# Cards---Kentucky RR---Round 1

## Case

### Impacts---1AC

#### Extinction. The civil service manages “the biggest portfolio of catastrophic risks ever.”

Loren DeJonge Shulman 22. Lecturer of international affairs at George Washington University, M.P.P. from the University of Minnesota, "Schedule F: An Unwelcome Resurgence." Lawfare. 8/12/2022. lawfaremedia.org/article/schedule-f-unwelcome-resurgence

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

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

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

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

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

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

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

Worst-Case Scenario: Harming National Security

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

Some Schedule F advocates make clear that large-scale removals are under consideration and that removal, not oversight, is their ultimate goal for Schedule F. “Fire everyone you’re allowed to fire,” one commented, according to the Axios reporting. “And [then] fire a few people you’re not supposed to, so that they have to sue you and you send the message.”

Because the policy would also allow replacement of current civil servants without a competitive process, replacements for nonpartisan civil servants could be made without regard to qualification and suitability, or based on partisan affiliation, creating a new kind of political appointee.

The potential loss of talent could be wide and extremely damaging. Axios also reported that, according to sources close to Trump, the former president intends to “go after” the national security establishment as a matter of “top priority,” including those in the intelligence community and State Department. Policy roles that could be reclassified as Schedule F could cut across many high-import areas: Russian defense strategy, Iranian nuclear programs, or Chinese regional security capabilities, among hundreds of other categories. The harm to national security of removing and replacing civil servants—whose work, as we have established, requires expertise, relationships, and clear understanding of risk—with individuals with no required qualification except loyalty to a single individual is self-evident.

But, should a future president pursue this action, beyond missing an endless list of risk portfolio managers, the United States will miss something more fundamental to its success and security: its reliability. American alliances are valuable because of the steady undercurrent of the nation’s civil servants who maintain networks, expertise, and consistency regardless of who inhabits the Oval Office. Despite its turmoil, the American political system is a strong model and international interlocutor because its civil servants serve expertly and well across presidential administrations of any political affiliation. Schedule F, by stifling or removing long-serving civil servants, would make the United States a weaker, less reliable, and less trusted partner.

Why Shouldn’t the President Get a Say?

A president’s desire to shape a policy team, and to be sure it is filled with strong performers who are closely aligned with their views, is understandable. After all, presidents are elected to implement their chosen policy agenda, and having a team around them who can work in support is critical. But presidents already can wield enormous influence over both their closest policy advisers and the most far-flung agency overseers: through the 4,000 political appointees who are named, or removed, at the pleasure of the president. The Schedule F proposal would be an enormous and unnecessary expansion of this already poorly utilized system.

Most administrations never come close to seeing all those politically appointed policy roles filled despite the tremendous access and leverage such appointments bring them. And some presidential teams still struggle to make best use of political appointee and career civil servant partnerships. Rather than adding more chaos and instability with a Schedule F policy, administrations could be maximizing the opportunity that comes with leveraging their career and political leaders together. As noted in a recent Partnership for Public Service and Boston Consulting Group report:

Career executives bring program and policy expertise from their long familiarity with their agencies which can help them manage programs better and work more effectively with external stakeholders and inside actors. Politically appointed leaders can bring energy, risk-taking and responsiveness into an agency’s decision-making process which can improve performance. When leaders are matched with missions, agendas and teams that align with their distinct approaches and perspectives, they can find success in creating a government that is more efficient, innovative and responsive to the needs of the public.

The civil service system is not perfect. The pay system has its origins in World War II. The hiring process, though well-intended, is glacial. The permeability of the system in an era that requires close understanding and collaboration across sectors is limited. But the fundamentals are powerful, and they serve as a critical ingredient to the success of the United States’ global leadership and the sustainability of its democracy.

The U.S. government is able to take on high-risk, high-cost ventures—nuclear security, pandemic response, environmental clean-up, food safety, and more—because civil servants are hired based on qualifications, not party affiliation; give advice based on data and integrity, not fear of reprisal; and owe allegiance to the Constitution, not the president. It needs to stay that way.

#### Deft diplomacy checks nuclear war and solves cooperation on every issue.

Michael Kimmage 25. Professor of history at the Catholic University of America, Ph.D. in United States studies from Harvard University. "The World Trump Wants." Foreign Affairs. March/April 2025. foreignaffairs.com/united-states/world-trump-wants-michael-kimmage

A Vision of War

In Trump’s first term, the international landscape was fairly calm. There were no major wars. Russia appeared to have been contained in Ukraine. The Middle East appeared to be entering a period of relative stability facilitated in part by the Trump administration’s Abraham Accords, a set of deals intended to enhance regional order. China appeared to be deterrable in Taiwan; it never came close to invading. And in deed if not always in word, Trump conducted himself as a typical Republican president. He increased U.S. defense commitments to Europe, welcoming two new countries into NATO. He struck no deals with Russia. He talked harshly about China, and he maneuvered for advantage in the Middle East.

But today, a major war rages in Europe, the Middle East is in disarray, and the old international system is in tatters. A confluence of factors might lead to disaster: the further erosion of rules and borders, the collision of disparate national-greatness enterprises supercharged by erratic leaders and by rapid-fire communication on social media, and the mounting desperation of medium-sized and smaller states, which resent the unchecked prerogatives of the great powers and feel imperiled by the consequences of international anarchy. A catastrophe is more likely to erupt in Ukraine than in Taiwan or the Middle East because the potential for world war and for nuclear war is greatest in Ukraine.

