive power over certain carefully enumerated facets of [hospital] life that the [hospital] feels it needs to protect its religious mission."280 Consider these two facts together: (1) an employer can unilaterally implement its own final proposal, and (2) that proposal can include a management rights clause.

With these powers intact, managerial prerogatives remain firmly in employer control.

Management rights clauses are a common practice in unionized religiously affiliated hospitals today.281 So, too, is this common in parochial schools that independently recognize unions and pursue collectively bargained agreements.282 Management rights clauses "preserve the autonomy of [management] over matters central to the religious mission of the institution while still giving employees access to a formal bargaining scheme."283 The existence and success of unionized religiously affiliated hospitals and other religious institutions unionized [\*555] institutions that maintain religious managerial prerogatives "refute[s] the myths that bargaining inevitably causes spiritual and economic chaos and that enforcement of labor acts entails insoluble constitutional difficulties."284 Union representation, collective bargaining, management rights clauses, and robust protection of managerial prerogatives can all go hand in hand.

#### Conflicting precedent makes exemptions wholly uncertain…

<<FOR REFERENCE---Garden>>

This state of affairs is both normatively and doctrinally undesirable. First, it leaves a tremendous amount of uncertainty for religiously affiliated employers and their employees; the passage of thirty-five years has failed to resolve the proper application of Catholic Bishop, and Hobby Lobby adds to the mix a host of unresolved questions about RFRA. Thus, when employers arguably qualify for an exemption, unions, employers, and employees may fight a contentious battle over whether employees should vote in favor of union representation at all, only to have a cloud of uncertainty hover over their ultimate decision for the years that it can take to conclusively resolve the threshold question of NLRA applicability. 113 Even if the NLRA is ultimately deemed to apply, [\*128] employees' initial support for union representation may have eroded over time - possibly to the point of non-existence - by the time the decision is final. Conversely, where an employer is found to be exempt from the NLRA (either in general or with respect to a particular set of employees), the initial union drive and its attendant collateral damage will have been unnecessary. 114

Second, this uncertainty is compounded by the fact that some applications of Catholic Bishop are inconsistent with principles espoused by Justice Kennedy, a potential swing vote in any case concerning religious exemptions from labor law. The Court - and in particular Justice Kennedy - has expressed significant distaste for statutory schemes that dispense civil liberties protections based on corporate form. This distaste is most well known in the First Amendment context. 115 However, Justice Kennedy's Hobby Lobby concurrence expressed [\*129] much the same sentiment, criticizing the Department of Health and Human Services ("HHS") for "distinguishing between different religious believers - burdening one while accommodating the other … ." 116 That some of these believers adopted the corporate form for the purpose of making profits while others did not was irrelevant to Justice Kennedy, just as it has been in the speech context.

#### …which is creating new AND costly legal fights.

<<FOR REFERENCE---Schumann>>

These legal maneuvers distort the true meaning of religious freedom. The First Amendment was meant to shield houses of worship from state interference, not to provide religious organizations with a sword to cut down the rights of others whenever it suits their interests.

If left unchallenged, this string of rulings will create a two-tiered system of worker protections: one set of rights for people working for secular employers, and another — far weaker — set of rights for those working in religious settings.

The consequences are far-reaching. Religious organizations employ an estimated 1.2 million people nationwide. Nearly 20 percent of hospital beds in the U.S. are in religiously affiliated facilities. Catholic schools alone employ tens of thousands of teachers and staff members.

If these employers are allowed to claim broad exceptions to labor laws, millions of workers could find themselves without protections. And if secular employers are allowed to claim religious motivation and take advantage of religious exemptions, the number of workers denied civil rights protections could increase exponentially.

<<FOR REFERENCE---Casper>>

Although consensus has been strong, the shifting federal bench and Supreme Court in particular and shifting Religion Clause [\*539] jurisprudence warrants concern about the continued viability of consensus in this area.192 The institutionalization of religious freedom the expansion of the Religion Clauses to highlight religious institutions' freedom, rather than focusing on individuals' has been prominent in recent years. This institutionalization spans topics,193 but is especially prominent in the ever-expanding ministerial exception.194 Additionally, organized labor has repeatedly lost in the federal courts as the federal bench has grown increasingly anti-union.195 This combination of increasing focus on religious institutions' religious freedom and waning protection for organized labor indicates that previous consensus that the Religion Clauses do not bar NLRB jurisdiction over employees of religiously affiliated hospitals is tenuous at best.196

#### That’s compounded by the dysfunctional avoidance canon.

<<FOR REFERENCE---Garden>>

These problems have been amplified in recent decades. First, the Court's methods of engaging in constitutional avoidance have changed. 17In some recent cases, the Court has applied a clear statement rule instead of more traditional tools of statutory interpretation--that is, it adopts a statutory reading that avoids a constitutional question unless Congress responds by clearly stating its intent to the contrary. When the Court does this, it usually adopts an implausible statutory interpretation, throwing the onus onto Congress to reiterate that it meant what it said the first time around. 18 And the Court has sometimes adopted statutory interpretations in order to avoid constitutional questions that seem insubstantial under existing law. In those situations, avoidance seems unnecessary because the chances that the Court would really invalidate the statute on constitutional grounds are slim, unless the Court is prepared to undertake a major shift in constitutional law. 19Moreover, while it might be desirable for the Court and Congress to be in [\*338] ongoing dialogue over the meaning of statutes, 20that dialogue is unlikely in the face of legislative gridlock. 21

A case from labor law--*NLRB v. Catholic Bishop* 22--illustrates both the Court's call for a "clear statement" from Congress about its intent to legislate in a way that the Court believes raises a constitutional question, and the Court's reliance on avoidance in the face of a constitutional question that could seemingly be resolved easily and in Congress's favor. 23 In Catholic Bishop, the Court applied a clear statement rule, holding that if Congress intended the NLRA to cover parochial high schools, it would have to say so explicitly--notwithstanding the fact that the NLRA's definition of covered employers is already very broad. 24 The Court adopted this approach to avoid a constitutional question about religious freedom that the Court never defined very clearly, and that the Court could have resolved in the NLRB's favor anyway. 25 \*\*\*FOOTNOTE BEGINS\*\*\* Garden, *supra* note 14, at 117 ("[T]he Supreme Court soon backed off the broad approach to church autonomy that *Catholic Bishop* might have previewed."). \*\*\*FOOTNOTE ENDS\*\*\* The result was a decision that diverged from the statutory interpretation that most closely tracked the statutory text in order to avoid a low or nonexistent probability that the Court would otherwise uphold the parochial school's as-applied challenge to the NLRA. Neal Katyal and Thomas Schmidt recently condemned this approach as an exercise in hypocrisy: "Avoidance decisions profess a Brandeisian reticence about the judicial power, which . . . allows the Court to renovate the Constitution with less visibility." 26

Recognizing the weakness of the Court's insistence that constitutional avoidance reflects judicial minimalism, some scholars have devised alternative accounts. For example, some argue that avoidance protects constitutional rights by forcing Congress to be explicit if it wants to approach the outer boundaries of its legislative power. 27These accounts often focus on what their proponents [\*339] see as "underenforced" constitutional norms. For example, Scalia and Garner argue that avoidance "represents judicial policy--a judgment that statutes *ought not* to tread on questionable constitutional grounds unless they do so clearly." 28Others have proposed that courts may engage in avoidance to preserve their own legitimacy while protecting litigants' rights in highly charged cases; Philip Frickey's account of the Court's approach to protecting the rights of dissidents in certain Cold War-era cases highlights this approach. 29

These scholarly accounts recast avoidance as constitutional law-lite. They shift the focus away from the Supreme Court's claimed deference to Congress in statutory interpretation and instead emphasize the importance of fidelity to the Constitution in difficult cases. This approach makes a virtue of the fact that Congress rarely overrides the Supreme Court's avoidance decisions. 30To scholarly defenders of constitutional avoidance, congressional inaction is a sign that the Court's use of avoidance has successfully served its purpose, rather than a signal that there has been a breakdown in the "conversation" between the courts and Congress. 31

Yet neither the Court's own account of constitutional avoidance nor the reasoning of its scholarly defenders adequately grapples with the many costs of constitutional avoidance. One of these overlooked costs is that avoidance [\*340] decisions distort or inhibit the development of substantive law. 32The next Part uses labor law to demonstrate how this happens.

<<FOR REFERENCE---Garden>>

Catholic Bishop reflects a modern constitutional avoidance that is unmoored from the values of judicial minimalism and fidelity to congressional intent that initially prompted the development of the doctrine. 127 Instead, other scholars have observed that modern constitutional avoidance reflects judicial activism more than judicial minimalism; it is not at all clear that Congress would prefer to have its handiwork narrowed through judicial construction, rather than run the relatively small risk that a statute will be struck down. 128 As Judge Friendly put it, "it does not seem in any way obvious, as a matter of interpretation, that the legislature would prefer a narrow construction which does not raise constitutional doubts to a broader one which does raise them." 129 In the same vein, Philip Frickey explained that constitutional avoidance "involves judicial lawmaking, not judicial restraint; the outcomes it produces are at least sometimes inconsistent with probable current congressional preferences; and it will not always foster a deliberative congressional response." 130 And, to Justice Scalia, the aggressive form of constitutional avoidance is little more than a way [\*133] for judges to rewrite statutes in order to achieve their preferred results. 131 The price of this approach is not limited to accuracy in statutory interpretation (though that is certainly a significant cost); in a slightly different context, Frickey and William Eskridge persuasively argued that avoidance of "immediate constitutional conflict" comes at the "price of a candid ventilation of constitutional concerns … ." 132 Worse, constitutional avoidance decisions often lack "the corresponding care that ordinarily goes into constitutional decisionmaking in cases where the court forthrightly acknowledges that such decisionmaking is taking place." 133

The traditional justification for constitutional avoidance is particularly inapt in the context of as-applied challenges, like Catholic Bishop. When the Court narrows a statute in the course of a facial challenge, it is at least possible that Congress would prefer something to nothing: a narrowed statute to the risk of one that is struck down in its entirety. For example, in challenges that raise the issue of congressional authority to enact a challenged law, the adoption of a narrowing construction through constitutional avoidance may save the remainder of the statute so that it can be applied to others. 134 But when the Court avoids a constitutional question in an as-applied challenge, as in Catholic Bishop, the on-the-ground outcome is the same whether the Court actually sustains a constitutional challenge to the statute's application to the plaintiff or avoids that question. It is utterly implausible that legislators would prefer that the Court read a statute in an unnatural way when the only possible effect is to increase the chance that the as-applied challenge will succeed.

[\*134] This evaluation of modern constitutional avoidance is damning, at least in light of the judicial minimalism values that the doctrine was originally intended to serve. However, scholars have backstopped Catholic Bishop-style constitutional avoidance by arguing that it accomplishes other important goals. Most prominently, several scholars have proposed that avoidance creates a penumbra that protects under-enforced constitutional rights by imposing hurdles on legislative attempts to come right up to the edge of what is constitutionally permissible. 135 Ernest Young puts this function in terms of "resistance norms," which protect constitutional values. 136 In his view, the importance of constitutional avoidance lies in its capacity to "function much like super-majority requirements by making it harder - but not impossible - to achieve certain legislative goals that are in tension with the canon's underlying value." 137 The canon's "underlying value" essentially incorporates the Constitution by reference; thus, for example, when the Court narrowly construes a jurisdiction-stripping statute in order to avoid a constitutional question, it is resisting congressional encroachment on Article III. 138 Similarly, constitutional avoidance might protect the underlying constitutional value of non-delegation, because avoidance decisions often limit the interpretive range available to administrative agencies. 139

Offering additional justification for aggressive constitutional avoidance, Frickey argues that it provides "an intermediate alternative between statutory invalidation and validation," 140 which preserves a role for legislative override and allows the Court to move incrementally. 141 In effect, avoidance decisions lower the temperature on hot-button decisions that might otherwise call the [\*135] Court's legitimacy into question in the eyes of the public. 142 Eskridge advances a related argument that constitutional avoidance allows the Court to protect and express public values by "updating statutes by construing them to reflect society's evolving values as they relate to the Constitution." 143 \*\*\*FOOTNOTE BEGINS\*\*\* William N. Eskridge, Jr., Public Values in Statutory Interpretation, 137 U. Pa. L. Rev. 1007, 1021 (1989). However, Eskridge criticized the outcome in Catholic Bishop, characterizing it as a decision in which the "result "rewrites' the statute and negates clearly expressed legislative expectations that have not been undone by substantially changed circumstances." Id. at 1066. \*\*\*FOOTNOTE ENDS\*\*\*

