# Disclosure---Kentucky RR---Round 4

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### Disclosure---1AC

#### Trump has illegally eliminated collective bargaining rights for civilian civil servants.

Matthew Finkin & Barry Winograd 25. Research Professor of Law at the University of Illinois at Urbana-Champaign; Former Adjunct Professor of Law at Cal, Arbitrator. “There’s No There There: The Trump Administration’s Use of Misleading Empirical Evidence to End Collective Bargaining for Most Federal Employees.” 7/17/25. https://verdict.justia.com/2025/07/17/theres-no-there-there-the-trump-administrations-use-of-misleading-empirical-evidence-to-end-collective-bargaining-for-most-federal-employees.

President Donald Trump has issued several executive orders affecting the federal workplace. One directive with sweeping impact is Executive Order (EO) 14251, issued on March 27, 2025. The EO excludes federal employees in more than a dozen cabinet-level and other agencies from labor law coverage and collective bargaining agreements (CBAs). Absent the EO, these employees and agencies would be subject to the Federal Service Labor-Management Relations Statute (FSLMRS), a statute passed in 1978 as part of civil service reform legislation. According to the EO, the President’s action was justified by a statutory provision to protect the nation’s national security.

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Under 5 U.S.C. § 7103(b)(1), the President can exclude federal agencies from application of the FSLMRS if two things are true: a primary function of the agency involves national security work, and if union representation would not be “consistent with national security requirements and considerations.” The purpose of this column is to consider faulty empirical evidence that has been offered by the Administration to support the EO, and to offer an alternative perspective on the FSLMRS and arbitration. The Administration contends that union representation is inconsistent with and undermines national security because CBA terms and arbitration decisions interfere with managerial prerogatives to run government agencies without delay or obstruction. In a memo from the Office of Personnel Management (OPM), also issued on March 27, the Administration transmitted guidance on the EO to affected agencies, advising them, among other actions, to disregard CBA provisions on reductions-in-force, grievance participation, and deduction of union dues. In addition, in a Fact Sheet issued on March 27, the White House charged that some federal sector unions “have declared war on President Trump’s agenda,” noting that one union has been “widely filing grievances to block Trump policies.” The Fact Sheet contrasts these reasons for the EO with the President’s support for “constructive partnerships with unions who work with him.” Responding to the EO, several unions sued President Trump seeking injunctive relief, alleging that the EO violates the FSLMRS and constitutes retaliation for union activity protected under the First Amendment. The administration’s opposition to one of the union lawsuits elaborated on its national security rationale: Employee performance is also critical in agencies with important national security roles. Many provisions in the Defendant agencies’ CBAs make it more difficult to remove employees who perform poorly. For example, CBAs often require “performance improvement periods” (PIPs) of at least 60 days before agencies can propose removing an employee for poor performance…Even after that process, CBAs allow unions to grieve dismissals of poor performances to binding arbitration, with arbitrators overturning approximately three-fifths of removals they hear. The AFPI Report In submitting the opposition brief quoted above, the administration cited a research report from the America First Policy Institute (AFPI), Union Arbitrators Overturn Most Federal Employee Dismissals. The sponsor, as the name suggests, is not an academic institution engaged in disinterested social science research, but a policy proponent. According to the AFPI’s mission statement, it: …exists to advance policies that put the American people first. Our guiding principles are liberty, free enterprise, national greatness, American military superiority, foreign-policy engagement in the American interest, and the primacy of American workers, families, and communities in all we do. The AFPI’s values aside, it is appropriate to closely examine the report as it is the sole empirical support offered by the Administration for its assertion that the grievance and arbitration process has a workplace impact that undermines national security. As the AFPI report explains, non-unionized employees may object to dismissals before the Merit Systems Protection Board (MSPB). Unionized employees, if they wish, can opt to arbitrate under a CBA’s grievance procedure, subject to review by the Federal Labor Relations Authority (FLRA), the administrative agency overseeing federal sector labor relations. The legal standard to decide whether dismissal is justified applies equally to the MSPB and in arbitration, and case law has developed to assess individual cases in both forums. The Supreme Court has affirmed this approach. Using MSPB decisions from 2011 to 2016, and a sample of 435 arbitration awards from 2018 to 2020, the AFPI report finds the following: The AFPI report attributes the difference in total managerial vindication—72 percent versus 42 percent—to two main causes: the incentive for unethical arbitrator decisions to curry favor with the prevailing party, and deficiencies in the arbitral selection process. Of the first, the report acknowledges that the tripartite Code of Professional Responsibility for Arbitrators of Labor-Management Disputes prohibits the compromise of a decision, a so-called “split decision,” when “made for the sake of attempting to achieve personal acceptability.” The AFPI report points to the 20 percent rate of split decisions in arbitration as evidence that arbitrators act unethically. Of the second cause for the differential, the report posits that unions are repeat players selecting arbitrators drawn from a master list maintained by the Federal Mediation and Conciliation Service (FMCS), but an agency “goes to arbitration only a few times a year.” From this premise, the AFPI concludes that unions track arbitrators for their win/loss performance while agencies do not, and that “arbitrators who frequently rule against unions get little federal arbitration work.”