Even in the rules-based order, the integrity of borders has never been absolute—especially the borders of countries in Russia’s vicinity. But since the end of the Cold War, Europe and the United States have remained committed to the principle of territorial sovereignty. Their enormous investment in Ukraine honors a distinctive vision of European security: if borders can be altered by force, Europe, where borders have so often generated resentment, would descend into all-out war. Peace in Europe is possible only if borders are not easily adjustable. In his first term, Trump underscored the importance of territorial sovereignty, promising to build a “big, beautiful wall” along the U.S. border with Mexico. But in that first term, Trump did not have to contend with a major war in Europe. And it’s clear now that his belief in the sanctity of borders applies primarily to those of the United States.

China and India, meanwhile, have reservations about Russia’s war, but along with Brazil, the Philippines, and many other regional powers, they have made a far-reaching decision to retain their ties with Russia even as Putin labors away at destroying Ukraine. Ukrainian sovereignty is immaterial to these “neutral” countries, unimportant compared with the value of a stable Russia under Putin and with the value of continuing energy and arms deals.

These countries may underestimate the risks of accepting Russian revisionism, which could lead not to stability but to a wider war. The spectacle of a carved-up or defeated Ukraine would terrify Ukraine’s neighbors. Estonia, Latvia, Lithuania, and Poland are NATO members that take comfort in NATO’s Article 5 commitment to mutual defense. Yet Article 5 is underwritten by the United States—and the United States is far away. If Poland and the Baltic republics concluded that Ukraine was on the brink of a defeat that would put their own sovereignty at risk, they might elect to join the fight directly. Russia might respond by taking the war to them. A similar outcome could result from a grand bargain among Washington, western European countries, and Moscow that ends the war on Russian terms but has a radicalizing effect on Ukraine’s neighbors. Fearing Russian aggression on the one hand and the abandonment of their allies on the other, they could go on the offensive. Even if the United States stayed on the sidelines amid a Europe-wide war, France, Germany, and the United Kingdom would probably not remain neutral.

Were the war in Ukraine to widen in that way, its outcome would greatly affect the reputations of Trump and Putin. Vanity would exert itself, as it so often does in international affairs. Just as Putin cannot afford to lose a war to Ukraine, Trump cannot afford to “lose” Europe. To squander the prosperity and power projection that the United States gains from its military presence in Europe would be humiliating for any American president. The psychological incentives for escalation would be strong. And in a highly personalistic international system, especially one agitated by undisciplined digital diplomacy, such a dynamic could take hold elsewhere. It could spark hostilities between China and India, perhaps, or between Russia and Turkey.

A Vision of Peace

Alongside such worst-case scenarios, consider how Trump’s second term could also improve a deteriorating international situation. A combination of workman like U.S. relations with Beijing and Moscow, a nimble approach to diplomacy in Washington, and a bit of strategic luck might not necessarily lead to major breakthroughs, but it could produce a better status quo. Not an end to the war in Ukraine, but a reduction in its intensity. Not a resolution of the Taiwan dilemma, but guardrails to prevent a major war in the Indo-Pacific. Not a solution to the Israeli-Palestinian conflict, but some form of U.S. detente with a weakened Iran, and the emergence of a viable government in Syria. Trump might not become an unqualified peacemaker, but he could help usher in a less war-torn world.

Under Biden and his predecessors Barack Obama and George W. Bush, Russia and China had to cope with systemic pressure from Washington. Moscow and Beijing stood outside the liberal international order in part by choice and in part because they were not democracies. Russian and Chinese leaders exaggerated this pressure, as if regime change were actual U.S. policy, but they were not wrong to detect a preference in Washington for political pluralism, civil liberties, and the separation of powers.

With Trump back in office, that pressure has dissipated. The form of the governments in Russia and China does not preoccupy Trump, whose rejection of nation building and regime change is absolute. Even though the sources of tension remain, the overall atmosphere will be less fraught, and more diplomatic exchanges may be possible. There may be more give-and-take within the Beijing-Moscow-Washington triangle, more concessions on small points, and more openness to negotiation and to confidence-building measures in zones of war and contestation.

If Trump and his team can practice it, flexible diplomacy—the deft management of constant tensions and rolling conflicts—could pay big dividends. Trump is the least Wilsonian president since Woodrow Wilson himself. He has no use for overarching structures of international cooperation such as the UN or the Organization for Security and Cooperation in Europe. Instead, he and his advisers, especially those who hail from the tech world, might approach the global stage with the mentality of a start-up, a company just formed and perhaps soon to be dissolved but able to react quickly and creatively to the conditions of the moment.

Ukraine will be an early test. Instead of pursuing a hasty peace, the Trump administration should stay focused on protecting Ukrainian sovereignty, which Putin will never accept. To allow Russia to curtail Ukraine’s sovereignty might provide a veneer of stability but could bring war in its wake. Instead of an illusory peace, Washington should help Ukraine determine the rules of engagement with Russia, and through these rules, the war could gradually be minimized. The United States would then be able to compartmentalize its relations with Russia, as it did with the Soviet Union throughout the Cold War, agreeing to disagree about Ukraine while looking for possible points of agreement on nuclear nonproliferation, arms control, climate change, pandemics, counterterrorism, the Arctic, and space exploration. The compartmentalization of conflict with Russia would serve a core U.S. interest, one that is dear to Trump: the prevention of a nuclear exchange between the United States and Russia.