These appealing benefits of modern constitutional avoidance suggest that the canon is valuable, even if it cannot be defended on the grounds of judicial minimalism and fidelity to congressional intent. However, each of these benefits is premised on the ability of Congress to override the Court's statutory reading, and potentially force the constitutional question. 144 \*\*\*FOOTNOTE BEGINS\*\*\* See Hasen, supra note 126, at 215 (discussing, but rejecting, the descriptive possibility that "the Court will use constitutional avoidance only when doing so would further a dialogue with Congress that has a realistic chance of actually avoiding constitutional problems through redrafting"). \*\*\*FOOTNOTE ENDS\*\*\* Thus, Young's "resistance norms" are explicitly premised on the idea that congressional override is "not impossible." 145 Similarly, Sunstein's concern with non-delegation makes sense only when an agency makes a decision without clear guidance; there is no reason to make it difficult for Congress to give that guidance. Quite the opposite in fact; "so long as government is permitted to act when Congress has spoken clearly, no judicial barrier is in place." 146 And for constitutional avoidance decisions to preserve Court legitimacy, they should genuinely lob the issue back to Congress, rather than simply pretending; if the inter-branch "conversation" is a sham, then it should do little to insulate the Court from criticism. 147 \*\*\*FOOTNOTE BEGINS\*\*\* See Calabresi, supra note 36, at 12 ("The inevitable errors … cannot help but raise the specter of judicial, nondemocratic domination and cast doubt on judicial review … ."); Krotoszynski, supra note 36, at 4-9, 46-52 ("Strict observance of the passive virtues is as likely to provoke interbranch strife as to prevent it."). \*\*\*FOOTNOTE ENDS\*\*\*

#### Those make exemptions unsustainable.

<<FOR REFERENCE---Carmella>>

Now that the Court has explicitly held that for-profit entities are capable of exercising religion, free exercise claims from closely-held, secular businesses owned and operated by people with religious convictions will likely surface. As for this class of claimants, an explicit autonomy argument is difficult to make; courts may more easily stay within the *Hobby Lobby* balancing framework. But *religious for-profits* - a potentially large class of entities - could make a plausible claim for the categorical protections offered by the autonomy doctrine. Religious for-profits, which provide religious goods and services or provide educational, health care and social services traditionally within the domain of nonprofits, are free-standing religious institutions rather than simply extensions of family businesses. In some instances, they function 216 in the same markets alongside religious nonprofits. These entities are made all the more possible by new corporate forms that facilitate combinations of charitable and religious mission alongside profit-making. 2 17 But despite the changes in corporate law that blur the traditional divide between nonprofits and for-profits, the religious for-profit is not capable of meeting the jurisdictional and jurisgenerative prerequisites for autonomy protection. Further, the harms to persons and groups that accompany autonomy exemptions would multiply in number and intensity if an entire class of market actors, wielding economic power over access to goods, services and jobs, were permitted to act without regard to those they employ and serve. And, finally, once the doctrine is expanded, protection will likely become diluted across the board. Churches and those religious nonprofits that warrant autonomy protection will see the doctrine eroded even in its core application. Courts must recognize that for all these reasons, the autonomy doctrine should not be extended to for-profits.

#### Only narrowing them through the RFRA solves. That’s Garden, Casper, Carmella, and Schumann.

<<FOR REFERENCE---Garden>>

Regarding RFRA accommodations in the labor and employment context, there is one area in which both employers and employees should be able to agree (at least in the abstract): the interests of all concerned are served when accommodations are as narrow as possible, particularly if they burden third parties. Of course, narrow accommodations minimize encroachments on employees' interests. But, perhaps counterintuitively, religious employers are also better off when RFRA accommodations are narrow. As discussed previously, the sincerity determination will be much easier – and much more likely to come out in an employer's favor – if a desired accommodation will not yield secular as well as religious benefits for the person invoking it. 262 Finally, the Constitution itself demands narrowness: Justice Kennedy has observed that "a religious accommodation demands careful scrutiny to ensure that it does not so burden non-adherents or discriminate against other religions as to become an establishment." 263 Thus, five Justices (Justice Kennedy plus the Hobby Lobby dissenters) may agree that RFRA accommodations are permissible only where they do not burden employees. However, the remainder of this Section proceeds from the assumption that courts may entertain religious exemption claims that impose some degree of burden on employees.

It is difficult to say exactly what a religious accommodation might look like without knowing the precise scope of the conflict between the NLRA and a given employer's religious beliefs. However, this Section offers some suggestions regarding the procedure for settling on an accommodation, as well as strategies for minimizing an accommodation's burden on third parties. It uses as examples two of the most likely conflicts between an employers' religious beliefs and the NLRA: first, the risk that a union will bargain for a specific term (such as insurance coverage for contraceptives or abortion) to which the employer would object on religious grounds; and second, the requirement to bargain in good faith with a duly certified labor union in general.

Accommodation claims are not unique to RFRA; they also arise in other statutes, such as the employment provisions of the Americans With Disabilities [\*158] Act. 264 In that context, they are generally handled through an interactive process – one in which a disabled employee and an employer exchange information about how a job's essential functions might be restructured to accommodate the employee's needs. 265 This process can be easily adapted to the NLRA/RFRA context; in fact, as a statute that has bargaining at its core, the NLRA is uniquely well suited to an interactive process. In such a process, the person seeking the accommodation – here, the employer – would need to come forward, identifying the precise nature of the conflict between their sincere religious beliefs and the NLRA. 266 Then, assuming that the employer was entitled to an accommodation, the employer and the union – or, where that fails, the NLRB itself – would engage in an interactive process to shape the accommodation. This process has two main advantages. First, it is familiar: it would not need to be constructed from the ground up. Second, it is well suited to the task: the interactive process would allow the Board to educate the employer about the NLRA's requirements (which the employer might not understand correctly, particularly if it is unrepresented), and the employer to educate the Board about the precise nature of its religious objection – both necessary precursors to arriving at an appropriate accommodation. 267

#### Unionization *decreases* debt in firms’ capital structure---only comparative study.

Dr. Kelvin J.K. Tan et al. 19, Associate Professor in Finance at The University of Queensland, PhD from The University of Queensland in Corporate Finance, also with Keegan Woods and Robert Faff, “Labor unions and corporate financial leverage: The bargaining device versus crowding-out hypotheses”, Journal of Financial Intermediation, Volume 37, January 2019, Pages 28-44, UNC Libraries

In this paper, we exploit both a theoretical tension and a quasi-natural experimental design to uncover new and meaningful insights on the empirical relation between labor union power and corporate financial leverage. Our study is motivated from the view that, despite a decline in trade unionism in the United States over recent decades, labor unions still have potentially significant effects on corporate decision-making and firm outcomes. Notably, the capital structure literature has advanced two competing views regarding the relation between the bargaining power of labor and financial leverage: (a) leverage used as a bargaining device; (b) a labor vs. leverage crowding-out effect. While plausible arguments can be mounted in either of these directions, it becomes an empirical question whether/which one of these views dominates the other in contemporary market settings.

The bargaining device view predicts a positive relation between unionization and financial leverage. Specifically, this perspective argues that financial leverage operates as a strategic tool, limiting the appropriation of rents by workers (see, e.g., Matsa (2010), Bronars and Deere (1991)). The general intuition behind these models is straight-forward. Unions and managers effectively bargain over the distribution of future cash flows. Before meeting at the bargaining table, the manager can lever up the firm and simultaneously return capital to shareholders (e.g., through a leveraged buyback or special dividend)—thereby capturing a portion of future cash flows. Further, the increase in leverage moves the firm closer to financial distress/bankruptcy, at some point reducing the quantum of rents that can be extracted by labor without risking wide-spread worker displacement. Critically, these bargaining strategies are not only appealing to currently unionised firms but (because workers can easily organize themselves into a union) are also relevant to those non-unionized firms that are facing the real threat of unionization (Bronars and Deere, 1991). Thus, the fundamental testable implication of these models is that financial leverage is increasing in union power and the threat of unionization—which we label the bargaining device hypothesis.

In contrast, the crowding-out perspective generates a negative labor-leverage prediction. The intuition begins with the premise that unions impose economically significant costs on firms. Of course, the most obvious cost is the union wage premium. In fact, the general consensus is that the union wage premium is historically about 15% in the United States (Aidt and Tzannatos, 2002). Additionally, union workers are more likely to receive costly fringe benefits such as severance pay, paid holidays, paid sick leave, and access to pension plans. Because the financial claims of labor out-rank debt-holders in the event of default, these increased costs can be viewed as cash claims on a super-senior “debt-like” contract. Accordingly, these claims “crowd-out” financial leverage, thereby reducing the firm’s debt capacity. Moreover, unions also induce a degree of operating inflexibility in that they reduce the manager’s discretion in hiring and firing decisions. This operating inflexibility is hypothesized to reduce financial leverage (see, e.g., (Kuzmina, 2013, Simintzi, Vig, and Volpin, 2015)). In combination, these forces deliver a crowding-out hypothesis predicting a substitution effect between financial leverage and unionization.

We execute a battery of tests which pit these two competing perspectives against one another, in the contemporary United States using firm-level data. Exploring this US context is particularly important because major relevant changes have occurred in both labor and capital markets which could have plausibly (and non-trivially) transformed the process driving previous empirical findings. For example, although Matsa (2010) documents a positive relation between the bargaining power of labor and financial leverage, his findings are largely based on quasi-experiments employing data drawn from a very different, and now somewhat historical, era (in the 1950s - 1970s). A complete discussion of these contextual changes is deferred to Section 1.

Our identification strategy involves two parts. Our primary approach exploits exogenous variation in both union power and the threat of unionization using Right-to-Work legislation in Oklahoma (2001) and Indiana (2012). We estimate the effects of the passage of these laws on leverage using both difference-in-differences and a matching experiment. To supplement this quasi-natural experimental design and to estimate the effect of union power on financial leverage, we develop a novel measure of union power using mandatory IRS filings. Armed with this new variable, we examine the relation between firm-level union power and financial leverage using panel regressions with high-dimensional fixed effects (1999 to 2013).

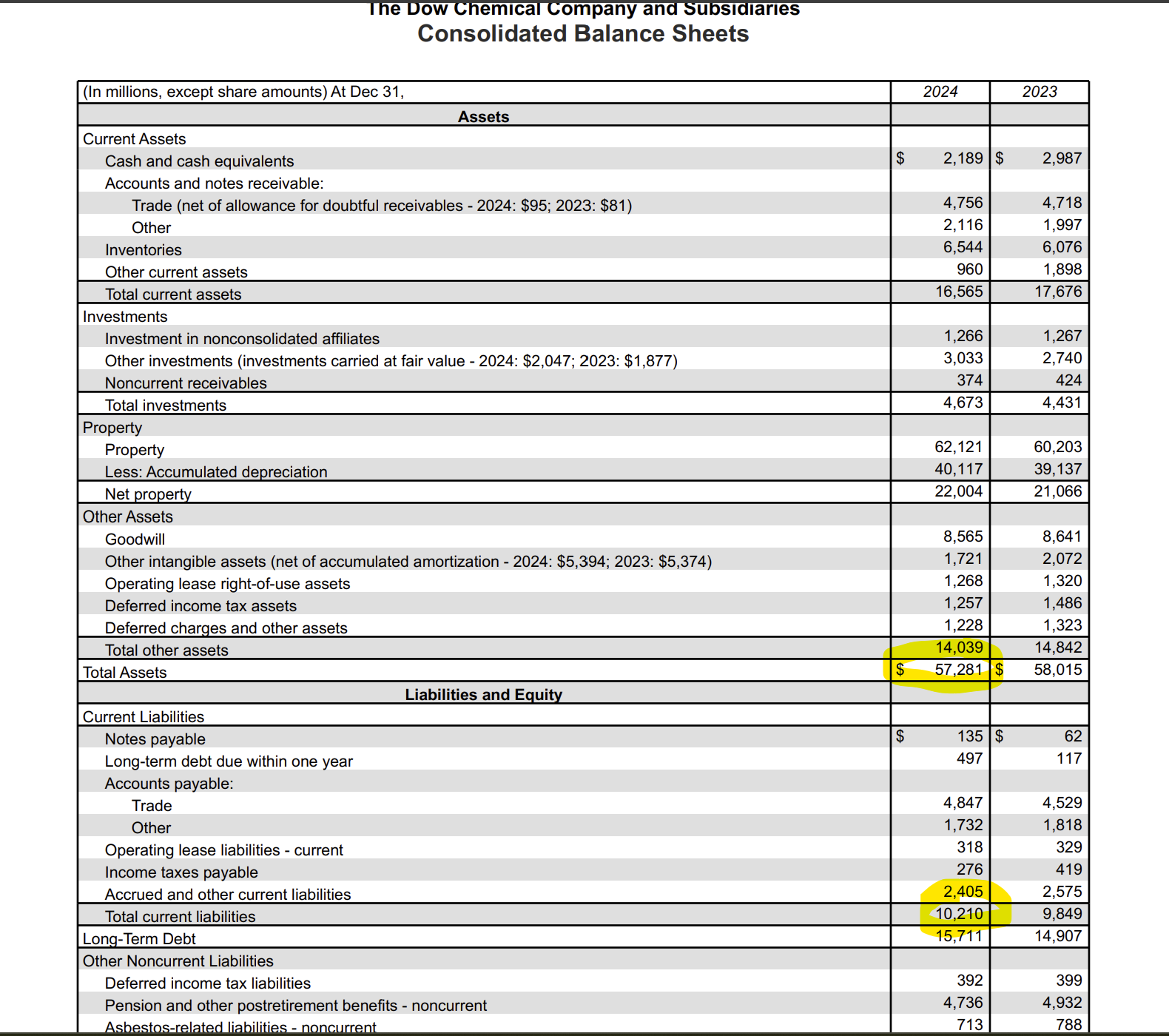
Our main findings are readily conveyed. Both our quasi-experiments as well as our panel regressions concordantly reveal a negative relation between the bargaining power of labor and financial leverage, that is, we find evidence favoring the crowding-out hypothesis. Moreover, this labor-leverage substitution effect is substantially stronger in firms which are more vulnerable to rent-seeking (i.e., firms operating in labor-intensive and traditionally union-intensive industries). We also construct a test (albeit informal) designed to challenge the view that the mechanism driving this negative relation is indeed related to excess labor costs. We are unable to falsify this mechanism.

