## Doctrinal Stability

### Civil War---Impact---1AR

### RF---Impact---1AR

### Terror---Impact---1AR

## Advantage 1

### AT: Straight Turn---1AR

#### This sincereity standard is already applied in other areas, and good!

Dr. Brady Earley 24, PhD, JD, Empirical Research Fellow, Brigham Young University, "Responsible Religious Freedom: Factual Scrutiny in Free Exercise Doctrine," Journal of Law and Religion, Vol. 39, No. 3, pg. 297-321, 2024, OUP. [italics in original]

Properly focused on directly evaluating government justifications through facts, scrutiny analysis is a normatively attractive alternative to *Smith*. First, factual scrutiny is supported in practice from the history and precedent of the Free Exercise Clause. Present within legal reasoning from Blackstone to the United States’ founding era is the idea that facts guide judges in interpreting the law rather than just pure text and logic.142 In particular, factual inquiry was historically integral to conducting a scrutiny analysis “in a variety of natural rights contexts.”143 For example, the very first reported Supreme Court free exercise decision involved clear reference to legislative facts to justify denial of a religious exemption.144 In *Permoli v. Municipality No. 1 of City of New Orleans*, the Supreme Court determined that the city of New Orleans could forbid open-casket Catholic funerals during an episode of yellow fever in the city.145 In its reasoning, the court noted how facts demonstrating the “law of necessity” for enacting the public health ordinance “gives warrant” for disallowing open-casket funerals that would otherwise “impair [the ordinance’s] efficacy.”146 Moreover, this is supported by the Supreme Court’s more recent precedent under the Free Exercise Clause. Modern cases demonstrate how free exercise precedent supports a “precise analysis”147 informed by the facts that allow the court to “take relevant differences into account.”148

A second benefit from factual scrutiny in free exercise is the way it supports the institutional roles of courts and legislatures in free exercise conflicts. If courts require lawmakers to show that their law must be free from a religious accommodation to accomplish its purpose, lawmakers will be incentivized to search for that evidence. As Paul Yowell has explained, legislatures in the United States are well equipped to perform this function due to institutional resources such as legislative research services that courts often lack.149 Importantly, this approach also acts as a constraint on courts. Whereas Smith or balancing tests invite greater judicial discretion regarding “comparable” secular exemptions or the size of burden on a religious claimant,150 the question under factual scrutiny boils down to an evaluation of the necessity of fit between the law and its goals. Courts conducting such an analysis will largely be confined to the facts of the case and briefings of the parties before them.151

Moreover, there is already good precedent supporting judicial capability for evaluating government justifications in the free exercise context. Since the enactment of RFRA in 1993 and RLUIPA in 2000, federal and state courts have regularly engaged in a close analysis of government interests burdening religious exercise.152 Moreover, many state governments have shown increasing approval for courts to continue undertaking such scrutiny in free exercise. Currently, twenty-eight states have a RFRA on the books, with seven of those (25 percent) adopting their state-level RFRA since 2020.153 This judicial experience with RFRA and RLUIPA over the past several decades bolsters confidence in the judiciary to ably conduct scrutiny of government justifications.

Finally, and perhaps most importantly, focusing on government justifications through factual scrutiny shifts discourse on religious freedom from rights to responsibilities. Under the current paradigm, religious freedom challenges are framed as a right to be claimed and argued against government power. Both *Smith* and balancing tests encourage religious claimants to view themselves as rightsholders trying to establish entitlement. But under a factual scrutiny approach, this paradigm shifts. With a focus on government’s evidentiary burden to provide justifications, the right to religious freedom is secured by holding government accountable to its constitutional responsibilities.154 In a polarized environment where free exercise is often at the center of fights over competing rights, the reciprocal responsibilities that accompany those rights are often overlooked. Consequently, more cases are decided as one-sided conflicts in the courts and less effort is made to find better tailored resolutions in the legislature.155 But focusing on the facts of each dispute “concretize the interests on both sides, reduce the level of abstraction, and open up possibilities for compromise”—a benefit especially needed in the current constitutional environment.156

#### CBR exemptions regime is terminally unsustainable.

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

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

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

#### Collapse is inevitable BUT disorderly.

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The Roberts Court has ushered in a period of church-state doctrine that we have termed *structural preferentialism*. This new regime reverses the *separationist* model that existed only a few decades ago and replaces the period of *deferentialism* that immediately preceded it. It is characterized by an expansive Free Exercise Clause and an almost nonexistent Establishment Clause. The implications of this constitutional revolution are startling and cannot easily be explained through doctrinal analysis alone. Instead, following previous scholars, we have argued that the Court's decisions are better understood as if they reflect the demands of competing religious interest groups.562 We have provided a periodization of historical church-state regimes that describes the ebb and flow of these interests, and we have offered a political-economy explanation for the sudden shift in the Court's emerging doctrine.