### Solvency---1AC

#### Federal unions are necessary and sufficient to solve:

#### 1. Proactively. Workers enshrine policy priorities in CBAs.

Nicholas Handler 24. Lecturer at Stanford Law School, J.D. from Yale Law School. "Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power." *New York University Law Review*, 99(45), 75-76.

3. Direct Constraints on Policy

Labor provisions may also directly constrain policy choices. Theoretically, many such provisions are limited by management rights.152 But labor has been pushing for such contractual provisions more aggressively in recent years, sometimes with the encouragement of sympathetic presidents looking to lock in policy preferences.

By way of disputes over conditions of employment, labor can resist substantive policy directives to which line employees are opposed for professional, ideological, or other reasons. As discussed in greater detail in Part III, law enforcement functions, particularly in the immigration context, are perhaps the most prominent example. Unions representing CBP and ICE agents have successfully used labor rights to challenge many substantive management policies touching core questions of immigration enforcement tactics and priorities, often over the objection that such challenges infringe on protected management rights. These include what weapons agents are issued,153 what types of searches they must perform and how,154 and what information officers must provide to detained immigrants, including identifying information about officers and information about potential legal remedies,155 among many other issues. Complaints about conditions of employment have been used, among other things, to delay the implementation of agency policies directing agents to prioritize detentions of violent criminals and to deprioritize arrests of minors and other nonviolent immigrants.156

Under President Trump, both CBP and ICE negotiated, with the encouragement of the administration, for even more expansive rights to challenge any enforcement guidance affecting the conditions of their employment and to delay the implementation of those policies until any labor disputes have been resolved, a process potentially lasting years.157 Under the Biden Administration, unionized employees at the EPA are now attempting to bargain for similar protections that would preclude the agency from adopting any policies that violate certain principles of "scientific integrity."158 These developments demonstrate the capacity for labor to become not only an influence on policy but, through the deliberate use of conditions of employment as a restraint on managerial discretion, a primary driver of it.

#### 2. Reactively. Unions fund litigation, protect employees from firings, and lobby to check mission creep.

Nicholas Handler 24. Lecturer at Stanford Law School, J.D. from Yale Law School. "Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power." *New York University Law Review*, 99(45), 77-80.

1. The Value of Unions

The civil service's move toward unionization reflects a broader recognition of the value of organized groups in protecting rights and pursuing key political objectives.160 Unions accumulate resources and expertise, allowing civil servants to mount sophisticated and well-financed defenses in labor disputes and to lobby effectively on key issues.161 Unions, for instance, are more effective at litigating employment disputes, a key tool in resisting the disciplinary efforts of management.162 They achieve higher win rates than unrepresented employees before arbitrators, a key strategic consideration for union-side counsel, as well as a key source of criticism from opponents of unionization rights.163 Unions also bolster the ability of civil servants to successfully litigate employment disputes against agencies in other ways. Through FLRA litigation, unions have secured civil servants Weingarten rights: the right to have a union representative present during a disciplinary investigation.164 Unions have likewise fought, with mixed success, to bargain for specific substantive rights for civil servants during interviews by agency inspectors general.165 Unions also provide extensive financial and logistical support to individual employees. The National Border Patrol Council, for instance, has established legal defense funds for CBP officers who are under investigation for their involvement in "critical incidents," such as the use of force.166

Even when unions do not litigate labor disputes directly, the threat of litigation - the possibility of losing, the need to delay policy implementation, the drain on budgets, and the attendant uncertainty - incentivizes agencies to cooperate with unions, and to take their preferences into account when staffing political positions and formulating policy. For instance, powerful unions, including those representing ICE and the EPA, can and do express their opposition to certain agency heads, dissuading the President from appointing them for fear of souring labor relations and inciting costly litigation battles.167

Perhaps the best example of labor's deterrent power is President Clinton's National Performance Review (NPR) program, launched in 1993. NPR's goal was to "reinvent[]" government by streamlining agency operations, reducing the size of the federal workforce, and reducing labor-management litigation.168 In exchange for union support for a variety of cost- and personnel-cutting measures, President Clinton granted unions substantial new powers.169 The National Partnership Council, which shaped agency reorganization policy, was given four union representatives (one from AFL-CIO, and one each from the largest federal unions - NTEU, AFGE, and NFFE).170 Further, in exchange for union cooperation, President Clinton issued Executive Order 12,871 requiring agencies to bargain over formerly optional subjects, effectively waiving a broad range of management rights and significantly expanding union bargaining power.171 Unions also took a substantial role in shaping the federal government's downsizing to ensure union positions received protection during workforce reduction.172

In addition to litigation, unions also have extensive statutory power to lobby Congress, often acting as one of the only sophisticated, proregulation advocacy groups in a competition of political influence dominated by private interests and well-funded nonprofit groups. The CSRA created unions that are, in effect, federally subsidized by dues, "official time" (time during which union officials are paid to engage in organizing and bargaining work), and protections against unfair labor practices.173 To facilitate union lobbying, Congress also created numerous exceptions to rules governing political engagement by civil servants, including the right to lobby on behalf of a labor organization and Hatch Act exemptions to participate in politics.174

Unionized federal employees have been politically engaged since the enactment of the CSRA, lobbying on a range of budgetary and regulatory reform issues.175 Unions lobby on issues ranging from regulatory enforcement policy, to the selection of agency leadership, to questions of funding - and their efforts have had substantial influence in Congress.176 Unions representing the employees of the NLRB, Department of Education, and IRS have all, for instance, lobbied for increases in appropriations for regulatory efforts that have been regular targets of under-funding.177 Labor also endorses political candidates, testifies routinely before Congress, and speaks to the press on high-visibility policy issues, often expressing views contrary to the views of agency leadership.178

#### 3. Morale. Absent unions, nobody wants to work for the government.

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This report, The Relationship Between Unions and Meaningful Work describes findings from a survey of a small group of Illinois public sector workers which investigates the work motivations of public employees. The study shows new evidence that government employees are strongly motivated to find “purpose in work that is greater than the extrinsic outcomes of the work.” Additionally, we find that government employees view their public sector union as a primary source of intrinsic motivation.