Our paper contributes to the literature on capital structure and labor by documenting robust evidence of a negative relation between the bargaining power of labor and financial leverage in the contemporary United States. We argue that our findings reflect the fact that (for reasons fully explained in the paper) the “rules of the game” have changed and, accordingly, that the bargaining device channel is no longer dominant. More broadly, we contribute to the growing literature on the effects of labor on corporate financial decisions. Furthermore, we overcome the challenge of finding a readily available and conceptually sound firm-level proxy for the bargaining power of labor using information derived from annual mandatory IRS filings. This novel measure brings significant advantages over extant measures.

### AT: Chemicals

#### Uniqueness overwhelms---Dow is the biggest American chemical company and their debt to assets ratio is tiny. Do you really think they’re gonna take out *40 billion in debt* after the AFF? Insert this screenshot from their 10-K.

Dow 24, “2024 ANNUAL REPORT”, https://s23.q4cdn.com/981382065/files/doc\_financials/2024/ar/Dow\_2024\_Annual\_Report\_Web.pdf



#### RF solves migration crisis. That’s Thames.

<<FOR REFERENCE>>

However, a renewed commitment by the second Administration to the priorities of the first could help bring an end to these recurring instances of persecution, thereby preventing the expansion of global challenges and leading to a safer and more secure United States. In addition, President Trump’s personal diplomacy with Xi Jinping, Kim Jong Un, and Vladimir Putin provides unique opportunities to press concerns about religious persecution. The opposite is also true: the absence of presidential support will undermine other efforts, as his foreign policy reflects his personal interests to an exceptional degree. As diplomacy unfolds with each, the president and his envoys must include concerns about religious freedom in their engagements.

Some argue it is not for the United States to meddle in the internal affairs of other nations. But including human rights in U.S. foreign policy advances U.S. values and interests. The religious persecution by this league of tyrants will impact the bilateral relationship, regarding human rights and more. If governments fail to respect the fundamental freedoms of their people, why should we expect them to respect international agreements or trade pacts? It is folly to believe oppressors can be trusted. If people face violence on account of their faith, they will flee to other countries. Religious persecution is one of the key push factors leading to unprecedented levels of global migration. 10

In this complex world, the U.S. government must not shy away from advancing U.S. values centered on religious freedom and human rights. It must not fall into the trap of moral relativism because these regimes have a different worldview, or be shamed into silence about human rights concerns with bogus charges of cultural imperialism. Instead, robust human rights diplomacy should remain a distinctive feature of U.S. foreign policy. The United States has every right to bring its values into foreign affairs, as they reflect the nation’s identity and principles.

The United States is the indispensable actor in promoting religious freedom and related human rights. Its history—the good and the bad—positions it to share best practices while challenging repressive systems. Moreover, its prosperity might require nations to listen. How the United States responds to global religious persecution matters. John McCain said it well: “What matters most is that we remain confident in our principles, mindful that they are not ours alone, and that we recognize that to be on the right side of history is to support people denied their basic rights.” 11

#### Extinction.

Dr. Michael Lawrence et al. 24, PhD, Research Fellow, Polycrisis Program, Cascade Institute, Royal Roads University; Dr. Thomas Homer-Dixon, PhD, Executive Director, Cascade Institute, Royal Roads University; Dr. Scott Janzwood, PhD, Research Director, Cascade Institute, Royal Roads University; Dr. Johan Rockström, PhD, Director, Potsdam Institute for Climate Impact Research. Chief Scientist, Conservation International; Dr. Ortwin Renn, PhD, Professor, Environmental Sociology, Stuttgart University; Dr. Jonathan F. Donges, PhD, Deputy Lead, Earth Resilience Science Unit, Potsdam Institute for Climate Impact Research, "Global Polycrisis: The Causal Mechanisms of Crisis Entanglement," Global Sustainability, Vol. 7, 2024, OUP. [italics in original]

In the interest of establishing a research agenda, we have adopted a harm threshold that remains somewhat ambiguous and hence leaves room for future refinements. In the extreme, a polycrisis could reach the severity of a ‘catastrophic risk’, an event that kills 10–25% of humanity (Cotton-Barratt et al., 2016; Kemp et al., 2022) or brings about the collapse of human civilization (GCRI, 2023). It could even become an ‘existential risk’ that extinguishes humanity entirely. But a polycrisis, by our definition, does not need to reach these levels of harm; and, in contrast to accounts of individual existential and catastrophic threats (arising from, for instance, an asteroid hitting Earth), a polycrisis necessarily involves *multiple* crisis events. It could involve massive immediate casualties, but also a widespread and sustained decline in the quality of life into the future.

Based on these considerations, we define a global polycrisis as *the causal entanglement of crises in multiple global systems in ways that significantly degrade humanity’s prospects*. The causal interactions between constituent crises are significant enough to produce emergent harms that are different from, and usually greater than, the sum of the harms they would produce separately. Consequently, these crises must be addressed as a whole; they cannot be resolved individually. While our approach to polycrisis incorporates key aspects of other definitions, it is specifically intended to aid scientific research into the nature of polycrisis by emphasizing the *causal interactions* that connect *global systems* and spread crises among them. Our definition relates to other important concepts (such as systemic risk) but adds essential novelty by highlighting the causal entanglement of multiple crises – interconnections that abound but remain sparsely understood, as explained in the sections below.

3. Are we in a global polycrisis?

We argue here that the world is currently experiencing a global polycrisis and that this situation is worsening. Constituent crises include the lingering health, social, and economic effects of the Covid-19 pandemic; stagflation (a persistent combination of inflation and low growth); volatility in global food and energy markets; geopolitical conflict, especially between assertive authoritarian regimes (including China and Russia) and the democratic West, which is leading to a partial decoupling of American and Chinese economies; political instability and civil unrest in countries both rich and poor arising from economic insecurity, ideological extremism, political polarization, and declining institutional legitimacy; and increasingly frequent and devastating weather events generated by climate heating. These crises are destroying livelihoods and lives around the globe and are undoubtedly diminishing humanity’s prospects. Moreover, they are certainly interconnected, although exactly how remains unclear.

This is not humanity’s first polycrisis. We experienced at least two additional instances in the last half century, though some may argue they were not truly global. The oil shocks of the 1970s arose from conflicts in the Middle East and generated severe international energy shortages that contributed to, and interacted with, stagflation in the world economy (Progressive International, 2023). The 2008–09 global financial crisis intersected with oil supply constraints and long-term stresses in food production to produce cascading bankruptcies, food price hikes, and political unrest worldwide (Biggs et al., 2011; Homer-Dixon et al., 2015).v

While the present polycrisis features some of the same constituent crises – including energy and food shocks, stagflation, and financial instability – it is unprecedented in crucial ways (Homer-Dixon, 2023; Lähde, 2023). First, the world is far more interconnected now than it was during the OPEC oil shocks. Between 1980 and 2020, air freight increased sixfold to 180 billion-ton-kilometers per year, the number of air passengers nearly tripled to 1.8 billion annually, and internet usage increased from virtually 0 to 60% of the world’s population. Meanwhile, the total value of world merchandise trade increased twelve-fold between 1980 and 2022 to nearly 25 trillion US dollars annually (at current prices), and container port traffic has more than tripled since 2000 to almost 800 million 20-foot-equivalent-units in 2020.vi

The ‘conduits’ of this extreme connectivity – aircraft, container carriers, fiber-optic cables, and the like – now carry immense circum-planetary flows of the ‘vectors’ of matter, energy, biota, and information (Box 1). The conduits also create and sustain multi-continental markets and globalized corporations that in turn encourage increasing standardization and homogenization among system elements, from financial instruments to germ plasm for agricultural goods to computer operating systems and social media platforms. This homogenization then enables even denser interconnection, in a powerful positive feedback.

Unfortunately, complex systems that feature *both* high connectivity and high homogeneity among system elements can be especially prone to rapid, discontinuous change (Scheffer et al., 2012), much as closely planted agricultural monocrops are susceptible to devastation by pathogens. By striving to maximize efficiency and open access to markets while stripping away social and environmental safeguards, neoliberal arrangements have exacerbated both homogenization and hyper-connectivity in the global economy, generating recurrent crises and worsening stresses both in the economy (for instance, by increasing inequality) and in other systems (for instance, by damaging the ecosphere).

Even in the absence of high homogenization, gradual shifts in exogenous conditions can erode a highly connected system’s resilience until its stabilizing feedbacks are overwhelmed, and it flips to a different equilibrium (Scheffer, 2009). And systems that may be resilient on their own can become more vulnerable to such flips when they become tightly connected to other systems (Buldyrev et al., 2010; Gao et al., 2015); unexpected vulnerabilities can arise when system elements not designed to work together are inadvertently connected (Perrow, 1999).

In sum, the interlinked architecture of our global systems is at the heart of the current polycrisis, because it worsens risks as diverse as financial turmoil, pandemics, economic inequality, and ideological extremism (Centeno et al., 2015; Helbing, 2013; Rodrik, 2011). These systemic risks are ‘endemic to globalization’; they can be managed (by reforming the neoliberal economic order, for instance) but not eliminated (Goldin & Mariathasan, 2016, p. xiii).

The present polycrisis is also unprecedented in a second respect. Human resource consumption and pollution output are pushing Earth’s physical and ecological systems far from their previous equilibria, imperiling the stability of many other global systems critical to human wellbeing, from food production to international security. For instance, our emissions of greenhouse gases have created an energy imbalance at the planet’s surface (more heat coming in from space than going out) of about 1.36 Watts per square meter (Hansen et al., 2023). This extra energy – now equivalent to nearly one million Hiroshima-sized atomic bombs exploded in the atmosphere *every day* – is producing increasingly extreme storms, floods, heat waves, and droughts, affecting billions of people and worsening population displacement, social instability, and conflict (Adelphi & PIK, 2020; Ide et al., 2020; Schleussner et al., 2016).

Together, hyper-connectivity and the destabilization of ecospheric systems are amplifying and accelerating crisis events worldwide (Figure 2). For example, since HIV first appeared four decades ago, outbreaks of zoonotic viral disease have become increasingly severe and frequent, from the SARS outbreak of 2002 to H1N1 in 2009, MERS in 2012, Ebola in 2014, Zika in 2015, Ebola again in 2018, Covid-19 in 2019, and most recently mpox and Marburg (Araf et al., 2023; CFR, 2023; Smith et al., 2014). Meanwhile, climate heating is also accelerating: between 1970 and 2010, Earth’s tropospheric temperature increased about 0.18 °C per decade; between 2010 and 2040, warming is predicted to increase to 0.27 °C per decade, a rise in rate of 50% (Hansen et al., 2023, p. 21). And because this warming makes zoonotic disease outbreaks more likely, two seemingly discrete crises – pandemics and calamitous weather – are becoming increasingly entwined (Carlson et al., 2022).

[Figure omitted]

But global crises are not just amplifying and accelerating, they also appear to be *synchronizing*. ‘We’re seeing what occurs when everything happens everywhere all at once’, says International Relations theorist Stephen Walt (2022). Complex and largely unrecognized causal links among the world’s economic, social, and ecological systems seem to be causing many risks to go critical at the same time or in quick succession (Figure 3). Indeed, ‘the failure to take into account feedbacks across systems’ is a crucial emerging risk itself (Future Earth, 2020, p. 6).

While scientific knowledge of individual systemic risks like climate change and zoonotic viral disease is often deep, our grasp of causal mechanisms linking these risks and the crises they generate remains shallow (ISC et al., 2022, p. 8). For instance, the World Economic Forum’s annual *Global Risk Report* identifies apparent links among risks but does not examine amplifying feedbacks in detail. Below, therefore, we offer an analytical framework to help advance our understanding of the causal mechanisms driving the present polycrisis.