Our primary contribution, however, has been to name and explain the current constitutional arrangement. Structural preferentialism reestablishes religion in the United States by mandating massive funding of religious institutions-including direct funding of churches and religious schools-while dramatically limiting the ability of the government to regulate those religious entities. The regime has been extended to business corporations that assert a religious purpose, and it has been applied to require exemptions from basic civil rights statutes. Furthermore, although the regime purports to apply principles of religious freedom equally, legislative implementation has predictably shown favoritism to religion over nonreligion, and to certain religions over others.563 So, too, judicial implementation has been inconsistent. When faced with claims by minority religions, such as Muslims, the Supreme Court has been less than receptive.564 There is evidence indicating that the same is true in the lower federal courts as well.565

Three decades ago, when the Court was moving from its separationist paradigm to its period of deference, Professor Douglas Laycock coined the term "disaggregated neutrality" to describe what he was seeing in the doctrine.566 What he meant was that the Court applied the idea of religious neutrality inconsistently. When the government regulated religious groups, the Court adopted a position of formal neutrality (under *Smith*), which meant treating them just like nonreligious groups. But when the government funded religious schools, the Court applied a substantive principle of neutrality (under *Lemon*), which prohibited their advancement, even if they were funded in the same way as nonreligious schools.567 When taken together, these doctrines seemed to treat religious believers and institutions worse than their secular counterparts. The result was: no exemptions *and* no equal funding. What could make sense of this doctrinal structure? "The most obvious explanation," Laycock wrote, "is simply hostility to religion."568 And then he added this: "If you have the opposite preferences, you are equally in need of a good explanation."569

In our view, that is precisely the situation of the Roberts Court today. Its approach can be understood as disaggregated, but to opposite effect. When it comes to public funding, the Court insists on formal equality toward religion, so that state policies designed to separate church and state are construed as impermissible discrimination toward religion.570 But when it comes to regulation, the rule is substantive neutrality, under which religious actors are exempted from rules that burden their practice or observance.571 Though either of these rules, viewed in isolation, could be seen as neutral toward religion, in combination they work systematically to preference religion over nonreligion and some (mainly conservative) religious denominations over others.

If history is a guide, this form of religious preferentialism will continue for a generation, but then, as with prior regimes, it will collapse. Theories of separation hold that sects beholden to states and states beholden to sects weaken each other, ultimately resulting in reform. The stability of preferentialism ultimately depends on forces that, while influenced by the Court, are also part of a much larger religious and political culture. That culture is in the process of significant social change, marked by polarization, disaffiliation, and the fusion of religious and political identities. Our argument is that understanding those forces is necessary to explain the doctrinal shifts in the Court's jurisprudence. Surveying the shifting periods of Religion Clause doctrine provides ample support for that thesis.

#### Other laws disprove.

Donald C. Carroll 19, JD, LLM, President, Law, Law Offices of Carroll & Scully, Inc. Adjunct Professor of Law, University of San Francisco, "A Groundless Clash of Freedoms?: The Religious Freedom of the Religiously Affiliated University and the Freedom of Faculty to Organize Under the NLRA," U.S.F. L. Rev., Vol. 53, No. 1, 2019, Nexis Uni.

The Board's jurisdiction as exercised in PLU does not offend the RFRA. As earlier noted, the RFRA says the federal government shall not "substantially burden" a person's exercise of religion, even through a law of general applicability unless that burden is in furtherance of a "compelling government interest" and represents the "least restrictive means" of furthering that interest. 219

The question posed about substantial burden in Hobby Lobby was whether the contraceptive mandate imposed a substantial burden on the ability of the closely held corporation's owners to conduct business in accord with their religious beliefs. 220 The Court's majority made short shrift of the issue by noting that Hobby Lobby would be indirectly supporting what it considered moral evil and that, because of its size, Hobby Lobby could be looking at a fine of about $ 1.3 million per day. 221 By contrast, and as shown in the above discussion about entanglement, it is difficult to see any burden of any substantiality for an institution complying with PLU. The institution cannot credibly say it would be cooperating with evil to be subject to Board jurisdiction. A religiously affiliated university need not change its mission [\*39] or moral values. It has the ability simply to say "no" at the bargaining table to any proposal it deems harmful to its values. The generalized speculations of the Court, to the contrary, are just that, uncritical speculation.