The unions that public sector workers belong to, do more than simply negotiate and enforce collective bargaining agreements. As our findings suggest, they are also related to the competence and performance level of public sector employees. But perhaps more provocatively, it is likely that the union plays an important role in the meaningful work that they experience while on the job, the job satisfaction they experience, and the prosocial values they maintain; some of the very factors that draw individuals into public service.

The policy implications for Illinois and other states are obvious. First, by taking away the right to unionize or denigrating the value of collective bargaining, as occurred in Wisconsin, Indiana, and Michigan the state may be removing one of the most important incentives to recruit highly educated people to public service. Second, a weaker or nonexistent unionized government labor force may transform the choice of public service into merely a self-interested financial exchange; labor becomes just another commodity.

Finally and most potentially troubling, if workers are without a collective identity that potentially facilitates their quest for meaningful work and subsequently, they perceive their employment as primarily or solely as a way to earn living, then public service itself loses a significant portion of its service dimension. Ironically, weakening the institution that is unjustifiably characterized as imposing a financial burden on citizens may produce a workforce that labors for little more than a paycheck. Fair compensation should be a minimum requirement for government employees, but so should a commitment to preserving the people’s common assets.

Our study challenges the claim that public sector unions act contrary to the common good. We found evidence that not only do workers who choose to pursue careers in the public sector do so in spite of the comparative lower wages that they earn, but that the unions they belong to strongly related to their desire to accomplish more thorough work than earning an income. Work in the public sector serves as a vehicle to fulfill, at least in part, a personal need to experience a meaningful life and job.

#### 4. Militancy. Trump’s second term is unique: employees are more vocal than ever.

Nicholas Handler 24. Lecturer at Stanford Law School, J.D. from Yale Law School. "Separation of Powers by Contract: How Collective Bargaining Reshapes Presidential Power." *New York Univeristy Law Review*, 99(45), 49-51.

But surprisingly, administrative law scholars have ignored a complex system of labor law at the heart of modern personnel administration, which reshapes presidential-bureaucratic relations in profound ways and challenges many of our assumptions about bureaucracy and the administrative state. Federal employees have extensive, statutorily enshrined labor rights. They have the legal right to form labor unions, to negotiate the terms of their employment with presidentially appointed agency heads, and to enter into complex collective bargaining agreements (CBAs) that govern many aspects of their work and shape how the federal government implements public policy.10 These contractual arrangements can amend the relationship between the President and the civil service in important ways, restructuring how agencies work and constraining what agency heads can direct employees to do in service of an agency's mission. Hundreds of these CBAs have been adopted, governing millions of federal employees ranging from immigration judges to scientists to prison guards.11 Their provisions are enforced through thousands of adjudications each year, hundreds of which are appealed to the Federal Labor Relations Authority (FLRA) and dozens to circuit courts.12

Take the field of immigration as an example. Typically, the story goes that the President imposes policies with profound implications for the immigration system, such as prioritizing the arrest and deportation of certain populations or setting targets to grant or deny certain numbers of asylum applications or removal challenges.13 Once those policies are announced, bureaucrats may choose to either sheepishly obey or clandestinely resist their orders. Presidential administration thus produces either an "imperial" presidency or an unaccountable "deep state."

But in the overlooked field of labor, bureaucrats may check presidential directives not through subterfuge, but through formal and legal challenges resting on breach of contract or labor violation claims. Immigration and Customs Enforcement (ICE) agents can challenge and defeat policies requiring them to deprioritize the arrest of certain populations - such as minors and those without criminal records - or to provide legal information to detained immigrants on the grounds that those policies improperly alter agents' conditions of employment.14 Border patrol guards can defeat policies altering what types of border searches they may conduct, what types of weapons they may carry, or what disciplinary processes they may face for misconduct.15 Immigration judges can defeat productivity quotas or performance evaluation standards designed to force them to process cases more quickly - a process well known to produce lower win rates for immigrants challenging removals.16 And employees of the United States Customs and Immigration Service (USCIS) may challenge directives pushing them to grant fewer asylum applications.17 In all these instances, important questions of presidential policy may rise and fall not on deep analyses of Article II or the Administrative Procedure Act, but on disputes over contractual interpretation, bargaining obligations, and unfair labor practices. In short, federal labor provides a forum in which civil servants openly and formally, rather than secretly and illicitly, challenge presidential administration in a wide range of important contexts. What emerges from the study of federal sector labor is a picture of presidential power neither imposed from above nor subverted from below. Rather, the President and the civil service bargain over the contours of executive authority and litigate their disputes before arbitrators and courts.