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Reasons for Skepticism

Before addressing the AFPI report’s explanation of its findings, there are reasons to be skeptical of its data. It is estimated that there are about 2.3 million full-time federal employees, with over a million—a number that has been increasing—being represented by unions and having access to arbitration. The report notes that, according to OPM records, thousands of federal employees with permanent civil service status are dismissed each year. Only a small fraction of dismissals lead to administrative proceedings. For cases of unacceptable performance, notice and an opportunity to improve typically are required by statute as a pre-condition to discharge, thereby affording employees a means of preserving employment.

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The first problem with the AFPI data is that it does not provide the number of MSPB decisions it relies on, only a percentage. We simply cannot tell if the number of cases in the MSPB category is statistically meaningful. A related complication is that we do not know the union status of an employee with an MSPB case, unlike employees with arbitration cases brought by unions. A second data problem is that the AFPI report’s analysis of dismissals that went to arbitration not only is based on an unstated number of cases, but the volume analyzed—435 over two-plus years—includes disciplinary suspensions along with dismissals, as well as alleged violations of contract terms. This mix of data is a confusing jumble, and not illuminating. A third data deficiency is that the AFPI report focuses on the government’s supposed inability to remove employees for poor performance as an impediment to protecting national security. But the AFPI data treats all discharges alike without separating discharges based on poor performance. The agglomeration of all discharge cases tells us nothing about whether employees dismissed for poor performance in the federal sector are treated disparately by arbitrators compared to the MSPB, or whether the number of discharges for poor performance—which the AFPI report does not disclose—are too few to be statistically significant. Last, the only examples of actual cases cited in the AFPI report are dismissals based on employee misconduct; for example, harassment, drug possession, accepting gifts, and patient misconduct. The report does not offer a single instance of a termination for poor performance, much less one adversely affecting national security. We believe that these methodological shortcomings have led the Administration to make an illogical leap in citing the AFPI report to support the EO. Assuming arguendo that the AFPI’s raw data prompts a measure of concern, even if inchoate, the relevant question is this: What does actual experience tell us about the role of arbitration and its alleged interference with national security? The final section of this column will directly address this question, but first the report’s explanations are considered. The Report’s Explanations There are solid scholarly studies of arbitration, most recently a comprehensive, rigorous, and insightful work drawn from more than 2,000 discipline and discharge decisions filed with a Minnesota labor relations agency. The Minnesota study shows that it is not unusual for the results in discipline cases to vary based on a number of variables. The study found, for example, that arbitrators in Minnesota upheld private sector discharges in full 49 percent of the time, but 56 percent of the time in the public sector. By the AFPI’s reasoning, arbitration must be biased to favor public sector employers over those in the private sector. Q.E.D. Outcomes also vary by the cause given for discharge. Arbitrators in Minnesota upheld discharge for poor performance about 65 percent of the time, and about 45 percent of the time for on-the-job misconduct. But, as noted, the AFPI report aggregates all federal sector discharges even though the report’s singular concern is performance, not misconduct. There is no need to unpack all the APFI report’s explanatory failings, even assuming its statistical sample is adequate. Three reasons alone suffice. First, union represented federal employees who face discharge may pursue either the contractual grievance procedure or an appeal to the MSPB. They cannot do both. As a