For Catholic-affiliated universities, any claim of a burden is also in effect self-contradictory because to be Catholic the institution should accept the social teachings of the Church which demand respect for the right to organize and bargain even for the Church's own employees. 222

As noted earlier, the NLRA does represent a compelling government interest. Drilling down further into the nature of that interest, however, helps to inform a discussion of the other RFRA elements, especially the "least restrictive" element.

Congress' purposes in the NLRA included labor relations, "peace" across the nation, and also giving workers a "voice" at the workplace. 223 These purposes go further, however, than peace and voice. They implicate "a valid labor regulatory system which serves a substantial public purpose." 224 They also implicate human rights, as Professor James A. Gross has written: "If the core values of the Wagner Act are understood for what they actually are - that is, human rights values - it changes the scheme for giving certain rights priority over other rights. If freedom of association is recognized as a human right, for example, then it gets first priority." 225

As Professor Gross points out, that does not mean other rights such as management rights are forsaken, but that those other rights do not receive the first priority that courts, administration agencies, and labor arbitrators have historically given them. 226

In Hobby Lobby, the government could find other means of providing cost-free contraceptives, said the Supreme Court. 227 How does government find some other means to provide university professors, tenured and contingent, with the human rights recognized by the NLRA? Notably in Hobby Lobby, the Court did not reach the question of whether an accommodation of that employer would mean employees had to lose their own benefits, and Justice Kennedy expressly signaled [\*40] his reluctance to accept such a result in his concurrence. 228 The prospect of a substantial majority of faculty losing entirely the benefits of the NLRA should be a sobering sign of a need for a more critical assessment of the merits of the opposition to Board jurisdiction in the name of religious freedom.

As also earlier observed, the second prong of the PLU test will make any teacher held out by the institution as performing a specific religious function, such as teachers of theology or religious studies, ineligible for inclusion in a bargaining unit. 229 What course of action, then, could be less restrictive and still achieve Congress' substantial public purposes? Or what could be less restrictive and still recognize the human right to organize for better wages, hours, and conditions? There are a few voices for a voluntary system of bargaining outside the jurisdiction of the Board. 230 Even advocates of this idea are forced to admit that its weakness is that it "necessarily concentrates power on the side of the institution." 231 Indeed, the faculty would be left as at-will, itself a morally dubious result. 232 It is not legally open to the NLRB, however, to defer to this alternative under the guise of "least restrictive." So far, there is nothing in the law under the RFRA that suggests professors should go without legal protection under the NLRA in order to accommodate religious freedom.

However, it cannot seriously be contended that a least restrictive means legally necessitates an abject surrender and a return to an unregulated state. These religiously affiliated universities are subject to all manner of government regulation, local, state, and federal, such as taxation, health, safety, fire zoning, and any number of other police power intrusions and limitations on their operations. Determining why these institutions should be free of NLRB regulation when workers' rights are at issue demands a more focused and critical response by those who object to that jurisdiction.

Conclusion

There is no facial conflict between the religious freedom of the university and the freedom of faculty to organize and bargain under [\*41] the NLRA. It is not necessary to revisit Catholic Bishop. It is necessary, however, to acknowledge that an extension of the result in that case simply by the "avoidance" mechanism to universities not operated by a church and not suffused with church authority is unwarranted and evades the courts' duty to determine the law. Then-Judge Breyer was correct when he urged resolution in the Supreme Court.

The NLRB's PLU case tests are worthy of consideration on the merits of the challenges both under the Religion Clauses and the RFRA, without further evasion. As this article is finalized, three universities are seeking review of NLRB decisions based on PLU in the U.S. Court of Appeals for the District of Columbia 233 and Manhattan College. 234 The right of often underemployed and underpaid faculty under this nation's labor law to organize and bargain should be confronted on the merits.