Federal employees' labor rights are likely to become more important in coming years. The Trump Administration accelerated a trend towards federal employees leveraging their labor rights to influence executive branch policies.18 In February 2020, for instance, the union representing ICE employees attempted to negotiate a collective bargaining agreement with Kenneth Cuccinelli, the departing de facto deputy head19 of the Department of Homeland Security, that would have significantly expanded their power to challenge immigration enforcement directives as violating agents' rights to certain working conditions.20 An EPA employees' union, emboldened by a victory before the FLRA, likewise sought to negotiate a new CBA enshrining certain protections for scientific expertise and neutrality as employment rights.21 Presidents, however, are not always on the losing end of such contractual arrangements. A 2004 effort by the Bush Administration to insert non-disclosure requirements into a CBA between the Department of Homeland Security and its employees, for instance, resulted in an employment-based ban on leaking from one of the nation's largest and most politically controversial agencies.22 As the norms promoting bureaucratic expertise weaken,23 and as other administrative structures designed to protect civil service independence come under sustained attack,24 such efforts will likely multiply.25 Understanding federal sector labor law is thus an urgent task, as it is an increasingly important battlefield for contesting both the practical control and legal legitimacy of the administrative state.

#### 5. Deregulation. Unions are the “most important line of defense.”

Nicholas Handler 25. Associate Professor of Law at Texas A&M. “Federal Labor Unions Strengthen the Administrative State.” 5/5/25. https://lpeproject.org/blog/federal-labor-unions-strengthen-the-administrative-state/.

Since taking office in January, President Trump has waged an all-out assault on the federal workforce. The attack is multi-pronged and raises a dizzying number of statutory and constitutional questions—everything from how reductions in force must be conducted under the relevant civil service laws to whether the Supreme Court’s precedent in Humphrey’s Executor, which protects members of independent, multi-member regulatory agencies from at-will removal, violates Article II of the U.S. Constitution. Here, I focus on a front in this war that has received comparatively little attention, but that is just as consequential for the future of the executive branch: President Trump’s war on federal sector unions.

The Origins of Federal Labor Unions

A bit of background: Under the Civil Service Reform Act of 1978, many federal civil servants have the right to join unions and to collectively bargain over the “conditions” of their “employment.” As I’ve explained elsewhere, this right can check presidential abuses and influence agency operations in a number of ways. Everything from how immigration judges decide cases to how effectively the EPA can regulate environmental risks depends, in part, on federal labor law. Federal labor law is complex, but on a basic level, unions organized under the CSRA check presidential power in three ways.

First, labor law allows unions to push back on what Jody Freeman and Sharon Jacobs have called “structural deregulation”—essentially, attempts by the President to disable agencies whose missions he opposes by imposing burdensome working conditions. Agency heads might change work assignments, require office relocations, or deprive civil servants of needed resources in order to prevent an agency (say, the EPA or the Department of Labor) from carrying out its mission effectively. These day-to-day working conditions are the types of issues that unions bargain over routinely, and as a result, unions often form the last and most important line of defense against presidential sabotage of an agency’s mission. Many unions, for instance, bargain over issues like staffing levels, work hours, and the availability of overtime and backpay, which affect the ability of staff to perform their jobs effectively.

Second, Presidents may seek to influence agency decision-making more subtly through management tools. Take immigration courts, for example. Immigration judges adjudicate removal proceedings for immigrants facing deportation. Many of these immigrants may lack legal counsel and have a limited understanding of the rules governing removal. A good immigration judge may take time to help explain the proceedings or to elicit important evidence from the respondent by asking probing questions. This can allow the judge to build a record and deny removal in cases where the immigrant might not otherwise have been able to defend herself. Presidents looking to increase the rate of removal (say, to deliver on promises of more aggressive immigration enforcement) may bury immigration judges in cases so they can’t take the time they need to assist respondents. Or they might tweak performance evaluations to discourage grants of leave to remain. Unions can and do bargain over management tools like these, often over presidential objections.

Third, and finally, by enabling the formation of unions, the CSRA allows civil servants to pool resources and organize effectively around a range of issues related to the federal workforce. Unions, for example, cultivate a sophisticated bar of labor attorneys that litigate both labor issues and a wide range of other issues that arise under civil service laws, anti-discrimination laws, and the U.S. Constitution. In addition to litigation, unions also have publicity and lobbying operations, bringing to public attention presidential tactics for influencing federal policy. As research has shown, formal rights have value—but they have much more value when they are vested in well-organized, well-resourced groups with the means to vindicate them. Unions provide such rights for federal workers, who often wield them in ways in that protect public services and help to protect congressional initiatives from presidential subversion.

For all these reasons, President Trump has targeted federal unions for nearly a decade. During his first administration, he deployed a range of tactics to hamper and disable federal sector labor rights—from issuing executive orders directing agencies not to negotiate on a range of workplace issues, to preventing union officials from using work hours to pursue union goals, to unilaterally rescinding contracts at disfavored agencies like the Department of Education, to seeking the decertification of certain unions on legally dubious grounds. These tactics met with mixed success. But the consensus among Trump I alumni appears to be that they did not go far enough in curtailing supposed bureaucratic “resistance” to the President’s administration. And indeed, many high-profile alumni of the first Trump Administration spent the Biden Administration developing a set of legal arguments in favor of even harsher restrictions on federal labor.