practical matter, unions commonly retain the power to decide whether to file a formal grievance and control the forum for disposition; that is, whether without settlement, it will take the case to arbitration. In the ordinary course, a union will conduct a preliminary investigation into an employee’s complaint before deciding whether to grieve. If a union believes the employee to be wrong or the case too weak, it is unlikely to grieve. If the union does not file a grievance, the employee has recourse to the MSPB. Although the AFPI report tells us nothing about the union status of the employees in its sample, it remains likely that employees who are not in a union-represented bargaining unit, and who have recourse to the MSPB, will not have had their case screened by union representatives knowledgeable about the possible outcome. It also is likely that unionized employees appearing before the MSPB without a union representative will have had their cases rejected after screening by their unions, had they sought union assistance. Under these conditions a disparity in result, if there is one, should not be surprising, especially if an employee is appearing pro se without any representation, as the MSPB permits. Second, is the supposed “repeat player” effect described in the AFPI report and the alleged advantage for arbitrators known to unions. Awards in the federal sector are provided in the comprehensive CyberFEDS database available by subscription to those handling federal cases. A subscriber can learn an arbitrator’s decision history by the click of a mouse. Yet the report would have the reader believe that federal agencies have been too ignorant, indifferent, or lethargic to inquire. CyberFEDS access aside, the AFPI report errs in its description of the role of the FMCS. True, the FMCS maintains an arbitrator roster with hundreds of names, and it can provide a list of several names from the roster for parties to consider in a single case. However, many if not most agencies and their union counterparts agree on a standing panel of arbitrators to hear all of their cases with the results known to both parties. For example, the Internal Revenue Service and the National Treasury Employees Union have a well-developed contractual system for panels of arbitrators for national and local disputes. In this system, both sides are repeat players. The reference to “union arbitrators,” as in the title of the AFPI report, is a misnomer. Third, the AFPI report is misleading in describing the significance of what it refers to as split decisions. The MSPB is permitted to render partial decisions with neither side prevailing completely. As noted above, the AFPI’s reported numbers conflate MSPB split decisions with those MSPB decisions fully sustaining an employee appeal. The AFPI report attributes the prevalence of split decisions, of whatever number, to arbitral corruption akin to self-dealing, even as the report, by aggregating the data, declines to inform the reader of how often the MSPB makes split decisions. Contrary to the charge made by the AFPI, there is nothing inherently nefarious or corrupt in a split decision. It is unethical only when compromise is made, “…for the sake of attempting to achieve personal acceptability.” As the Minnesota study recognizes, split decisions are ethical when “an arbitrator finds the employee engaged in inappropriate conduct, but also concludes that the employer’s discipline was excessive.” In such a case, rather than discharge, the arbitrator can award a suspension with back pay from the end of the suspension to reinstatement, or can award reinstatement with no back pay at all. As these researchers find, In a close case requiring significant discipline but not the ultimate sanction of discharge, the reinstatement without back pay directive permits the arbitrator to assign the economic burden to the party whose misconduct triggered the need for discipline in the first place—the employee. The emphasized clause reminds us that arbitration is the end product of a multi-step grievance procedure in which the union and agency representatives have jointly examined the facts and issues. It is not surprising that those disputes most intractable of settlement—“close cases”—are those most likely to be arbitrated and to result in split decisions. In sum, whatever its rhetorical value, the AFPI report is not social science.