#### Limitations preclude overexapansion.

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]

To flesh out the true threat the NLRB poses to religiously affiliated hospital employers, it is crucial to understand the scope of the Board's power and role. The NLRB is a severely constricted entity. Jurisdictional limits, limits on Board-initiated action at both the representative-election stage and in the realm of unfair labor practices, as well as limitations on available remedies, constrain the Board's reach.198 The statutory limitations placed on the NLRB ensure that it remains within constitutional bounds when exercising jurisdiction over religiously affiliated hospitals. A big, bad NLRB a "leviathan-like governmental regulatory board"199 does not exist. In place of this [\*541] hypothetical administrative state monster is an NLRB with narrow, deeply circumscribed power.

An employer is only within NLRB jurisdiction if its "business operations sufficiently impact interstate commerce under the U.S. Constitution's Commerce Clause."200 Thanks to minimal levels of interstate commerce requirements, many companies and organizations entities that the laymen would call employers fail to qualify as employers under the NLRA.201 If an entity is outside NLRB jurisdiction, the NLRB role is null.

Even if an employer falls within NLRB jurisdiction, it need only bargain with a union when employees of the covered enterprise choose, by majority support, to be represented by a union.202 The NLRB only holds an election when asked; it cannot act independently.203 Before the Board commences an election process, an "employee, individual, or group of employees acting on behalf of employees . . . a labor organization acting on behalf of employees . . . or an employer [if] one or more individuals or labor organizations have presented to it a claim to be recognized as the employees' representative" must file a petition with the regional office of the NLRB.204

Seeking an election from the Board is challenging. To start the election process, the employees seeking the election must show "support for the [election] petition from at least 30% of employees."205 Although only 30% support is needed to petition for an election, many organizers wait to petition for an election until there is clear majority support.206 This step alone is often protracted, contentious, and the [\*542] start and unsuccessful end of the organizing.207

If workers do access the NLRB election process, the employer remains uninvolved. Union organizing and union elections, at least initially, do not directly concern the employer.208 These are between private individuals (workers) and a third-party union. Moreover, just as the Board cannot alone initiate an election procedure, the Board cannot alone initiate charges for unfair labor practices.209 The government becomes involved only once an individual brings a charge to the Board.210

As for remedial power, the Board's authorized remedies are few and far between.211 For example, if an employer refuses to bargain in good faith, a union may file unfair labor practice charges with the NLRB.212 If the Board finds that there was in fact an unfair labor practice (like failing to bargain in good faith, discharge because of union support, etc.), the Board can issue a "cease and desist" order and/or an order to take affirmative action such as "reinstatement of employees with or without back pay."213 The Board cannot order punitive damages.214 Moreover, the delays in Board proceedings have made even the limited remedies of reinstatement and back pay functionally "insufficient, costly, and capable of chilling worker activity."215

The National Labor Relations Act does not compel employers or unions to agree to any conditions or contract.216 The Board has no power to compel agreement because the "government cannot compel [\*543] the parties to agree on specific terms," nor to agree whatsoever.217 The Act does not regulate the substantive terms of a collective bargaining agreement: "agreement, if reached, is voluntary."218 The Board has no power to impose terms of agreement to remedy bad faith bargaining or other unfair labor practices; "the only remedy for bargaining in bad faith is an order to return to bargaining."219 Parties fail to bargain, so the Board orders them to bargain. The parties fail to bargain again, so the Boards orders them to bargain again. If this remedial power sounds circular and weak, that is because it is. The Board's remedial power is further limited by the fact that it is not self-enforcing. If the Board finds an unfair labor practice, the Board "may order the employer to return to the bargaining table, but . . . the NLRB must petition a federal appellate court for an order of enforcement."220 The Board has no independent enforcement authority.221

In general, Board jurisdiction does not involve "continuing or systematic monitoring," and does not involve "monitoring the religious aspects of [an organization's] activities at all."222 It does not "create the reality or the appearance of the government's supervising or collaborating with the Church."223 The NLRB role is limited: it acts only when it is sought out, and even when it acts, the NLRA severely constrains the role it can play.

The Free Exercise Clause of the First Amendment protects a religious organization's right to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."224 The Establishment Clause prohibits state establishment of religion, as "interpreted by 'reference to historical practices and understandings.'"225 When the NLRB exercises jurisdiction over a [\*544] religiously affiliated hospital, its scope of influence and choice of action is limited. The Board cannot mandate agreement. Accordingly, the Board cannot mandate any sort of internal religious governing decisions. The Board cannot independently inquire into employer action. As such, the Board has limited interaction with the employer. The statutory limitations on the NLRB ensure that the Board remains within the confines of the First Amendment.

#### Even at that---it still allows sincere claims to go through. ‘Narrowest exemptions possible’!

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.