4. The causal mechanisms of crisis entanglement

‘Synchronization’ can mean several things. In physics, synchronization occurs when interactions between oscillating objects cause them to align their rhythms so that events happen at the same time or with the same periodicity (Pikovsky et al., 2007). Synchronization often homogenizes behavior by causing system elements to act in the same way, as when glow bugs flash in unison or investors all try to sell off bad stocks at the same time (Strogatz, 2003). And the term synchronization may be used more loosely to refer to events that occur in quick succession.

The apparent synchronization of global crises (in any of the above senses) raises a crucial question: what sorts of interactions and feedbacks are aligning crises in multiple global systems? These relationships remain opaque and underexplored. We therefore propose an analytical framework to guide investigation of the causal mechanisms connecting global crises.

*4.1 The basic model: crisis in a single system*

Scholars and policymakers tend to silo their analyses of, and responses to, crises; that is, they tend to see the causes and effects of a given crisis through the lens of a single system. Such parsimony can be a useful analytical starting point. Beginning, therefore, with a single system, our basic model (Figure 4) proposes that a crisis occurs when one or more slow-moving *stresses* interact with one or more fast-moving *trigger* events to push the system out of its established equilibrium and into a state of disequilibrium or instability.vii In line with our earlier definition of crisis (Section 2), this disequilibrium manifests itself as a sudden (non-linear) event or series of events that significantly harms a large number of people.

[Figure omitted]

A complex system is not static. Constantly operating internal processes (such as negative feedbacks) keep the system’s state (represented in Figure 4b as a ball) within a certain range of values (depicted as a ‘basin of attraction’ in a ‘stability landscape’). Stresses are slow-moving processes – pressures, emerging contradictions, and deepening vulnerabilities – that accumulate in the system over time and weaken its stabilizing feedbacks, reducing their ability to hold the system’s state within its established range.viii

[Figure omitted]

Metaphorically, the basin in which the system resides becomes shallower.

Stresses often operate at the global scale, and because they are slow-moving, their change over time is usually somewhat predictable. In global systems, stresses currently include growing socioeconomic inequalities, increasing resource scarcities, economic overleveraging, climate heating, and ecological degradation, among many others. By reshaping the stability landscape, these stresses shift the probabilities of future global developments and create systemic risks – that is, potential pathways across that landscape to crisis.

A trigger event is a fast-moving process that interacts with stresses to push a system state out of equilibrium. If stresses have made the system’s basin of attraction shallower, a trigger event of a given magnitude will more easily cause such disequilibrium. Trigger events are usually stochastic, unpredictable, and local or regional in scale, but they have global-systemic consequences. They include phenomena like political uprisings, price spikes in critical goods and services, major corporate bankruptcies, and the loss of keystone species in specific ecosystems.

A system enters crisis when it leaves its established basin of attraction. A crisis thus has three defining properties: the system state is unstable (i.e. out of equilibrium), the change in system state occurs relatively suddenly, and the resulting instability causes significant human harm. Pushed from equilibrium, the system is in a turbulent state that disrupts stabilizing mechanisms and generates harmful outcomes, such as loss of income or deaths and injuries from violent conflict, malnutrition, starvation, or disease.

A crisis ends when the system returns to equilibrium – by either re-entering its original basin of attraction or moving to a new one. If the system state returns to its original basin and that basin remains shallow, a crisis will likely erupt again. If the system state settles into a new basin of attraction, it has completed a critical transition; it has flipped from one set of system behaviors to another with its own stabilizing internal processes.

Ideally, a crisis ends with the system entering a basin that reinforces normatively beneficial system behaviors and which is sufficiently deep (i.e. stable) to prevent another crisis. But the system could also enter a harmful and undesirable – but still highly stable – basin, perhaps one with widespread economic deprivation and political repression. In these circumstances, it is the system’s newfound stability in a pernicious state, rather than its crisis instability, that creates significant harm.ix For example, systems such as slavery and imperialism caused immense suffering over long historical periods – not as crises, but due to their lamentable stability and resilience.

[Figure omitted]

The global financial crisis of 2008–9 illustrates our basic model. It arose from the conjunction of several slow-process stresses, including growing worldwide trade in opaque financial instruments securitized by overvalued housing markets, and tightening balance-sheet interdependencies among major financial institutions stemming from cross-ownership of these instruments. The collapse of Lehman Brothers was the trigger event that started a cascade of defaults. The crisis ended when central banks rescued major commercial banks from default, slashed interest rates, and injected unprecedented amounts of liquidity into national economies. The global economic system settled into a new disinflationary equilibrium of weak demand, low growth, and exceptionally low interest rates that lasted until the Covid-19 pandemic.

Through this entire period and up to the present, the global economy has continued to experience additional powerful stresses – including rising economic inequality within most nations and worsening global heating – that have progressively weakened its social and ecological foundations and contributed to a long-term fall in the secular rate of global economic growth (Homer-Dixon, 2020, p. 204). These (and other – see e.g. Roubini, 2022) changes amount to a steady shallowing of global capitalism’s basin of attraction that is boosting the risk of future systemic crises.

No conceptual schema can fully capture the intricate causal, spatial, and temporal features of specific global crises. But our basic single-system model should help researchers distinguish between the three core elements of stress, trigger, and crisis and then map interactions among these elements. Figure 5 shows possible types of within-system interaction.

*4.2 Crisis interaction between multiple systems*

A global polycrisis, however, is characterized by relationships between systems. In Figure 6, we show how the elements of our basic model (stresses, triggers, and crises) can interact among multiple systems.

The possible inter-systemic interactions shown in Figure 6 draw upon – and echo – advances in ecological research. Just as other scholars and policy makers tend to address crises in single systems, ecologists have largely studied critical transitions in isolated ecosystems. But recent, leading-edge work in ecology identifies causal relationships *between* such transitions in *multiple* ecosystems (Keys et al., 2019; Klose et al., 2021; Rocha et al., 2018).

Rocha et al. (2018) compare the thirty ecosystem critical transitions mapped in the Regime Shifts Databasex and identify three broad types of causal relationships between them:xi

* *Common stresses*: A common stress may weaken the resilience of multiple systems, or the stresses affecting one system may interact with stresses in another, as depicted in Figure 6a.
* *Domino effects*: A crisis in one system may affect the stresses in another system, cause a triggering event that pushes another system into crisis, or reshape a crisis in another system, as depicted in Figures 6e and 6f. Domino effects operate in temporal sequence.
* *Inter-systemic feedbacks*: Stresses, trigger events, and other events generated by a crisis can form feedback loops that either dampen or, more commonly, escalate crises in two or more systems. Feedback effects can be depicted by combinations of the processes shown in Figure 6, as illustrated in Figure 7.

We propose additional possibilities: ‘common triggers’ by which the same event can activate crises in multiple systems (Figure 6b), as well as possible causal interactions between stresses in different system (Figure 6c) and stresses in one system that generate trigger events in another system (Figure 6d). All six forms of interaction depicted in Figure 6 can be thought of as ideal types; together they provide a ‘grammar’ of causal interactions between systems that can be used to develop hypotheses in polycrisis research. The remainder of this section provides further applications and examples.

*4.3 Common stresses and systemic synchronization*

Many global systems are currently undergoing radical change; this simultaneity of change is probably not coincidental. It suggests common stresses are causing the synchronization of underlying system behavior (Figure 6a), which may account (at least in part) for the acceleration, amplification, and apparent synchronization of today’s global crises.

* The Earth environmental system is leaving its Holocene equilibrium and entering a period of instability due to anthropogenic perturbation of the climate and other physical and ecological systems (Armstrong McKay et al., 2022; Barnosky et al., 2012; Rockström et al., 2021; Steffen et al., 2018). This instability is already causing enormous human harm, and its effects could become catastrophic in the near future (Kemp et al., 2022; Xu et al., 2020).
* The global human energy system has begun to shift away from its dependence on fossil fuels. Whether this shift will culminate in a new zero-carbon energy equilibrium is uncertain: technological bottlenecks and incumbent opposition may block its progress. The shift’s economic benefits are also uncertain: it could ultimately force humanity to decrease its energy consumption per capita (Hall, 2018; Smil, 2022).
* The international security system is changing from a world order based on American leadership (a ‘pax Americana’) toward an uncertain and likely less-stable multipolar order defined by the rise of China and the diffusion of power to a much wider range of actors (Gilpin, 2002; Ikenberry, 2014; Nye, 2011). Historically, such transitions have been accompanied more often than not by major war (Allison, 2017; Gilpin, 1988).
* The global economic system is shifting from a neoliberal economic regime – one undermining itself through worsening instability, inequality, and ecospheric externalities – to a yet indeterminate regime, but one likely involving increased dirigisme and economic integration within ideological blocs (Birdsall & Fukuyama, 2011; Monbiot, 2016; Rodrik, 2011; Rodrik, 2019).
* The information system is being revolutionized by artificial intelligence, with unclear but likely unprecedented implications for employment, decision making, and personal, national, and global security.

The simultaneity of radical change across these systems likely arises, in significant part, from their interdependence, as we argued in section 3 above. Stresses affecting one system can create (or constitute) stresses in others (Figures 6a and 6c). Stresses in the global energy system, for example, include the declining thermodynamic quality of remaining fossil fuel deposits, a trend that increases the energy cost (and therefore carbon emissions) of extraction. Fossil fuel emissions then create stresses in the Earth system, such as climate heating and ecosystem disruption. But possibilities for substituting other, zero-carbon energy sources remain limited (Hall, 2018). Most alternatives, for instance, have relatively low power density, which makes them ill-suited as primary energy sources for today’s high power-density-ofconsumption urban regions and manufacturing facilities (Smil, 2016). Fossil fuels also still provide energy for nearly all longdistance transportation and remain essential to steel, cement, plastic, and fertilizer production (Smil, 2022, pp. 76–102). Stresses in the global energy system thus create stresses in global food, transportation, and economic systems.

Additionally, stresses in one global system can stimulate or constrain reorganization in others. For example, the Earth system’s post-Holocene transformation is influencing change in the global energy system and thereby the global economic system. Hegemonic competition in the international security system could reduce governmental collaboration to reorganize the global energy system so as to reduce, in turn, that system’s impacts on the Earth system.

A framework called *adaptive cycle theory* suggests that a number of global systems may be on the cusp of catastrophic reorganization. Global energy, food, and financial systems have become increasingly complex, and their sub-components increasingly specialized and connected, as firms have competed to maximize productivity and efficiency. These changes have made these systems more rigid and less resilient in some respects. Systems exhibiting such characteristics, adaptive cycle theory argues, are susceptible to breakdown and reorganization (Gunderson & Holling, 2002; Holling, 2001). When multiple systems align at this phase of the cycle – as several global systems appear to be doing now – breakdown in one may trigger breakdowns in others.

*4.4 Domino effects between global systems*

Such a cascade of breakdowns across systems would be an example of domino effects. The domino metaphor implies a linear chain of cause and effect, in which one crisis causes another, and so on. The interactions between global crises are, of course, not so simple. Stresses and triggers can interact across systems (Figures 6c and 6d); a crisis in one system may affect the stresses and/or the trigger events that push another system into crisis (Figure 6e); and the events generated by one crisis may influence the behavior of another system in crisis (Figure 6f). These types of interactions combine across multiple systems to form multicausal networks, in contrast to simple causal chains.

[Figure omitted]

Figure 8 illustrates domino effects by mapping a causal network of stresses, triggers, and crises among several global systems – specifically, the health, environmental, economic, transportation, international security, and social order and governance systems – from the past through the present to possible (and somewhat speculative) outcomes in the future. The left-to-right temporal logic of such maps helpfully traces the course of events, but it cannot capture the recursive feedback loops that powerfully drive synchronization. Those feedbacks are illustrated instead by the causal loop diagrams in Figure 9.

*4.5 Inter-systemic feedback loops*

Domino effects are one-way causal relationships. But system behaviors can sometimes influence their own causes, creating feedback loops. Negative (i.e. dampening) feedbacks tend to stabilize systems by counteracting change, such as when markets correct for overvalued assets. Positive (i.e. self-amplifying) feedbacks involve two or more variables that intensify one another in spirals of run-away growth or decay, such as arms races or stock market crashes.

[Figure omitted]

We argue that feedbacks arise from combinations of the interactions depicted in Figure 6 and produce the crisis synchronization manifested in a polycrisis. Although one crisis may on occasion dampen another – as when, for example, a stock market crash produces a communication system outage that slows herd behavior – the real danger arises when interactions among two crises’ causes and effects create a positive feedback in which each crisis keeps worsening the other. Positive feedbacks can quickly overwhelm institutional safeguards and controls. And they can create an acute policymaking dilemma in which one crisis cannot be resolved without remediating a second one – but the second cannot be resolved without remediating the first.