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Federal Sector Labor Law and National Security

Rather than rely on findings and explanations that are not supported by data, we can better understand the impact of arbitration on national security from the text of the FSLMRS and from cases applying it. The EO’s abrogation of collective bargaining and grievance arbitration is predicated on the claim that, in an agency with a primary function in national security, even if not the dominant function, the obligation to bargain collectively with unions imposes inflexibility that threatens national security, irrespective of the work these employees do. However, by operation of law, the FSLMRS in 5 U.S.C. § 7112(b)(6) already prohibits a bargaining unit from including “any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security.” The FLRA has provided extensive interpretation of the meaning of subsection (b)(6)’s exemptions.

An early FLRA decision, Oak Ridge, determined that the statutory exclusion from union representation should apply narrowly to work that “directly affects national security,” citing as key concerns “espionage, sabotage, subversion, foreign aggression, and any other illegal acts which adversely affect the national defense.” In Oak Ridge, the FLRA relied on Cole v. Young, a 1956 decision of the Supreme Court rejecting summary discipline based on a national security claim. For the Supreme Court, an “indefinite and virtually unlimited” understanding of national security would create an exception to general personnel laws that “could be utilized effectively to supersede those laws.” The same reasoning can apply to the EO. Oak Ridge remains controlling precedent under the FSLMRS.

An employee doing any national security work in the departments exempted by the EO—Veterans Affairs, for example—is already precluded from collective bargaining. Building on the express exclusion of a handful of agencies in the FSLMRS, presidents beginning with Jimmy Carter have excluded a small fraction of the workforce in several agencies and departments based on national security concerns, but, as observed in one of the EO injunction decisions, no president, until now, has sought to remove most federal employees from the FSLMRS.

So understood, the EO’s reliance on the national security exclusion in 5 U.S.C. § 7103(b)(1) is based on the blanket assumption that because a primary function of a portion of these units is devoted to national security, the exacting, job-by-job bargaining unit determinations required by 5 U.S.C. § 7112(b)(6) need not be undertaken for the agency as a whole. This reflects neither a fair reading of the text of the statute, nor practice.

Beyond unit determinations, employees without national security functions in these agencies can be exempted from collective bargaining pursuant to 5 U.S.C.§ 7103(b)(1) if, but only if, collective bargaining for them would be inconsistent with national security. This is the second part of the statutory test established by Congress. The Administration claims that this condition is satisfied because agency management is hindered by alleged bargaining delays and contract inflexibility leading to performance impediments that are enforced in arbitration. The argument does not withstand scrutiny; the logical leap too great.

Under 5 U.S.C. § 7122(a)(1), the FSLMRS permits either party in an arbitration to challenge an award on the ground that it is “contrary to any law, rule, or regulation.” This provision includes any law, rule, or regulation dealing with national security functions. Given this limitation, the FSLMRS itself has an appellate mechanism that prevents any arbitration award from interfering with national security.

Moreover, actual data demonstrates that national security is a subject rarely touched upon in federal sector arbitration. Using the advanced search function of the FLRA’s comprehensive compilation of all awards appealed under 5 U.S.C. § 7122 from 1980 through 2025, the search identified 2,324 challenges. Of these, a search for keywords related to the FSLMRS’s national security exemption found only five awards in the past 45 years that have possible relevance; that is, 0.00215 percent of all awards.

From the FLRA decision search, three awards deal with “security clearances:” one involving the loss of clearance for a temporary guide; another for denial of sick leave after loss of security clearance; and, a third about barring union communication with an employee during a security clearance investigation. A search for awards involving “internal security practices” found two: one affirming the right of management to assign an employee displaced after loss of a security clearance; and, a second about designating employees for random drug testing based on internal security practice. This sparse arbitral record should not be surprising. Under 5 U.S.C. § 7121(c)(3), the FSLMRS expressly excludes from arbitration the dismissal or suspension of an employee covered by 5 U.S.C. § 7532; that is, an employee subject to management’s disciplinary authority “in the interests of national security.”

When the empirical evidence is properly considered, the public record demonstrates that arbitration under CBAs neither interferes with nor constrains agency action based on national security. The EO cannot be supported by relying on faulty empirical evidence.