#### You can’t just bargain for reproductive rights at a religious institution.

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.

## Hospitals ADV

### Disease---Impact---1AR

### Urban Migration---1AR

## Avoidance ADV

## Irrelevant

### Dropped?

## Distinguish

### Noerr

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### NOERR. It’s impossible to confine AND certainly spills back into CBRs.

Dr. Randy D. Gordon 13, PhD, JD, LLM, Partner, Law, Gardere Wynne Sewell LLP. Adjunct Faculty Member, Southern Methodist University, "A Question of Fairness: Should Noerr-Pennington Immunity Extend to Conduct in International Commercial Arbitration?" The American Review of International Arbitration, Vol. 19, No. 2, pg. 211-233, 12/03/2013, SSRN. [italics in original]

Second, because the *Noerr-Pennington* doctrine is now commonly framed in First Amendment terms, its application has spread beyond antitrust claims—and in more than one dimension.27 \*\*\*FOOTNOTE BEGINS\*\*\* *See Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 931 (9th Cir. 2006) (“[W]e conclude that the *Noerr-Pennington* doctrine stands for a generic rule of statutory construction, applicable to any statutory interpretation that could implicate the rights protected by the Petition Clause.”); *Baltimore Scrap Corp. v. David J. Joseph Co.*, 237 F.3d. 394, 399 (2001) (holding that *Noerr-Pennington* immunity applies to adjudicatory processes through the First Amendment because “the rights of petition and association trump any anticompetitive effects that might occur from asking the government for redress . . . and that [a]ny other rule would allow the specter of satellite litigation to restrict the primary right of citizens to seek justice from the judicial system”) (citing *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510-11, (1972)); *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000) (holding that because *Noerr-Pennington* “is based on and implements the First Amendment right to petition,” it is not limited to the antitrust context; rather, it “applies equally in all contexts”). \*\*\*FOOTNOTE ENDS\*\*\* But the United States Supreme Court has not squarely held this to be the case, although, as we will see, it has inferentially done so, at least to the satisfaction of the lower courts. In *BE & K Const. Co. v. N.L.R.B.*, the Court faced the by-then familiar “issue of when litigation may be found to violate federal law, but this time with respect to the NLRA rather than the Sherman Act.”28 Ultimately, the Court did not need to decide whether fully to extend Noerr to a non-antitrust statute, but—as Justice Scalia stated in a concurring opinion—the majority opinion sufficiently cleared that road:

Although the Court scrupulously avoids deciding the question (which is not presented in this case), I agree with Justice BREYER, that the implication of our decision today is that, in a future appropriate case, we will construe the National Labor Relations Act (NLRA) in the same way we have already construed the Sherman Act: to prohibit only lawsuits that are *both* objectively baseless *and* subjectively intended to abuse process.29

The underlying reasoning of the majority opinion was that—consistent with the general notion that the freedoms of speech and press entail that they must be given “breathing space”—it would be anathema to First Amendment values to declare unlawful an “entire class of reasonably based but unsuccessful lawsuits.”30

This expansive reading of *Noerr* is consistent with what many courts both before and after *BE & K* have held. As one Texas court put it, “[t]he courts that have addressed whether the doctrine applies in cases other than those based on anti-trust violations recognize that while the doctrine originally arose in connection with anti-trust cases, it is fundamentally based on First Amendment principles . . . . Thus, the doctrine is a principle of constitutional law that bars litigation arising from injuries received as a consequence of First Amendment petitioning activity, regardless of the underlying cause of action asserted by the plaintiff.” 31 Not surprisingly, then, *Noerr* now applies to (1) non-antitrust federal statutory claims32 \*\*\*FOOTNOTE BEGINS\*\*\* *Gen-Probe, Inc. v. Amoco Corp.*, 926 F. Supp. 948, 956 (S.D. Cal. 1996) (the doctrine bars “any claim, federal or state, common law or statutory, that has as its gravamen constitutionally protected petitioning activity”). \*\*\*FOOTNOTE ENDS\*\*\* (2) state as well as federal claims,33 (3) pre-litigation activities,34 (4) reports to law enforcement,35 (5) some settlement agreements,36 \*\*\*FOOTNOTE BEGINS\*\*\* *A.D. Bedell Wholesale Co. v. Philip Morris, Inc.*, 263 F.3d 239 (3d Cir. 2001), *cert. denied*, 534 U.S. 1081 (2002) (in extending Noerr to settlement agreement, court stated that “[W]e see no reason to distinguish between settlement agreements and other aspects of litigation between private actors and the government which give rise to an antitrust immunity”). \*\*\*FOOTNOTE ENDS\*\*\* and (6) refusals to settle.37

As these cases show, *Noerr* casts a reasonably long shadow over litigation activities. But what if parties—particularly cross-border parties—elect arbitration instead of litigation as a method of dispute resolution? Should Noerr attach to the same extent—or even to some extent—to arbitration activities? To that subject we now turn.