The Constitution and Federal Labor Unions

As with other areas of federal law, this time around is different for labor. In his second term, President Trump is eschewing many of the incremental tactics (harsh as those were) that he pursued in his first term to hobble unions. The goal this time appears to be full-scale demolition of the federal labor movement. The administration has pursued a wide range of strategies to undermine unions. Among the most important are unilaterally rescinding major collective bargaining agreements at large agencies, like the TSA; leaving key posts at the Federal Labor Relations Authority (FRLA), such as General Counsel, vacant, thus preventing it from enforcing key provisions of labor law; and firing the Democratic Chairwoman of the FLRA in violation of federal law. Most dramatically, the President has purported to exclude an enormous number of federal civil servants (estimates range upwards of 700,000) from bargaining rights altogether, relying on an obscure provision of labor law that restricts labor rights in certain sensitive national security posts.

Each of these moves raises different technical issues under federal labor law. I and others have written elsewhere about why the President’s use of national security exclusions, in particular, appears spurious. But while the specific labor questions are important, focusing too narrowly on them risks missing the forest for the trees. Rather than litigating specific contractual or statutory issues, here I focus on the broader constitutional and democratic stakes of the President’s war on federal labor.

President Trump and his leading personnel advisors appear to view most, if not all, federal labor rights as unconstitutional infringements on the President’s Article II authority to wield the “executive power” and to “take care” that federal law is “faithfully executed.” This is a particularly muscular version of the unitary executive theory, though its core premises aren’t all that different from other versions: they rest on the belief that any check on the President, from any “unelected” member of the executive branch, is an unconstitutional and undemocratic restraint on the President’s ability to deliver his agenda on behalf the people.

## Politics

### Courts Shield---2AC

#### 1. Court action shields the plan’s unpopularity.

McKinzie Craig & Joseph Daniel Ura 25. Assistant director at the Louisiana State University Paul M. Herbert Law Center, Ph.D. in political science and government from Texas A&M University. Professor of political science at Clemson University, Ph.D. in political science from the University of North Carolina at Chapel Hill. "Policy, Position-Taking, and Congressional Voting under Judicial Review." *American Politics Research*, 0.0, 2.

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.

### Courts Shield---1AR

#### Colling is wrong: courts act as cover.

Gerald S. Dickinson 25. Professor at the University of Pittsburgh School of Law, J.D. from the Fordham University School of Law. "Judicial Laboratories." *Pennsylvania Journal of Constitutional Law*, 27.75, 147-148.

Other scholars take a more aggressive view of state courts in school finance reform.

<Footnote begins>

See, e.g., Thro, supra note 484, at 223 (discussing how state courts declared respective school finance systems unconstitutional, prompting legislative responses and effectively compelling political action.); see generally MICHAEL A. REBELL, COURTS AND KIDS: PURSUING EDUCATIONAL EQUITY THROUGH THE STATE COURTS (2009) (arguing that state courts help legislatures increase school funding by issuing rulings that shield them from political backlash).

<Footnote ends>

This viewpoint sees state courts serving as democratic "cover" for timid legislatures that want to increase funding for school finance, but are politically reticent to test the waters due to the specter of raising taxes on constituents. These policy-driven remedial mandates may require state courts to impose affirmative obligations on the legislatures to correct funding failures by shaping the nature of educational opportunities. In other words, it appears that scholars supporting such judicial intervention envision not only a rights-based role of state courts over constitutional protections, but also a role that is primarily focused on imposing policy-directive remedial orders mandating specific educational services. Such judicial determinations and actions suggest that school finance experiments fit neatly within judicial laboratories of democracy. And there are, indeed, examples of elected judiciaries taking a prominent policymaking role from the bench to correct democratic failures in school financing. But those experiments into the democratic arena of education have vacillated from cautious to aggressive.

### Aff Solves---2AC

#### The aff solves the impact within hours.

Nick Wertsch 25. Associate Director of Workplace Justice at Dēmos. “How Federal Workers Can Leverage Civil Disobedience as a Strategy to Win.” 5/25/25. https://www.commondreams.org/opinion/federal-workers-civil-disobedience.

Essential federal workers provide another example from 2019. In a failed effort to secure funding for a border wall, Trump shut down the federal government for more than a month. Without a federal spending bill in place, federal workers were either furloughed or forced to work for 35 days without pay. What ultimately ended Trump’s shutdown was a small group of air traffic controllers. Throughout the ordeal, the air traffic controller union leadership strongly disavowed any idea of striking, both publicly and privately, worried that it would trigger serious legal consequences for the union. But after performing high stress jobs for a month without pay, and once other labor movement leaders began to call for a general strike, air traffic controllers started to call in sick, grounding flights in major metros. Within hours of the sickout, Trump reached an agreement on a new spending bill. If coordinated with the intention of creating a work stoppage, these sickouts ran the legal risks described previously. But support for ending the shutdown was high, and the public blamed Trump for causing the crisis.

### Courts Shield---1AR

#### It’s offense. Shutdown without unions is worse. Only the plan solves.

Joseph A. McCartin 25. Professor of History at Georgetown University. “Will Federal Workers Rediscover Their Militancy?” 4/1/25. https://www.dissentmagazine.org/online\_articles/will-federal-workers-rediscover-their-militancy/.

Ironically, it was a small number of strategically placed air traffic controllers who finally brought the shutdown to an end when they called in sick, causing a ground stop at LaGuardia Airport on the morning of January 25, 2019, which led the Trump administration to fold by that afternoon. The union that represented those workers, the National Air Traffic Controllers Association—PATCO’s successor—utterly disavowed any responsibility for their action. I had found out a week before that episode just how afraid NATCA was of any suggestion that its members might stage a job action. When I mused in the American Prospect that a controllers’ sickout would end the shutdown in short order, one NATCA official furiously criticized me for even having uttered that thought in public.