Figure 9 illustrates several harmful positive feedbacks that appear to be forming today within and between the global systems identified in Figure 1. Compared to Figure 8, which shows how stresses, triggers, and crises can cascade unidirectionally over time, Figure 9 illustrates the back-and-forth (or cyclical) interactions between crises, triggers, and stresses.

In Figure 9a, economic turmoil arising, for instance, from inflation, financial crisis, and debt – or perhaps due to scarcities of key resources such as energy, food, water, and raw materials – creates mass grievances and institutional opportunities for populist leaders to capture political power and weaken the rule of law. These leaders’ actions to establish authoritarian regimes simultaneously draw on and amplify nationalist, chauvinistic, and anti-globalization ideologies, often by scapegoating foreigners, cosmopolitan elites, and internal minorities. Although their efforts to decouple the national economy from the world economy generally worsen internal economic turmoil, this turmoil, paradoxically, often exacerbates the grievances and opportunities the leaders can exploit to consolidate their power (by blaming ‘foreign elements’ or ‘internal enemies’ for the economic crisis). In the last decade, this feedback has operated in such diverse countries as Venezuela, Nicaragua, Russia, Turkey, Zimbabwe, Myanmar, and Sri Lanka.

In Figure 9b, we show that populist authoritarian regimes espousing nationalist and anti-globalization ideologies generally decrease their participation in international institutions, reduce their international cooperation, and focus their attention and resources inward. They thus diminish opportunities for mutually beneficial economic exchange and forego the benefits of globalization, which can worsen both internal and global economic turmoil.

In Figure 9c, we indicate that, in the decades ahead, less international cooperation will perhaps fatally weaken international action to slow climate change. More frequent and severe extreme weather events will then trigger flows of migrants toward richer countries (Lustgarten, 2020; Xu et al., 2020), an influx that is likely to increase support for chauvinistic and isolationist ideologies in receiving societies. The resulting exacerbation of economic turmoil could ultimately propel out-migration from these countries.

Finally, Figure 9d shows that the chauvinistic reaction to mass migration is likely to precipitate violence against those seeking refuge and those deemed too sympathetic toward outsiders. Meanwhile, extreme weather events could worsen intercommunal tensions, trigger state collapse and civil war, and increase the probability of international conflicts over scarce resources, including water and food. Civil violence and interstate war tend to deepen nationalism while generating new waves of refugees and exacerbating economic turmoil. These pernicious feedbacks are certainly not inevitable; but if they were to take hold they would escalate all of the problems depicted in Figure 9 in a catastrophic spiral.

### Coercion CP---2AC

#### 4. Preemption.

Jesse Merriam 17, Assistant Professor, Political Science, Loyola University Maryland, 2017, “Preemption as a Consistency Doctrine,” *William & Mary Bill of Rights Journal*, vol. 25, pp. 1022, https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1815&context=wmborj.

Just as preemption doctrine makes the federal government the institutionally superior sovereign whose norms prevail over contrary norms issued by inferior sovereigns (the states), the Court’s pre–Employment Division, Department of Human Resources of Oregon v. Smith208 interpretation of the Free Exercise Clause,209 and its post-Smith interpretation of the Religious Freedom Restoration Act (RFRA)210 make a person’s religious beliefs the institutionally superior sovereign in the event of an inconsistency between those beliefs and a law.211 More specifically, to trigger strict scrutiny under the pre-Smith Free Exercise Clause, and now under RFRA, the religious individual bringing the suit must show that her religious beliefs were “substantially burden[ed]” by the law being challenged.212 This standard is a consistency doctrine because it means that, for strict scrutiny to apply, the individual must show a certain type of inconsistency between her beliefs and the law. The “substantial burden” test thus raises the question, analogous to the one raised in preemption cases, of what it means for two things to contradict each other, such that the norm issued by the superior sovereign (the religious belief) displaces the norm issued by the inferior sovereign (the government).

#### State law is preempted by ERISA.

Sylvia Law & Barry Ensminger 86, JD, Professor of Law, New York University; JD, University of Pennsylvania, "Negotiating Physicians' Fees: Individual Patients or Society?" New York University Law Review, Vol. 61, No. 1, 1986, pg. 80-81

The second major way in which ERISA may disable states from regulating the cost and accessibility of health services is by prohibiting state efforts to regulate relationships between health insurers and health care providers. A state might, for example, require Blude Shield, or health insurers generally, to offer policies that include mandatory assignment protection for acute care services. Or a state, through insurance regulation, might limit the amounts Blue Shield pays to participating physicians, or adjust the amounts it pays for various types of service. ERISA allows states to regulate "insurance", but it is not clear what is encompassed in that term. In Massachusetts, the Medical Society claimed that ERISA preempted the state law limiting Blue Shield payments to participating doctors. It argued that ERISA's authorization of state laws which regulate insurance is limited to practices which are the "business of insurance" under the McCarran-Ferguson Act, as interpreted in Royal Drug. Royal Drug's definition of the "business of insurance" excludes relationships between insurers and providers of service. 382 If this definition of insurance is extended to ERISA, a state would have no power to regulate relationships between health insurers and health care providers.

Dicta in the Supreme Court's 1985 ERISA decision in Metropolitan Life supports the argument that the "insurance" that ERISA allows states to regulate is the same "business of insurance" which McCarran-Fergusonassigns to state control. 383 As we have suggested, the Court's constricted reading of the "business of insurance" in Royal Drug made little sense in the McCarran-Ferguson context. 384 The history of ERISA provides no basis for the claim that Royal Drug's odd concept of insurance is to govern ERISA's preemption of state power. Nonetheless, in this judicially constructed Alice in Wonderland world, any state seeking to regulate insurers' arrangements with physicians or other providers must be prepared to litigate claims of ERISA preemption.

ERISA's preemption of state regulation of employment-related health benefits poses a fundamental clash in values. At base, it is a clash between those who believe that health enefits are best shaped and allocated by employers and unions in collective bargaining, immune from any regulatory intervention on behalf of nonunionized workers and others in the community, 385 and those who believe that states should have greater freedom to choose when public action is needed to protect larger social interest in the cost and accessibility of medical care. This fundamental value conflict has not been articulated in the congressional debate, nor can it be found in the Supreme Court's decisions interpreting ERISA. The political forces supporting broad preemption -- in the words of one author "big business" and "big labor" 386 -- are sufficiently powerful that Congress has acceded to their desire to be free from state regulation, without probing. The political voices of those harmed by broad federal preemption -- those who are medically and economically vulnerable and the states that confront their concrete needs -- are, by comparison, diffuse and weak.

#### 6. Collective bargaining is key to avoid entanglement that burdens religion.

Donald C. Carroll 19, President, Law Offices of Carroll & Scully, Adjunct Professor of Law, University of San Francisco, 2019, “A Groundless Clash of Freedoms: The Religious Freedom of the Religiously Affiliated University and the Freedom of Faculty to Organize under the NLRA,” *University of San Francisco Law Review*, vol. 53, no. 1, pp. 35-36, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3133360.

It is useful to observe here that there are state labor board cases which do support the proposition that NLRB jurisdiction is more than viable without any real entanglement or burden on religion. The Second Circuit, post- Catholic Bishop, has upheld the constitutionality of state labor boards bargaining for purely secular terms and conditions in even church operated high schools where every teacher is directly involved in the transmission of religious values to students just as in Catholic Bishop.2 03 In this case the court's majority found that the N.Y. State Labor Board had had jurisdiction for years and had never encountered a religious question or had to inquire into religious beliefs.204 The role of the N.Y. Board with respect to collective bargaining is not intrusive; it is, indeed, identical to the role of the NLRB with the result that the duty to bargain "does not involve excessive administrative entanglement between church and state." 205 Unlike the state aid cases which require on-going state supervision to perceive whether state monies are used only for secular classroom purposes, 206 [BEGIN FOOTNOTE 206] See Lemon v. Kurtzman, 403 U.S. 602, 627 (1971); see generally Meek v. Pittenger, 421 U.S. 349 (1975) (holding certain state aid programs unconstitutional because the schools benefitting were predominately religious and supervision of personnel would be too excessive); see also Wolman v. Walter, 433 U.S. 229, 231 (1977) (holding that state field trip funding was impermissible direct aid to sectarian education, as neither the individual teacher's religious neutrality or the secular use of funds could be guaranteed without the type of close supervision that would create excessive entanglement). [END FOOTNOTE 206] the Second Circuit said the Board's "supervision over the collective bargaining process is neither comprehensive nor continuing."20 7 The historical reason for the existence of so few legal issues was probably because of the language the parties negotiated which recognized the need, after Catholic Bishop at least, to carve out and preserve the right of management to preserve its religious character.208 Similarly, NewJersey's state labor board can compel church operated elementary schools to recognize a union as representative of lay teachers and to engage in collective bargaining. 209

#### Offering incentives to religious organizations undermines religious freedom.

Mark Storslee 19, Executive Director, Stanford Constitutional Law Center, 2019, “Religious Accommodation, the Establishment Clause, and Third-Party Harm,” *University of Chicago Law Review*, vol. 86, pp. 877-878, https://lawreview.uchicago.edu/sites/default/files/Storslee\_ART\_Post-SA%20%28JJ%29.pdf.

Second, the Establishment Clause prohibits accommodations that provide exceptionally powerful incentives to adopt the religion being accommodated.29 Under this rule, when an accommodation operates in ways analogous to a coercive law mandating religious conformity, the Establishment Clause requires that it be struck down or, more likely, modified to dissipate the incentive. So, for example, when a religious accommodation involves both objectively powerful incentives and widely held claims of conscience—as with exemptions from military service, for instance—there are heightened Establishment Clause concerns over induced conformity that will sometimes require removing or reducing the incentive.

#### Their author says the CP only solves when unions are already strong. Advantage one disproves solvency.

Benjamin I. Sachs 11, Assistant Professor of Law, Harvard Law School, March 2011, “Despite Preemption: Making Labor Law in Cities and States,” *Harvard Law Review*, vol. 124, no. 5 pp. 1174, https://harvardlawreview.org/print/vol-124/despite-preemption-making-labor-law-in-cities-and-states/.

The examples of tripartite lawmaking presented in this Part are intended to serve four broad purposes. First, they reveal the existence of tripartism and describe its contours. Second, the examples suggest that the phenomenon of tripartite lawmaking may well be widespread. Although the opacity of these deals means it is impossible to determine exactly how prevalent they have become, tripartite labor lawmaking can flourish in any jurisdiction in which the government possesses regulatory authority over employers and in which unions enjoy significant local political power. These conditions, while not universal, are far from rare. Third, and irrespective of tripartism’s current scope, by revealing the existence of and possibility for tripartite lawmaking, the examples clarify the way that preemption operates in practice and thereby allow for a new and more complete assessment of the preemption regime. And fourth, the examples enable us to identify extensions to other areas of law.

#### Deviation from expected procedure galvanizes uncertainty AND triggers a wave of litigation.

Ira Lupu & Robert Tuttle 21, Elwood and Eleanor Davis Professor Emeritus of Law, George Washington University Law School; David R. and Sherry Kirschner Berz Research Professor of Law and Religion, George Washington Law School, "The Radical Uncertainty of Free Exercise Principles: A Comment on Fulton v. City of Philadelphia," American Constitution Society, 2021, https://www.acslaw.org/analysis/acs-journal/2020-2021-acs-supreme-court-review/the-radical-uncertainty-of-free-exercise-principles-a-comment-on-fulton-v-city-of-philadelphia/

We know from extensive experience during the regime of Sherbert-Yoder that courts will not stay on this path, even if they pretend to do so. In the 1980s, faced with a doctrine that made it nearly impossible for the government to deny an exemption, the Court found multiple ways to work around the promise of presumptive immunity for religious claims. By 1990, the Court had worked around the Sherbert-Yoder standard far more often than it had applied that standard with the promised rigor.[114] The methods included weakening the doctrine in government-controlled enclaves such as prisons[115] and the military;[116] refining the concept of burdens to exclude difficult cases, such as those brought by Native Americans with respect to sacred lands,[117] and weakening the compelling interest test to make it easier to satisfy.[118] Lower courts did likewise.[119] All of these moves produced significant departures from rule-of-law values of consistency and predictability in application of the law. Why should we expect anything different now?

Fourth, Justice Alito’s broad conception of free exercise, coupled with his assertion of a strict judicial standard to govern such claims, reveals the deep flaws in his structural argument about the constitutional treatment of speech, press, and association compared to religion. With respect to coverage, rights of speech, press, and association all relate to human activities of communication. This is a broad subject indeed, but it is miniscule when compared with the entire universe of human behavior, all of which may be touched by religious conviction.