#### Lack of worker protections has created a crisis in every corner of the government.

Jay Kuo 8/28. J.D. from Cal, A.B. in Political Science from Stanford. "The Emperor Has No Claws.” 8/28/25. https://thinkbigpicture.substack.com/p/trump-paper-tiger-taco?r=1z3mqo&utm\_medium=ios&triedRedirect=true. Language modified.

As the self-proclaimed “unitary executive,” at whose pleasure all employees of the government are supposed to serve, at least in his mind, Trump has sought to control the Executive Branch from top to bottom. And he has demanded unquestioning fealty from every official, even while demanding they bend or break the rules, especially around the politicization of their authority.

To this end, his lackeys, especially Attorney General Pam Bondi, FBI Director Kash Patel, Defense Secretary Pete Hegseth, HHS Secretary Robert F. Kennedy, Jr, and Director of National Intelligence Tulsi Gabbard, have been busily firing anyone who doesn’t toe the MAGA line or who practices any sort of professional, ethical behavior.

This has created a crisis of morale within every corner of the federal government and prompted several high-profile public resignations, including three from top officials at the Centers for Disease Control yesterday. Talented workers have been departing in droves, leaving many parts of the government ~~paralyzed~~ [neutralized] from staff shortages.

There have also been a high number of whistleblower complaints exposing and highlighting the dysfunction, lack of ethics, and even criminal behavior of officials in these agencies. Meanwhile, departments such as the Pentagon are overrun with leaks to the press, causing leaders like Hegseth to embark upon agency-wide investigations and even to fire his closest advisors in a raw moment of paranoia.

All this has created a federal government dangerously unready for international crises, national disasters, or another pandemic. By moving too fast and breaking too many things, the regime has endangered the entire U.S. public. For example, the chief data officer of the Social Security Administration alleged this week in a whistleblower complaint that members of DOGE had uploaded hundreds of millions of Americans’ Social Security numbers, birthdates, and other personal identification information to a vulnerable cloud storage system, breaking several privacy and security laws and putting all the data at risk of being leaked or hacked.

#### The civil service caps “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.

#### Specifically, bargaining rights underpin expert diplomacy.

Michele Kelemen 25. M.A. in Russian and East European Affairs and international economics from the Johns Hopkins University School of Advanced International Studies. "Veteran diplomats react to the Trump administration gutting the lead U.S. aid agency." NPR. 4/14/2025. npr.org/2025/04/14/nx-s1-5357431/veteran-diplomats-react-to-the-trump-administration-gutting-the-lead-u-s-aid-agency

Trump administration reforms at the State Department are shrinking the United States' diplomatic footprint globally.

AILSA CHANG, HOST:

Quote, "unjustified seismic shift" in the U.S. foreign policy enterprise - that is how some Democrats are describing the reforms taking place at the State Department. The Trump administration has already gutted the lead U.S. aid agency, and the remnants will now be absorbed by the State Department, which is also facing cutbacks. As NPR's Michele Kelemen reports, all of this has veteran diplomats worried.

MICHELE KELEMEN, BYLINE: For a hundred years, the American Foreign Service Association has supported U.S. diplomats at home and around the world. The Trump administration has stripped it of its collective bargaining rights with the State Department, something AFSA President Tom Yazdgerdi is now fighting in court.

TOM YAZDGERDI: Without collective bargaining rights, any major initiatives, say, on assignments or promotions, we no longer have eyes on. That's not only bad for our members, I think it's bad for the Foreign Service.

KELEMEN: But it's not only the union's troubles that worry Yazdgerdi, a veteran Foreign Service officer. He says it's important for the U.S. to have a professional, nonpartisan Foreign Service to help Americans overseas promote American businesses and carry out the policy of the president. But right now, he's seeing a lot of talent leaving.

YAZDGERDI: We have more people who have retired in the first 2 1/2 months of this year than in all of last year, so it's on pace to be a record year. And that's unfortunate because I think we want to also maintain, you know, that senior experience and knowledge. Mentorship is a huge thing in the Foreign Service. We might be losing some of that if we just see a run for the door from our senior Foreign Service members.