In each of these instances, the seeming stability of the federal system of labor relations and federal unions’ deep investment in preserving that system functioned to contain conflicts that otherwise might have spiraled. Now that system is all but destroyed. After mere months in office, Trump has systematically subverted a robust structure that took decades to build. He fired FLRA chair Susan Tsui Grundmann and MSPB chair Cathy Harris, ensuring that henceforth those adjudicating agencies will do his bidding. He effectively shuttered agencies like USAID and turned whole categories of workers—such as those engaged in DEI work—into at-will employees to be fired without due process. And now he has apparently delivered his coup de grâce, demolishing the union rights federal workers have enjoyed for decades.

What Next?

While the Trump order threatens to produce a veritable nuclear winter in U.S. labor relations, its very radicalism makes its long-term impact more unpredictable. The past is full of cautionary tales reminding us that the more an ambitious actor tries to bend history to their will, the more likely the unintended consequences of their actions will undo their grand plans.

One unintended consequence of Trump’s move is that it could very well rouse the union movement and its allies to a more confrontational opposition to his agenda than anyone could have foreseen. Up to this point, federal unions have confined their resistance to filing lawsuits and contract grievances, circulating petitions, holding rallies, and lobbying legislators. Unions have not contemplated job actions to date in large part because they are forbidden by law; engaging in them could lead workers to lose their jobs and cost unions their certifications as bargaining agents, as happened in the PATCO case. But will calculations change in a world where workers no longer feel protected by civil service regulations and their unions have already been decertified for all intents and purposes?

As the sociologist C. Wright Mills observed long ago, where they are firmly established unions tend to act as “managers of discontent.” They seek to direct their members’ grievances into channels that might produce significant—if usually incremental—gains, and to restrain their members from actions that might threaten the union’s survival or damage its credibility as a reliable negotiating partner in the eyes of management. Yet what happens to workers’ discontent when unions are no longer able to play that role? And what happens to union behavior when the system in which they have invested and from which they derived their own stability is shattered?

Up to this point, most federal workers have operated as though the old assumptions still hold true, believing that the terms and conditions under which they work cannot be revoked by one man’s politically motivated order. Most federal unions believed that a presidential fiat could not override the protections they had under the CSRA as long as their organizations abided by its rules.

As the old order crumbles, however, faith in the courts’ ability or willingness to stand up to Trump’s aggression is waning. On the day after he announced his union-busting executive order, the U.S. Court of Appeals for the District of Columbia ruled 2–1 that Trump had the authority to fire Cathy Harris of the MSPB and Gwynne Wilcox of the National Labor Relations Board in the middle of their Senate-confirmed terms. In his concurring opinion, Judge Justin Walker, a Trump appointee, argued that the Constitution’s framers vested in the president “full responsibility for the executive power.” It seems likely that a majority of justices on the current Supreme Court will arrive at the same conclusion when Trump’s wholesale restructuring of federal labor relations reaches their docket—unless something changes the present dynamic.

Can unions bring about that change? The day after Trump’s order was announced, the AFL-CIO acknowledged the existential threat it posed. “No union contract is safe after last night,” it said. Yet whether unions feel incentivized to resist Trump’s attack with more than rhetoric, lobbying, and redoubled lawsuits is an open question. Union leaders realize that the sudden conversion of federal workers to what is effectively at-will employment status and the simultaneous termination of their bargaining rights merely puts them in the same position as the vast majority of private-sector workers, who lack both union representation and employment security. Could the public be stirred to support government workers in a confrontation with the Trump administration? Uncertain of the answer, union leaders are likely to continue to take a cautious approach to this crisis—at least in the near term. Yet even if union leaders do not seek it, an escalating confrontation is more likely now than it has been in generations.

It is worth remembering that federal labor relations were not always as pacific as they have been in recent decades. One reason that Kennedy signed his 1962 executive order was to head off growing unrest among federal employees. Although it has long been illegal for federal workers to engage in strikes, such actions were not uncommon during the years when the system of federal labor relations was under construction. (Between 1956 and 1961, there were ninety-two work stoppages at Cape Canaveral, where America’s space program was based.) Nor did the Kennedy and Nixon executive orders eliminate such activity. Between 1962 and 1981 federal workers engaged in thirty-nine illegal work stoppages.

Unrest among federal workers peaked in March 1970—after the executive orders were promulgated. In that month, hundreds of thousands of postal workers defied the federal ban on striking and staged an eight-day wildcat walkout, frustrated by their inability to negotiate over pay under the government’s limited form of collective bargaining. When Nixon called out the National Guard to deliver the mail, postal workers held firm and only returned to work after they were promised a wage increase. Just as they returned to work, several thousand air traffic controllers staged a seventeen-day sickout to protest the Federal Aviation Administration’s refusal to negotiate with their union. Both job actions produced results. The walkout made it possible for postal workers to win the creation of the U.S. Postal Service, a semi-autonomous federal agency that was allowed to bargain with them over their pay. For their part, air traffic controllers were able to speed up the official recognition of PATCO as their exclusive bargaining agent. It was only after PATCO’s ill-fated 1981 strike that job actions by federal workers became exceedingly rare.