### Distinguish---1AR

### L2NB---1AR

### CBR key

### New plank

--relax the law of circuits to allow panels to revisit prior panel decisions in light of circuit conflicts

## Bonds DA

### 1AR---UQ Overwhels

### 1AR---Link

### At: Casper REHIGHLIGHT

## Bankruptcy DA

### U---1NR

#### Bonds unstable now.

Reuters 25, global news agency, 12 March 2025, “US corporate bond spreads hit widest in about 6 months on recession fears,” https://www.investing.com/news/economy-news/us-corporate-bond-spreads-hit-widest-in-about-6-months-on-recession-fears-3925014.

The spreads between the yields on corporate bonds and U.S. Treasuries hit their widest since September this week, pointing to mounting investor worries about recession and a global trade war.

U.S. investment-grade bond spreads hit 94 basis points on Tuesday, their widest level since Sept. 18, according to the ICE BofA Corporate Index. Junk bond spreads widened to 322 bps, also their widest since Sept. 18, according to Tuesday’s late update of the ICE BofA High Yield Bond Index.

Investors consider U.S. corporate bond spreads a good gauge of financial market stress, especially the gap between yields on bonds issued by companies with poor credit ratings and ultra-safe U.S. government debt. When the gap widens it shows less willingness to hold riskier "junk" bonds.

The widening in spreads comes as the latest sign of growing anxiety about the economic outlook following a series of import tariffs imposed by the Trump administration that raised the specter of a global trade war.

"This will be inflationary, and the Fed won’t likely be able to cut rates in this environment," said Andrzej Skiba, head of BlueBay U.S. fixed income at RBC GAM. "This could put pressure on fixed income assets, and we see more spread widening and risk ahead."

A Reuters poll last week found 95% of economists across Canada, the U.S. and Mexico said the risk of a recession in their respective countries had increased following Trump’s chaotic tariff implementation.

"The escalation of tariff hostilities and re-rating in Tech sector valuations is causing contagion from stocks to credit in a way not observed in a while and is stoking fears that the economy could veer off the tracks," Societe Generale (OTC:SCGLY) analysts wrote in a Wednesday note.

The junk bond spread has opened up by 59 bps since a recent low on Feb. 18, JPMorgan analysts noted on Wednesday. They added that junk spreads are "biased wider" over the coming months, due to "vast macro uncertainty" surrounding trade policy, inflation and recession.

#### Current instability cascades.

Ross Pamphilon 25, chief investment officer for Impax Asset Management, 28 October 2025, “Do private credit failures pose a contagion risk to high yield?” *Impax Asset Management*, https://impaxam.com/insights-and-news/blog/do-private-credit-failures-pose-a-contagion-risk-to-high-yield/.

Fears about the health of private credit have erupted following two high-profile corporate collapses in the US this September. Consensus is that other failures will follow: to quote JP Morgan chief executive Jamie Dimon, “when you see one cockroach, there are probably more”.

While each failure may appear idiosyncratic, together they hint at structural fragilities in the private credit market, which has never been tested at its current scale through a full credit cycle.

For public market investors, contagion is the risk. If collective wisdom determines that private credit dynamics pose a systemic threat, a self-fulfilling downturn in credit – and especially within high yield – could ensue. By no means is this inevitable, though.

### Link---No Spillover

#### No spillover link. Religion is siloed.

Dr. John Moore 16, PhD, Northcentral University, MBA, Indiana Institute of Technology, "The First Amendment Case for Corporate Religious Rights," Nevada Law Journal, Vol. 16, 01/15/2016, SSRN

Dr. John Moore 16, PhD, Northcentral University, MBA, Indiana Institute of Technology, "The First Amendment Case for Corporate Religious Rights," Nevada Law Journal, Vol. 16, 01/15/2016.