When a news organization, for example, enters into employment relationships, or constructs a building in which to create its product, no one asserts that the First Amendment imposes strict standards on the government’s regulation of such activity. With respect to such matters, if government regulates news organizations to the same extent as other, comparable entities—that is, if the regulations are speech-neutral and generally applicable—the First Amendment has no work to do. By contrast, those who want to overturn Smith in free-exercise cases assert that the incidental impacts of any regulation of religiously motivated actors must be justified under strict, government-limiting standards. If free exercise meant worship activities and not the entirety of religiously motivated acts, the structural gap between religion and other First Amendment-protected activity would shrink dramatically.

Furthermore, with respect to standards of review, no justice or scholar has ever contended that a single, highly potent review standard should govern every possible dispute arising from regulation of communicative activity. When government regulates the content of communication, it must answer to the highest constitutional concerns.[120] In contrast, when government regulates the time, place, and manner of expression, the relevant standards are more relaxed.[121] When the regulation takes the form of control of expressive conduct, and the government has an interest in the conduct independent of the message it sends, the standards are quite lenient indeed.[122] Most generally, free speech principles do not protect speech against “incidental burdens” from generally applicable, speech-neutral laws.[123]

These latter categories—regulation of conduct generally, speech-neutrally, and independent of the message it sends—is a precise analogue for generally applicable standards that apply to all behavior of a certain kind, religiously motivated or not. When Justice Alito and others call for strict scrutiny in such cases, they are demanding special treatment for religion, not treatment equal to that afforded other constitutional rights.[124]

Many of the concerns expressed in Justice Barrett’s brief concurring opinion can be instructively linked to one or more of the problems that emerge from Justice Alito’s overbroad conception of what the Constitution means by the exercise of religion. Her opinion asks why the Free Exercise Clause, alone among First Amendment rights, should be limited to concerns about discrimination. The answer is that the clause is not so limited. It protects the activities of worship and preaching the Word as strenuously as it protects political advocacy, but it does not protect everything done in the name of religion.

Justice Barrett is “skeptical about swapping Smith’s categorical antidiscrimination approach for an equally categorical strict scrutiny regime, particularly when this Court’s resolution of conflicts between generally applicable laws and other First Amendment rights—like speech and assembly—has been much more nuanced.”[125] This skepticism is appropriate, but far too weak, because Justice Alito’s conception of the exercise of religion is so much broader than any judicial conception of what counts as the exercise of these other rights.[126]

Justice Barrett goes on to raise a series of concerns, at least some of which arise entirely from unasked and unanswered questions about the breadth of free exercise rights. For instance, she asks whether “entities like Catholic Social Services—which is an arm of the Catholic Church—[should] be treated differently than individuals?”[127] A better understanding of the constitutional meaning of the exercise of religion would lead to a related, but different question—whether Catholic Social Services is exercising religion in the constitutional sense when it provides social services to the general public. Of course, CSS is motivated by religion, and understands itself in religious terms, but that cannot transform all of its daily activities into the kind of religious exercise protected by the First Amendment.[128]

Justice Barrett’s final question about review standards is especially pointed: “[I]f the answer is strict scrutiny, would pre-Smith cases rejecting free exercise challenges to garden-variety laws come out the same way?”[129] This question is telling, in two respects. First, she is acknowledging—as Justice Alito, CSS, and its amici do not—the pervasive pattern of work-arounds in pre-Smith law. Second, her reference to “garden variety laws” shows an acknowledgment of the scope of exemptions encompassed by Justice Alito’s broad notion of free exercise. They would include generally applicable tax laws, labor laws, social welfare policy, land use control, and other areas of regulation not aimed at the experience of worship.

Justice Alito’s opinion invited these questions, and Justices Barrett, Kavanaugh, and Breyer deserve praise for raising them. The opinion of Justice Barrett, who is a former clerk for Justice Scalia, builds on the legacy of his opinion in Smith. As a result, and despite the few lonely voices speaking up in defense of Smith, its principles endure. The lower courts remain bound by it. The Supreme Court has neither the incentive nor sufficient interest among the current justices to take it up again quickly.[130] Without a workable alternative, the Smith framework for adjudication of free exercise cases will remain in place. And if religious exercise is understood in Justice Alito’s broad terms, there is no workable alternative.

D. The Scope of “General Applicability”

The one major inroad into the regime of Smith is the apparent narrowing of what counts as a generally applicable law. Two major developments point in this direction: (1) the Court’s treatment, in its emergency docket, of orders limiting attendance at houses of worship during the COVID-19 pandemic; and (2) the Court’s analysis in Fulton of the role of administrative discretion in undermining the general applicability of the law. Taken to their logical ends, these developments suggest that the category of generally applicable laws will shrink to the vanishing point, and Smith will become irrelevant.[131] The experience of courts with the pre-Smith law, however, suggests a different fate.

The COVID cases and the significance of secular exceptions. As recently as the summer of 2020, the Court’s most prominently expressed view about the concept of general applicability remained its opinion in Church of the Lukumi Babalu Aye, Inc. v. Hialeah.[132] Failures of general applicability were to be found only in invidious and hostile departures from even-handed treatment of all religions and their secular counterparts. Such departures demonstrate deliberate discrimination against religion generally, or (as in Lukumi) a particular religion.

When the first COVID cases arising from state limitations on attendance at houses of worship appeared at the Court in July of 2020, a narrow majority led by Chief Justice Roberts adhered to the Lukumi approach. In South Bay United Pentecostal Church v. Newsom,[133] the Court refused to issue an emergency stay of court orders imposing a limit on attendance, on the ground that the state had treated houses of worship the same as the appropriate comparators. As Chief Justice Roberts explained, the right comparators included “lectures, concerts, movie showings, spectator sports and theatrical performances, where large groups of people gather in close proximity for extended periods of time.”[134] And, as Chief Justice Roberts continued, “the Order exempts or treats more leniently only dissimilar activities, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.”[135] The notions of similarity and dissimilarity were driven, quite appropriately, by the state’s expert assessment of public health risks.

By November of 2020, however, Justice Ginsburg had passed away and had been replaced by Justice Barrett. The 5‒4 majority that had controlled the outcome in the summer of 2020 became a 5‒4 majority in support of a far more aggressive attitude toward rejecting findings of general applicability. In Roman Catholic Diocese of Brooklyn v. Cuomo,[136] and later in Tandon v. Newsom,[137] the new majority asserted that religious gatherings had a presumptive right to be treated as well as the state treated the most favored secular gatherings, such as retail establishments and factories. The state’s justifications for the different treatment, grounded in expert opinion on the risk of spreading COVID-19, vanished in this approach.

This new formulation of what constituted a failure of general applicability threatened the Smith regime. If any secular exception, however well-grounded in considerations of policy or legislative decisions about coverage of a law, undermines general applicability, religious claimants would be able to successfully seek exemptions from a wide variety of laws of many different kinds.[138]

It is far too soon to know whether this “most favored nation” approach to general applicability will take firm hold across the entire range of religious exemption claims, but we see reasons to be skeptical of that likelihood. First, and true to our conviction that restrictions on worship are at the core of the free exercise guaranty, the COVID-19 cases all involve limitations on group worship, and therefore implicate the most acute constitutional concern.[139] Second, as a matter of process, the COVID-19 cases all arose in the Court’s emergency docket, and so were not subject to full briefing and oral argument. This may help explain why none of the justices who joined in the Court’s opinion in Fulton, including Justices Kavanaugh and Barrett, even mentions the COVID decisions in Fulton.

More substantively, note that where strict review of religious exemption claims is triggered by the presence of a secular exception, the government will inevitably lose. The very presence of any exception demonstrates that the government interest in denying a religious exception falls short of compelling.[140] Perhaps the majority in Fulton, determined to avoid overruling Smith, chose not to advance a theory of general applicability that would make Smith mostly irrelevant, and simultaneously tilt the constitutional scales heavily toward every religious claimant.

Fulton and the relevance of administrative discretion. If we have correctly sized up the silence in Fulton with respect to the “most favored nation” approach to general applicability, what is to be made of the Fulton Court’s reliance on administrative discretion as the factor that undermines general applicability in this case? As we discussed in Part I, the discretion on which the Court relies in Fulton had never been exercised in the context of permitting social welfare agencies to refuse to screen particular classes of prospective foster parents. Such agencies, for example, could not screen only parents whose faith matched the agency’s faith commitments, although such preferences are not uncommon.[141]

The analogy on which the Court relies in Fulton is to the unemployment compensation context. In Sherbert v. Verner, the state agency was engaged in making decisions about whether a claimant had “good cause” to refuse available work. As the Court in Smith viewed that context, it lent itself to individualized governmental assessment of the reasons for the relevant conduct. . . . [A] distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant’s unemployment. . . . [O]ur decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of “religious hardship” without compelling reason.[142]

The system in Fulton looked nothing like the system described in Sherbert. Philadelphia had no process in place for evaluating the reasons why private contracting agencies might want exceptions from non-discrimination requirements. The city had created no such exceptions as a matter of substance. The contractual reference to the “Commissioner’s discretion” appeared to be a piece of administrative boilerplate, not a product of a policy judgment about the possibilities of “good cause” to ignore anti-discrimination rules that govern the screening of prospective parents.

As we argued in Part I, Fulton’s treatment of this grant of discretion was a convenience, a way to allow the Court to rule in favor of CSS without addressing the question of whether Smith should be overruled. But this move, if not cabined, threatens to do as much harm as that overruling might do. In the world of administrative agencies—especially at the state and local level—the use of waivers, enforcement discretion, and other ways of creating exceptions to policy is commonplace.[143] Indeed, if enforcement discretion alone undermines general applicability, the entirety of the criminal law will no longer qualify as generally applicable.[144]

In addition, large bodies of law administered by judges, rather than agencies, similarly incorporate devices for the exercise of discretion as a way of mitigating harsh, unjust, or constitutionally troubling results. Such discretion may operate to reinforce general legal principles of fairness, or to protect important interests, some secular and others religious. For example, judges may choose to construe statutes in ways that avoid conflicts with religion,[145] and they may similarly choose to apply general doctrines of equity to avoid hardships produced by religious beliefs, especially in matters involving care and custody of children.

At times, and quite appropriately, administrative and judicial discretion may be exercised in favor of claims of religious accommodation. Accepting an absence from school or work on grounds of religious obligation, for example, may be fair and appropriate. Constitutional norms do not preclude such recognition when they are not designed to advance particular faiths and when they cause no significant harm to others.[146]

But treating every grant of discretion, whether or not exercised, as fatal to a claim of general applicability turns the possibility of permissive religious accommodation into a surprise mandate of accommodation. In Fulton, the Court treated the grant of discretion to the commissioner as the beginning and end of the case in favor of CSS. The mere existence of discretion supposedly made the norm of non-discrimination not generally applicable, and simultaneously defeated any argument from the city that it had a compelling interest in denying the sought-after religious exemption. This was a way for the Court to put Fulton behind it, but its circularity is obvious, and should not be a general and frequent basis for free exercise adjudication going forward.

Fulton is a signal to lower court judges and litigants that the regime of Smith, in general terms, survived challenge and remains intact. If judges see it in that light, they will be loath to make Smith disappear through the device of finding most laws and regulations not generally applicable. To be sure, free exercise claimants will aggressively push these theories. Judges will occasionally find cases that seem sympathetic on the side of free exercise claimants, and search for ways to make use of such devices in order to rule in favor of religion. We expect that many of these cases will involve clashes between conservative religious groups or individuals, and those who assert rights of LGBTQ equality, a context in which both Masterpiece Cakeshop and Fulton unfortunately have created licenses to lean towards religious claims.

But judges will also see many religious claims that they do not find sympathetic, as well as cases in which the risk of materially undermining important government interests will loom large. These cases will appear in the context of criminal law, tort law, child welfare law, marriage and divorce law, labor and employment law, and administrative regulation of almost every kind. This is the state of affairs against which Justice Scalia warned in Smith, a warning to which Justices Barrett, Kavanaugh, and Breyer appeared sensitive in Fulton.

Lower courts, and the Supreme Court itself, repeatedly worked around this threat in the years between Yoder and Smith. This time around, we expect that lower courts will find ways to resist the move toward shrinking the category of generally applicable laws, because the alternative will be to allow religious claimants to be, again and again, a law unto themselves. We recognize the instability of the current moment in free exercise jurisprudence, but we remain confident that wiser heads, whether or not more plentiful, will continue to prevail.