Trump’s radical executive order could reawaken this long-dormant tradition of collective action among otherwise seemingly docile federal workers. Such actions, should they arise, will likely not take the form of a strike. There is a long history of slowdowns, sickouts, and work-to-rule actions by federal workers. Such actions are often difficult for the government to detect, let alone defuse. And they do not require official union sanction. Indeed, like the postal workers’ 1970 wildcat strike, these activities tend to be more effective and harder to defeat when they are unofficial.

#### Worker militancy forces the government to re-open.

Ben Beckett & Ryan Haney 19. Bachelor of Arts at the University of Michigan. Reporter and editor. \*\*Regional truck driver manager who deals with unions. January 2, 2019, “How Federal Workers Could Fight the Shutdown,” Jacobin. https://jacobin.com/2019/01/federal-workers-government-shutdown-union-power

But a more militant labor movement could respond to the shutdown very differently, seizing the “choke points” within the US economy and society that federal workers are strategically positioned to take advantage of.

For example, what if Transportation Security Administration workers decided to refuse orders to work without pay, leaving the airport security gates unstaffed during the busiest season for travel? The airlines would be effectively shut down by a TSA agent “wildcat,” with passengers reluctant to board unsecured flights.

Meanwhile, there’s a potential army of 400,000 furloughed federal workers, not just in D.C. but based at government offices across the country. What if, taking a note from the yellow vests movement in France, these workers established “picket lines” blocking major roads and highways, halting all nonemergency traffic? Certainly that traffic would also include package delivery trucks and tractor trailers hauling goods for their own high-demand peak season, many of them driven by Teamsters who are contractually protected when they refuse to cross picket lines.

Imagine the political fallout of this massive economic disruption, all because Trump wants a border wall. Even the MAGA hat-wearers would likely prefer a safe flight home and their packages delivered on time over a wall that they will never even see. The reopening of the government under these conditions would be a massive victory of the labor movement, a product of our own collective efforts rather than that of closed-door negotiations between legislators and the White House.

#### Labor ended the 2019 shutdown. They could do it again, but only with the aff.

SW 19. Socialist Worker. "Will labor learn the lessons of the shutdown?." SocialistWorker.org. 2-4-2019. https://socialistworker.org/2019/02/04/will-labor-learn-the-lessons-of-the-shutdown

IN THE end, it was labor that killed the shutdown.

As Socialist Worker wrote in an editorial, “[I]t took federal workers beginning to snarl traffic at major U.S. airports before [Trump] and the Republicans, without really admitting it, backed down and allowed the federal government to be reopened.”

However, in his January 25 Rose Garden surrender, Trump spent only two minutes announcing the end of the shutdown, and the next 15 minutes ranting about the need for a border wall or “barrier.” In that tirade, Trump threatened federal workers with another government shutdown on February 15, if Congress doesn’t vote for $5.7 billion in funding for his racist border wall.

In the face of this renewed threat, federal workers, federal unions and the labor movement should take a moment to reassess our strategies for resisting the shutdown. We need to ask — and answer — some vital questions.

IF AVIATION workers stopped the shutdown with a “sick-out,” could we have stopped the shutdown sooner?

YES, WE could have. The combined power of federal workers withholding their labor and private-sector workers calling for a safety strike brought Trump to his knees after 35 days, and there is no doubt that with better organization, we could have done so sooner.

As was widely reported, Transportation Security Administration (TSA) airport security screeners, members of the American Federation of Government Employees (AFGE), were among the 420,000 federal workers required to work for those 35 days without getting paid.

The low-paid screeners, many living paycheck to paycheck, quickly ran out of funds to even buy gas or pay train fare to get to work, and began calling out sick in increasing numbers. On some days over the five-week shutdown, TSA agent absences ran up to 10 percent.

On top of delays, flying became less safe, with the Federal Aviation Administration (FAA) furloughing 4,000 safety inspectors, represented by the Professional Aviation Safety Specialists union, during the first three weeks of the lockout.

Airline passenger and crew safety concerns led Association of Flight Attendants International President Sara Nelson to call for the labor movement “to end this shutdown with a general strike,” as she accepted the 2019 AFL-CIO MLK Drum Major for Justice Award.

Then, on Friday morning, January 25, air traffic controller absences at FAA facilities in Washington, D.C., and Jacksonville, Florida, caused a ground stop at New York’s LaGuardia Airport and delays up and down the East Coast. Air traffic controllers have been represented by National Air Traffic Controllers Association (NATCA) since 1987.

Within hours on Friday, the shutdown — and the lockout of federal employees — was over.

Given the combined power of public-sector and private-sector aviation workers that seems to have come together without coordination, imagine how much sooner we could have stopped the shutdown if we had organized together.

#### Failure to organize emboldens shutdown brinkmanship. That means the plan stops future shutdowns.

Ben Beckett 19. "Sickouts and Strike Threats Stopped the Government Shutdown." Jacobin. 1-25-2019. https://jacobin.com/2019/01/government-shutdown-collective-action-strikes-unions

Many federal workers will understandably want to simply return to work and put the lockout behind them. But the shutdown and the way it ended show that it is critical for federal workers to keep organizing.

The fact that the lockout was able to go on so long without an effective response will embolden the Republicans to use the tactic again. In fact, Trump’s proposal only funds the government through February 15, at which point the whole thing could start over if no permanent agreement is reached. And while legislation to provide back pay to government subcontractors — many of whom are low-wage workers — has been proposed, the deal as it stands does not provide for them.

But the speed with which Trump folded when faced with a serious disruption to business as usual at workers’ initiative shows how much power federal workers have — if they come together and figure out how to use it.