E. Not Every Corporation Does or Will Practice Religion

Just because corporations can exercise religion, it does not mean that all will. Indeed, it is unquestioned that all individuals can exercise religion, but there are still many who do not.303 Given the realities of corporate ownership and the pressures of the marketplace, it is likely that most corporations will opt not to exercise religion:

In the real world, of course, reliance on such mechanisms may be relatively rare. Shareholders of publicly held firms are likely quite diverse in their religious views (or lack thereof), and market pressure may deter large firms with diverse consumers and employees from adopting a particular religious stance. Still, while rare, one cannot assume that all we do not believe that such assertions are impossible. 304

In light of these considerations corporations will exercise religion even if such a right is recognized. But it would be a non sequitur to jump from there to the conclusion that no corporation can or will exercise religion. Even if the majority of American citizens did not exercise religion, the First Amendment would still protect the rights of the minority who did practice religion. So too, the lack of religiosity in most corporations cannot be validly deemed to undermine constitutional protections for those corporations that do practice religion.

Rather, the lack of universal religiosity points to the need for a means to determine whether a corporation actually exercises its religion or whether the corporation is purely secular. Just as the First Amendment does not protect the religious exercise of individuals who do not exercise religion, it will not protect corporations without religious beliefs. As explained more fully above, focusing on the sincerity of a corporation’s beliefs, as manifest in its practices, provides just such a mechanism.305

#### Industries are not connected.

Trond Flaarønning 25, M.A., Political Science, University of Oslo, works on the ALTWORK project, researching developments in alternative forms of association with working life in Norway over the last 25 years, March 2025, "Union decline through extension of collective agreements?," British Journal of Industrial Relations, Volume 63, Issue 1, pp. 100-129. [italics in original]

As with every difference-in-differences setup, the stable unit treatment value assumption (SUTVA) must be met. For this to be the case, there can be no spillover effects, and the intervention and comparison groups must be stable for the whole time period. Regarding spillover effects, I do not see a clear link between one group receiving mandatory extension and the union density of other groups. Only the other extension industries are used as controls, and even though they are similar in many ways, they are not ‘connected industries’.**18** The stable group assumption does not hold by itself because workers can change industries and move to other parts of the country, thereby basically going in and out of treatment. To address this, I follow standard practice and assign every worker to the industry and county they belonged to in 2004, the year before the first treatment. This is done so that every worker receives treatment only once. Everyone is assigned to their treatment group from 2004 because if people moved into, or out of, one of the early treated groups, it could be considered an effect of the first treatment. Because of this, the assignment into treatment groups should be interpreted as an ‘intention to treat’.19

#### Prefer specificity. Religious employees won’t abuse the process.

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.

Organizing workers at religiously affiliated hospitals is different than organizing workers elsewhere. Healthcare workers often have deep commitment to their patients and the missions of their employers. Workers at religious organizations may have deep emotional, spiritual, or religious connections to their employers. With these factors at play, organizing healthcare workers at religiously affiliated hospitals is clearly unique and filled with its own challenges.

Professor Eduardo Capulong, analyzing unionization in the nonprofit sector generally, found that nonprofit workers "want to 'do good.' . . . [They] were less motivated by 'job security, the salary, benefits or the paycheck' than they were by the 'chance to help the public, to make a difference, to do something worthwhile, and [to have] pride in the organization . . ."383 Capulong continued:

'[N]onprofit employees love their work so much that they set themselves up for exploitation.' The commitment to clients is, in fact, such a powerful motivator that it sometimes discourages nonprofit workers from leaving substandard employment. Thus, even as nonprofit workers tend to be pro-union generally, they may not be pro-union for themselves. Believing that they should not take funds dedicated to client programs, particularly when budgets are tight, many nonprofit workers minimize their own work-related concerns.384

Capulong is discussing nonprofit workers generally, but it stands to reason that this inclination is even stronger when we consider workers at nonprofit, faith-based organizations that may be similarly (if [\*572] not more so) steeped in the mission of their organization. When we add in the connection healthcare workers have to their patients, Capulong's explanation of nonprofit workers' aversion to unionization only grows more compelling. As others have noted, "the more employees identify with the company, the less likely they will identify with an outside union."385 Amy Gladstein, a New York labor lawyer who, since 2002, has been "responsible for directing the new organizing program for 1199 SEIU,"386 stated that "workers in Catholic hospitals are often more mission focused. [Some] people work there because they believe in the mission, as the Church says, that it is about providing healthcare for and helping the poor."387 With that image of a healthcare worker at a religiously affiliated hospital in mind, the challenge of overcoming worker loyalty to their employers comes into focus.