#### It must be a durable mandate. Else, say no AND maximal circumvention. That’s Casper.

<<FOR REFERENCE>>

Although consensus has been strong, the shifting federal bench and Supreme Court in particular and shifting Religion Clause [\*539] jurisprudence warrants concern about the continued viability of consensus in this area.192 The institutionalization of religious freedom the expansion of the Religion Clauses to highlight religious institutions' freedom, rather than focusing on individuals' has been prominent in recent years. This institutionalization spans topics,193 but is especially prominent in the ever-expanding ministerial exception.194 Additionally, organized labor has repeatedly lost in the federal courts as the federal bench has grown increasingly anti-union.195 This combination of increasing focus on religious institutions' religious freedom and waning protection for organized labor indicates that previous consensus that the Religion Clauses do not bar NLRB jurisdiction over employees of religiously affiliated hospitals is tenuous at best.196

#### AND…

Dr. Lael Weinberger 25, PhD, JD, Assistant Professor, Law, George Mason University. Nonresident Fellow, Constitutional Law Center, Stanford Law School, "The Origins of Church Autonomy: Religious Liberty After Disestablishment," SSRN, 02/04/2025, pg. 1-51. [italics in original]

For most of the twentieth century, the church-state issues that got the most attention tended to be about religion in the public square (prayer in public schools, for example14) or individual religious exercise (exemption from compulsory education laws,15 for example). This was easy to fit into the mold of individualistic rights protection, the standard paradigm for interpreting the Bill of Rights generally.16 The leading cases protecting religious liberty from the heyday of the twentieth century “rights revolution” were focused on individuals.17 Their focus on the individual is evident in the tendency to equate religious liberty with the protection of conscience, with connotations of being personal, subjective, and interior (perhaps non-rational).18 Cases about the institutional aspects of religious liberty stayed in the background.19 But religious institutions are no longer a backwater of religion-clause jurisprudence. They have come to take “center stage.”20 Yet scholars have offered radically different analyses of church autonomy’s historical provenance. Some date it back a thousand years.21 Others insist that it didn’t even exist as of the mid-nineteenth century.22

A. The Contested Rise of Religious Institutions

Religious institutions are at the center of the Supreme Court’s recent religious liberty cases. In the last decade-plus, many of the Supreme Court’s most important decisions about law and religion featured religious institutions asserting their rights. 23 Most of them involved churches as litigants.24 The two most directly about religious institutions as institutions were specifically framed in terms of the autonomy of the religious institution to run its own internal affairs. In *HosannaTabor*,25 the Court held that churches have a zone of autonomy protected by both the Free Exercise and Establishment clauses of the First Amendment. This ensures their right to manage their internal affairs free from state interference. In that case, the Court held that the Constitution requires a “ministerial exception” from the employment nondiscrimination requirements in Title VII. In *Our Lady of Guadalupe School*,26 the Court reiterated its support for the ministerial exception it had articulated in *Hosanna Tabor* and described the test for its coverage even more expansively.

The ministerial exception is a particular application of a constitutional principle of “church autonomy” or “religious autonomy.”27 Church autonomy doctrine is unique in relying on both the establishment *and* free exercise clauses of the First Amendment.28 “[C]hurch autonomy doctrine prohibits civil court review of internal church disputes involving matters of faith, doctrine, church governance, and polity.”29 It comes up when courts encounter lawsuits challenging some aspect of church governance. For example: a church member engages in conduct violating the ethical rules of a church, is rebuked by church leaders, and then the member sues the church leadership for defamation because the rebuke was disclosed to the congregation.30 Applying the church autonomy doctrine, the courts generally refuse to hold churches liable for decisions that are based on religiously-required church governance decisions.31 The Supreme Court cited the Free Exercise Clause as a basis for the church autonomy principle in a 1952 decision, *Kedroff v. Saint Nicholas Cathedral of Russian Orthodox Church of North America*.32 An Establishment Clause rationale for church autonomy first appeared in a Supreme Court decision in 1979.33 \*\*\*FOOTNOTE BEGINS\*\*\* See NLRB v. Catholic Bishop, 440 U.S. 490 (1979). For an argument that Free Exercise is the better basis for the doctrine, see Laycock, *Towards a General Theory*, *supra* note 27. \*\*\*FOOTNOTE ENDS\*\*\*

#### Rural development solves the impact of nuclear war.

Matthew **Farish 03**. Department of Geography, University of British Columbia. 04/2003. “Disaster and Decentralization: American Cities and the Cold War.” Cultural Geographies, vol. 10, no. 2, pp. 125–148.

Dispersal and decentralization One problem with America’s largest cities, William Borden pointed out in There will be no time (1946), was that they were ‘concentrated spatially’.71 As the Cold War deepened, many scientists and political commentators began to suggest that American urban populations were excessive: atomic disasters would simply affect too many people, and too many industrial sites. The most effective and comprehensive solution to this problem – but also the most contentious and expensive – was a massive programme of urban dispersal and decentralization, an argument that was anathema to most planners as recently as the war years.72 Though some aggressive theorists salivated at the prospect of an America speckled by evenly distributed towns of equal population, most agreed that the costs of such a utopia, ironically, would be too damaging to an American war machine dedicated to matching the Soviet Union stride for stride. However, various forms of ‘limited dispersion’ did gain significant currency, particularly with respect to the creation of new urban landscapes, and such principles as remote location of bomb production, placement of war contracts in small cities, creation of new, widely spaced satellite towns, increased highway construction and control of inner-city rebuilding were all frequently proposed.73 As a result, older, dense and ‘geographically bound’ cities, potentially impossible to disperse, were considered particularly vulnerable. For this reason and others, American scientists, strategists and other speculators turned New York and Washington into far more popular targets for projected nuclear attacks than less dense cities like Los Angeles and Houston.74 The most powerful early source spurring calls for urban decentralization was the United States Strategic Bombing Survey’s report on the effects of atomic bombs on Hiroshima and Nagasaki. As The American city reported with alarm in August 1946, the two Japanese cities were chosen as targets precisely because of their concentration of activities and population, not to mention Hiroshima’s particularly level and open topography, which allowed the effects of the blast to ‘spread out’. As a result, the survey cautioned, given ‘the similar peril of American cities . . . the value of decentralization is obvious’.75 In the United States, a nation with a higher urban to non-urban ratio than Cold War rivals like China and the Soviet Union, a city was, as Bernard Brodie put it, ‘a made-to-order target, and the degree of urbanization of a country furnishes a rough index of its relative vulnerability to the atomic bomb’. Like many writers familiar with the costs of national armament programmes, Brodie strongly questioned the feasibility of the most drastic urban dispersal plans, including ‘linear’ or ‘cellular’ cities, suggesting that such schemes would interfere with ‘natural’ growth of organic urban units. However, while his assertion that the military benefits of massive, forced dispersal would not be commensurate with the costs was undoubtedly accurate, he did conclude that a limited programme of industrial and infrastructural decentralization (or ‘compartmentalization’), as well as a general encouragement of suburbanization, would be significantly advantageous.76 It was these more ‘realistic’ questions that were central to the concerns of all but the most fanatical of the dispersal advocates. The argument that dispersal should remain secondary to international control of atomic energy – a popular position taken by Louis Wirth and others immediately after the Second World War – faded, along with hopes for global governance, as geopolitical hostilities increased.77 The same August 1946 issue of The American city also featured an article titled ‘Planning cities for the atomic age’, essentially a summary of the views of noted decentralization advocate (and planner) Tracy Augur, who had been shaken by the damage visited from the air on dense European cities during the war. In this piece, as well as other contributions to such varied periodicals as the Appraisal journal, the Journal of the American Institute of Planners and, most notably, the Bulletin of the atomic scientists, Augur consistently laid out the case for the dispersal of cities as a defensive measure against a potential atomic attack. His argument was a relatively simple one: space was the best military defence against the bomb, and congested, poorly organized and centralized cities were inviting targets. Like many similar advocates of decentralization, Augur was aware of the tremendous financial and social costs his plans seemed to entail, but he deflected these by stressing that the appropriate planning of inevitable new construction would not incur any additional expenses. If plotted scientifically, new towns of 30 000–50 000 residents would not simply girdle an existing urban area but stand as ‘semi-independent communities’ – clusters, inspired by the British garden city model, that were separated from one another by belts of open or agricultural land.78 As a result, Augur’s hypermodern suggestion that older, nineteenthcentury patterns of urban life and design were made unsuitable and obsolete by technologies such as the radio, the telephone and the automobile was fused with a premodern small-town idealism. This nostalgia was premised, as another proponent of decentralization argued, on the assertion that residents of ‘small and medium-sized communities lead a much more natural and normal life than those in large cities’.79 Interestingly, the ideal post-nuclear community in many science fiction novels and films was either a small town or another type of contained, purposeful settlement, such as a college or monastery.80 As Dean MacCannell has argued, these scenarios shared with those produced by nuclear strategists a belief in survivability. Both genres routinely argued that a sufficient number of people would live through a nuclear disaster and rapidly reconstruct American society; in most cases, these would be people ‘who are closely in touch with the unique spirit of America, and the values of the system of “free enterprise” ’. Not one strategist or government planner, MacCannell points out, ‘has envisaged a post-attack rebuilding by people who never much benefited from American society, or quite understood what America was all about, that is, by people who lived at a disadvantage on the margins of society’.81

#### Rural nurses are key to wildfire resilience. Rural communities are uniquely vulnerable.

Dr. Judith C. Kulig et al. 14, PhD, Professor, Health Sciences, University of Lethbridge; Dr. Dana Edge, PhD, Associate Professor, Nursing, Queen's University; Stephanie Smolenski, University of Lethbridge, "Wildfire Disasters: Implications for Rural Nurses," Australasian Emergency Nursing Journal, Vol. 17, No. 3, pg. 126-134, August 2014, ScienceDirect.

Rural communities vary in size and available infrastructure; when faced with wildfires, rural locales are at greater risk for devastating outcomes as their capacity to cope with the needs of their citizens can quickly overwhelm them. Physical distance from outside help, including additional firefighters, agencies and volunteers, can result in considerable time delays. In addition, long-term sustainability plans for the community may be stretched and jeopardised. Our findings, specifically from rural communities that have experienced wildfires, have implications for health care providers, specifically rural nurses.

The authors’ research compliments the directives of the United Nations Office of Disaster Risk Reduction,49 an agency charged with coordination of disaster risk reduction activities and linkages. In the UNISDR report, the agency maintains that “disasters can be substantially reduced if people are well informed and motivated towards a culture of disaster prevention and resilience, which in turn requires the collection, compilation and dissemination of relevant knowledge and information on hazards, vulnerabilities and capacities.”48 (p. 9) By enhancing and building resilience in communities, rural nurses can contribute to reducing disaster risk.

Rural nursing implications

The ICN Disaster Nursing Competencies were created in order to help clarify nurses’ roles in disasters across the globe. Countries can adopt the competencies, or use them as templates to create a customised plan for their area.18 The WHO and ICN also recommend that in-services and continuing education about disasters should be mandatory for working nurses and advocate for additional involvement in policy making by nurses in order to help prepare a community for a disaster using valuable nursing knowledge. Bringing expertise to rural hospitals to assess and prepare for disasters may be facilitated by the use of technology.50 Rural nurses are key to developing rural-appropriate policies given their unique knowledge and role in the community; typically, rural nurses are well-connected to their communities, familiar with a variety of people and agencies, and are well respected and trusted by the community at large.51

To mitigate communication issues and to ensure that a disaster plan truly addresses rural needs, nurses need to be involved in disaster planning discussions. A practical example is in the development of a community list of people, resources and agencies; identification of the most appropriate individuals and agencies to access in disaster preparation, response and recovery is a crucial first step. A rural evacuation plan that is well planned, communicated and implemented will address unique aspects of a community, such as ascertaining the means to transport seniors or determining the logistics of moving livestock. Evacuation notices must mirror rural lifestyle and reality; while social media is frequently used in disasters, planners need to be cognizant that rural areas may have limited or insufficient cell phone towers or Internet connections to benefit from this communication style. Securing local maps and developing a list of local residents who can be relied on to assist with evacuation are crucial tasks that provide back up if electronic communication fails. Rural communities can develop and adopt communication alternatives to use in power blackouts, such as blowing “horns” or “whistles” to signify an emergency situation. To be effective, the plans should be regularly updated, practiced, and communicated.

Vulnerable populations, including the elderly, disabled, the very young, and those with learning and communication impairments or chronic diseases, require special attention in the response and recovery of a disaster.18, 21, 52, 53 Nurses routinely care for at-risk populations and have the knowledge to advocate for their needs. For some vulnerable individuals, evacuation occurs from institutions such as hospitals, group homes or long term care facilities. Rural nurses need to be part of the planning process to evacuate these buildings or even the entire community. For instance, alternatives for evacuation may need to be developed, as was the case in the McClure fire.

During the initial phase of return to the community after a wildfire, the community has other kinds of needs for which rural nurses can take an active role. Rural nurses can be involved in developing a strategy for determining the kinds of donations that are needed by the community and communicating that information to external agencies, including government agencies and not-for-profit organisations. It would also be important to work with the media to ensure a consistent message is broadcast about the need for specific items.

Rural nurses also have a role to play in working with volunteers who are involved in the disaster response. In communities that lose housing and businesses, volunteers and non-profit organisations from outside the community are often called upon to assist with the rebuilding or to provide social support in the form of counselling. Rural nurses are familiar with community residents and can help to ascertain the appropriateness of those individuals who volunteer or simply show up to be involved in the disaster response.