Although this challenge remains present, the contours of the employment relationship in healthcare, even religiously affiliated healthcare, have changed tremendously due to COVID-19. As discussed *supra*,388 healthcare workers in and out of religiously affiliated hospitals have been mobilized by the widespread death, overwork, underpay, and unsafe worker and patient conditions of the COVID-19 pandemic. Workers who were once devoted to their employers and expected their employers to protect them have both seen, and felt, their employers fail them.389 Workers who were "dead set against a union five years ago," have had their minds changed by COVID-19.390 Facing colleague death, a lack of personal protective equipment, unsafe patient care levels, and personal sickness and hardship has irrevocably changed the workplace experience of healthcare workers.391

COVID-19 has exposed the connection between patient care and working conditions. Healthcare workers committed to patient care have a different relationship with their employers and with the idea of unions than they did even three years ago. The challenge of worker loyalty to hospital employers has been displaced by worker loyalty to patient care. And loyalty to patient care is pro-union.

#### It’s a distinct form of bargaining.

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.

This concern is well taken but overstated. NLRB jurisdiction does not displace a religious employer's ability to shape its environment and relationships. Unionized religious organizations have long maintained their particular type of labor-management relationship. As discussed *supra*, in 2009 the United States Conference of Catholic Bishops published a document with guidance for Catholic hospitals and unions.291 The document explored religious teachings, recommended steps that employers could take to fulfill their religious beliefs, and detailed what a labor-management relationship "based on mutual respect, equal access to truthful communications, and freedom from coercion" could look like.292 The guidelines also recognize that NLRB jurisdiction is permissible.293 These Catholic guidelines do not stand alone; examples of religious employers utilizing religious teachings to shape their labor-management relationship abound.294 These examples demonstrate that an NLRB assertion of jurisdiction over a religious employer a religiously affiliated hospital, for example "does not prevent the institution from developing and modeling" an "approach to labor relations" that accords with its own religion.295

#### Now, the specifics:

#### Litigation link: No link AND turn. RFRA both prevents AND resolves ‘floodgates.’

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.

#### Managers link:

#### Nope!

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.

### Link---Turn---1AR

#### Unions stabilize.

Carlos Fernando Avenancio-Leon 23, Ph.D, assistant professor of finance at the University of California San Diego and a nonresident scholar at the Washington Center for Equitable Growth, Alessio Piccolo, assistant professor of finance at the Kelley School of Business at Indiana University Bloomington, Roberto Pinto, assistant professor of finance at the Lancaster University Management School, September 27 2023, “Strong unions push firms to reduce riskier debt, lowering risks of unemployment for U.S. workers,” Washington Center for Equitable Growth, https://equitablegrowth.org/strong-unions-push-firms-to-reduce-riskier-debt-lowering-risks-of-unemployment-for-u-s-workers/

Yet the direct effect of unions on wages and work equity may actually understate the broader economic benefits of unions. In new research, we show that stronger unions have the unintended benefit of improving overall financial stability in the economy by prompting firms to make less risky borrowing decisions. This is because the collective bargaining process pushes firms to take fewer financial risks, thereby reducing the prospects of firms going bankrupt or undergoing layoffs.

This is an often-overlooked aspect of the role of unions in the economy: Union-induced financial stability can reduce the risk of unemployment for both unionized workers and the broader workforce alike.

In other words, firms care about having financial flexibility, and they make safer borrowing choices if their workforce is unionized and there is a possibility of having to ride out a strike. These safer financial choices help firms endure not only strikes, but also any potential economic adversity, including periods of economic recession—which affect all workers in the economy.

Crucially, our research also reveals that the adoption of so-called right-to-work laws, which weaken the power of unions, lead to significant increases in risky borrowing by firms because of the reduced need for firms to stay financially flexible. We document that firms in states that passed such laws reduced safer long-term borrowing by these firms and instead increased their use of riskier short-term debt—a difference in borrowing patterns that matters in times of economic turmoil.

During the financial crisis in 2007–2008, for example, we find that for each additional percentage of a firm’s total debt that was held long term, firms reduced employment by around one-third of a percent less than otherwise-similar firms, even after accounting for each firm’s total level of borrowing. Other academic work similarly documents that these differences in borrowing patterns mattered both during the Great Recession of 2007–2009 and the Great Depression of the 1930s.