There are other important ways that rural nurses can be engaged in disaster recovery efforts in their communities that go beyond the planning process and include short and long term assistance during the evacuation and throughout the recovery phase. This may include long-term mental health issues among those who are displaced.21 Vulnerable populations require special attention during disaster situations and nurses are in a prime position to assist them through all the phases, including collaboration between community resources to make the best use of available supplies and personnel.18 Although counselling may be available for those who are struggling, rural residents may feel uncomfortable with attending counselling sessions post-disaster because of perceived stigma. Rural nurses, in conjunction with counsellors, may be able to devise additional means to attend to the mental health needs of community members. Community nights, similar to the family nights held in Slave Lake that provided an opportunity for residents to mingle, is an example of an activity that could be implemented.

Although progress has been made,54 disaster nursing has yet to become an integral part of undergraduate nursing programmes; today's nurses and nursing students are not adequately prepared to respond to a disaster,55, 56 nor in understanding climate change.57, 58 One way to improve knowledge and skills for undergraduate students is through clinical placements with rural nurses; through mentorship, as well as opportunities to attend disaster planning meetings in rural communities, theoretical concepts can be linked to practice. Case studies that focus on disasters, simulation exercises13, 14, 59 and digital stories that illustrate rural nurses’ experiences with disasters and community recovery can be developed and shared with nursing students and newly hired rural nurses to highlight the theoretical and practical aspects of climate change and disaster management.

The WHO and ICN18 maintain that human quality of life is threatened whether a disaster is a single-family house fire, or a large-scale tsunami. Disasters, natural or manmade, can overwhelm the services of a community, especially a rural community that may have a limited number of available trained personnel. Each disaster is different and nurses play an important role in all levels of disaster preparedness. The findings from our research studies with communities that were evacuated by wildfires illustrate the complexity of disasters and the need for multi-disciplinary teams, including nurses, to address the issues that arise during and after a disaster. Rural nurses who live and work in the community will continue to see firsthand the impact of a disaster on the individuals within the community. Developing and implementing initiatives to address long-term health issues and having a supportive policy environment that encourages health outcome data collection to track health effects are two areas that need to be implemented. A combination of local and external support and the implementation of initiatives and programmes in communities that experience disaster can contribute to the resilience of the community and the health status of the individuals.

#### Wildfires are existential. The risk is exponentially increasing AND are self-reinforcing.

Braden Leach 22, JD, University of California, Berkeley, School of Law, "Litigating Catastrophe," California Law Review, Vol. 110, No. 6, pg. 2152-2159, 2022, HeinOnline. [italics in original]

Climate change is caused by greenhouse gas (GHG) emissions.15 GHGs like carbon dioxide and methane trap heat in the atmosphere. 16 As humans burn fossil fuels, we add more of these molecules to the atmosphere, creating an increasingly stifling blanket. The overwhelming scientific consensus is that climate change will result in sea-level rise, wildfires, drought, extreme heat, increased tropical disease vectors, ocean acidification, and other serious harms.17 If that were not enough, there is also the possibility of "abrupt climate change"- global warming causing sudden shifts in the Earth's ecosystem.18 Among the most startling mechanisms for this are the collapse of the Greenland and West Antarctic ice sheets, the instability of the Gulf Stream, and the rapid dieback of tropical rainforests. 9 The tail ends of the climate change risk curve are not welldefined, meaning that less likely and more severe climate scenarios are impossible to accurately predict and have a wide range of outcomes. 20 Richard Lazarus describes climate change as a "super wicked problem" because of the "enormous interdependencies, uncertainties, circularities, and conflicting stakeholders implicated by any effort to develop a solution." 21

Legal literature is virtually bereft of scholarship focusing on civilization-scale risks and tactics to ensure humanity's long-term survival. However, scholars are beginning to offer solutions using disaster law. This field is based on the premise that "[t]he legal system plays a central role in disaster prevention, response, and management," and its purpose is to formulate legal solutions to better prevent, respond to, and manage disasters. 22 In defining disaster law, Professor Daniel Farber explains that "[t]he common conception of disaster focuses on events that are sudden, significant, and natural." 23 However, nearly all "natural disasters" feature some human contribution. 24 He notes that the field does not have "sharp boundaries," but "[w]hat most characterizes the field is the 'circle of risk management': a set of strategies including 'mitigation, emergency response, compensation, and rebuilding. "'25

The intersection of law and global catastrophic risk that is discussed in this Note might be described as a cousin of disaster law, because global catastrophes are orders of magnitude more destructive than disasters and may encompass numerous individual disasters. Humanity also usually plays a much larger causal role. 26 A few legal thinkers have begun to consider catastrophic and existential risks as "legal priorities,"27 but much more work needs to be done.

We now turn to the problem of rising seas and the litigation it has spawned.

II. SEA-LEVEL RISE

Climate change will cause seas to rise by somewhere between four and eight feet by the end of the century. 28 In *The Uninhabitable Earth*, David Wallace-Wells notes that damage to coastal areas caused by sea-level rise will cost between $14 trillion and $100 trillion *per year*. 29 Jakarta, Indonesia, one of the world's fastest-growing cities and currently home to ten million people, could be entirely underwater by 2050 due to flooding and "literal sinking." 30 Nearly two-thirds of the world's major cities are on a coastline.3 1 If we do not halt emissions by 2100, as much as 5 percent of the world's population will be flooded annually.32 The melt rate of the Antarctic ice sheet tripled in the last decade; from 2012 to 2017, it lost an average of 219 billion tons of ice per year.3 3 The "damage mechanics" of rapid ice-shelf loss are new to us, making possible consequences a substantial unknown. 34 The four-to-eight-feet sea-level rise estimate may be a serious underestimation. Most of Bangladesh could be underwater, and the world may see hundreds of millions of climate refugees.3 5 Flooding will not stop at the end of the century, so even in our rosy two degrees Celsius scenario, seas may ultimately rise by around twenty feet.36

*A. The Phenomenon*

Sea-level rise is caused by anthropogenic climate change. 37 Increasing GHG concentrations in the atmosphere lead to warmer air and warmer oceans. As the ocean warms, it undergoes thermal expansion. 38 Climate change also causes land-based ice sheets to melt, which flow into the ocean and increase sea levels. 39 Since the Industrial Revolution, the concentration of carbon dioxide in our atmosphere has risen from about 280 parts per million (ppm) to 412 ppm in 2019, causing Earth's climate to warm by about 1.8 degrees Celsius and sea levels to rise by about 23 centimeters. 40

Flooding and storm surges are natural phenomena, but climate change has and will continue to increase their magnitude and frequency. 41 Although it is scientifically difficult to blame a discrete event on climate change, it is much easier to show causation when looking at many events in the aggregate. The overwhelming scientific consensus is that climate change will lead to larger and more frequent storm surges. 42

*B. Litigation*

There are several subspecies of sea-level rise lawsuits, but they tell a common story. According to the typical plaintiffs' allegations, fossil fuel companies have known since the mid-1960s that their products are very likely causing climate change. 43 Even so, they have pursued unchecked extraction and consumption of fossil fuel products.44 Instead of informing the public about this danger, these companies engaged in a campaign of misinformation to sow doubt.45 They paid think tanks, scientists, and politicians to spread information questioning whether climate change is happening at all, or if it is, to deny that it is human-caused.46

Lawsuits brought by the cities of San Francisco and Oakland both name as defendants the "five largest investor-owned fossil fuel corporations in the world as measured by their historic production of fossil fuels." 47 The big five are BP, Chevron, ConocoPhillips, ExxonMobil, and Royal Dutch Shell (collectively, the "Oil Majors"). 48 Plaintiffs allege that the Oil Majors have contributed around 11 percent of global fossil fuel product-related CO 2 emissions to the atmosphere since the Industrial Revolution.4 9 And as a result of climate change, plaintiffs allege that coastal cities, counties, and states will suffer serious harms from the rising sea, including increased storm surges and severe flooding. 50

These lawsuits assert only public nuisance claims and seek abatement orders requiring the defendants to fund adaptation measures like the construction of seawalls and the elevation of low-lying property and buildings.51 They do not seek money damages. Rather, they are fundamentally about "shifting the costs of abating sea-level rise harm . . . back onto the companies."5 2

Two states, several major cities, and local governments across the country have also filed lawsuits against the Oil Majors.53 While a few lawsuits simply allege violations of state consumer protection laws,54 most resemble the San Francisco and Oakland lawsuits, but are broader. In addition to public nuisance claims, they allege private nuisance, negligence, strict liability, trespass, failure to warn, and design defect claims. 55 They also name as defendants many other companies engaged in the production and sale of coal, oil, and natural gas, in addition to the five Oil Majors. 56 Some suits seek to internalize the costs of other climate change impacts, including drought and wildfire.5 7 Finally, these lawsuits request-along with abatement-disgorgement of profits, compensatory damages, and punitive damages. 58

These sea-level rise lawsuits are all in their early stages. Plaintiffs strategically brought most of the lawsuits in state courts, asserting only state common law claims, in an attempt to avoid "displacement" by the Clean Air Act.59 The Oil Majors battled to remove these lawsuits from state to federal court on federal question jurisdiction grounds, 60 but the First, Fourth, Ninth, and Tenth Circuits rebuffed these attempts. 6 1 However, New York City's suit was originally filed in federal court and suffered for it. The Second Circuit held that the suit fell under federal law and was displaced by the Clean Air Act, affirming dismissal.6 2

A recent development took place on May 17, 2021, when the Supreme Court ruled in *BP v. Baltimore* that the City of Baltimore's suit was wrongly sent back to state court.63 The Justices ruled 7-1 that the Fourth Circuit wrongly limited its scope of appellate review by only considering "federal officer removal" grounds on a remand order.' A week later, the Supreme Court vacated all of the circuits' decisions and remanded them back in light of the ruling. 65 At this point, a circuit split over whether these suits belong in state or federal court appears inevitable. 66

If they reach the merits, many commentators have prognosticated on the difficulties that sea-level rise plaintiffs will face. As Professor Douglas Kysar has noted,

Built as it is on a paradigm of harm in which A wrongfully, directly, and exclusively injures B, tort law seems fundamentally ill-equipped to address the causes and impacts of climate change: diffuse and disparate in origin, lagged and latticed in effect, anthropogenic greenhouse gas emissions represent the paradigmatic anti-tort, a collective action problem so pervasive and so complicated as to render at once both all of us and none of us responsible. 67

III. WILDFIRES

In the San Francisco Bay Area on September 10, 2020, the midday sky was a burnt, post-apocalyptic orange. 68 Smoke from a wildfire in northern California had migrated south and winds kept it in the upper atmosphere, making residents feel like they were living in a dystopian novel. But some have fared much worse than Halloween skies and power shut-offs. I recently sat on a plane next to a man whose home was destroyed in the horrific Camp Fire of 2017. He told me that he lost friends in the blaze. In the aftermath of the fire, the man's marriage fell apart, and now he returns to "Paradise" once a month to see his kids. If we multiply this man's experience by thousands or millions, we can start to see the social costs of catastrophes.

Over the last fifty years, the wildfire season in the western United States has grown by two and a half months. 69 Wildfires now burn twice as much land, on average, as they did in 1970; by 2050, this figure is predicted to double again.70 For every degree of warming, it could quadruple. 71 Globally, between 260,000 and 600,000 people die just from wildfire smoke each year. 72 Fires damage drinking water, lead to mudslides, and release tons upon tons of carbon. 73 Wildfires can "upend and turn violently against us everything we have ever thought to be stable . . . homes become weapons, roads become death traps, air becomes poison." 74

*A. The Phenomenon*

Wildfires are a complex phenomenon with multiple causes. They are naturally occurring, but climate change has and will continue to increase their severity and frequency. 75 \*\*\*FOOTNOTE BEGINS\*\*\* *See, e.g.*, Tania Schoennagel, Jennifer K. Balch, Hannah Brenkert-Smith, Philip E. Dennison, Brian J. Harvey, Meg A. Krawchuk, Nathan Mietkiewicz, Penelope Morgan, Max A. Moritz, Ray Rasker, Monica G. Turner & Cathy Whitlock, *Adapt to More Wildfire in Western North American Forests as Climate Changes*, 114 PROC. NAT'L ACAD. SCIS. 4582, 4583 (2017) ("Three primary factors have produced gradual but significant change across western North American landscapes in recent decades: the warming and drying climate, the build-up of fuels, and the expansion of the wildland-urban interface."). \*\*\*FOOTNOTE ENDS\*\*\* Anyone who has experienced fire season firsthand knows that intermittent rain throughout the summer months can be a lifesaver: if summers are hot and dry, forests are more likely to burn. Wildfires also create insidious positive feedback loops, because they release massive amounts of carbon into the air, causing more atmospheric warming and more wildfires. 76