KELEMEN: The State Department has canceled summer internships. There's a hiring freeze and talk of closing a couple dozen diplomatic posts, including embassies and consulates. Retired Ambassador Ronald Neumann of the American Academy of Diplomacy says these kind of cuts can be done smartly.

RONALD NEUMANN: There's an intelligent way to reduce the size of the overseas footprint. But you can also do it stupidly.

KELEMEN: And what he's seen so far from the Trump administration gives him pause - that includes the dismantlement of USAID and a more recent decision to put a junior Foreign Service officer in charge of the State Department's Bureau of Global Talent.

NEUMANN: This is like, say, taking a second lieutenant and saying, OK, you should be chief of staff for the Army.

KELEMEN: The State Department would not comment on personnel matters related to Lew Olowski, a lawyer and Trump loyalist who joined the Foreign Service four years ago. He's now acting as the top official in a bureau usually run by a veteran diplomat confirmed by the Senate. Senator Chris Van Hollen, the ranking Democrat on a foreign relations subcommittee overseeing the department, is alarmed.

CHRIS VAN HOLLEN: Another very alarming proposal would be to replace experienced, knowledgeable career Foreign Service officers with political hacks.

KELEMEN: Van Hollen and other Democrats on the Senate Foreign Relations Committee have written to Secretary of State Marco Rubio, who used to be one of their Republican colleagues on the committee.

VAN HOLLEN: Rubio has been pretty much AWOL. I will say that the, you know, Republicans on the Senate Foreign Relations Committee have not been exercising their oversight responsibilities.

KELEMEN: Republican Chairman Jim Risch has, so far, backed the changes the Trump administration is making, saying he did not want USAID to survive. But he says he does plan to have Rubio appear before the committee at some point to talk about the reforms. Van Hollen says things are moving too quickly, and America's soft power institutions are suffering.

#### 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.

#### Eliminating unions is the first step towards full-blown Trumpism.

Catherine L. Fisk 25. Professor of law at the University of California, Berkeley School of Law, J.D. from the University of California, Berkeley School of Law. "Democracy, Federal Worker Job Rights, and the Nonpartisan Civil Service." *University of Berkeley Law Working Papers*, 01292025, 21-26.

III. The Conservative Assault on Politically Independent Civil Service

The effort to make some, and perhaps eventually all, federal employees fireable by the President, is part of a larger right-wing effort to increase the power of the White House relative to Congress and the rest of the executive branch that has been going on for 50 years. The EO creating the exemption from job protection for “policy/career” positions is part of this campaign. Both the Nixon and the Reagan White Houses adopted strategies to identify and sideline civil servants whom they perceived as disloyal, and the Reagan Administration effort tapped the conservative Heritage Foundation in an effort to elevate loyalists and impose their policy on the bureaucracy through centralized control.108

The project of seizing control of the federal civil service may have started out as just a power move in the paranoia of the Nixon White House, but it acquired a constitutional theory to justify it in the Reagan years. In the early 1980s, frustrated by decades of Democratic control of Congress, the Reagan Administration Attorney General Edwin Meese, working with a group of young lawyers, including future Supreme Court justices John Roberts and Samuel Alito, developed the idea that Article II of the Constitution confers unilateral power on the President to control the entire executive branch. This became known as the theory of the unitary executive.109 As Attorney General Meese explained in a 1985 speech, the theory justified challenges to the independence of agencies created in the Progressive and New Deal eras. Proponents of the unitary executive idea justified it in terms of transparency and accountability, although critics insist it would hamper transparency and accountability.110 As Professor Skowronek said, the conservatives who advocated the unitary executive tied the fact that the President the one officer voted on by the entire nation “to the notion that the selection of the President had become, in effect, the only credible expression of the public’s will.” Having “fused” the “public voice” to the will of the President, “extra-constitutional controls could be rejected as inconsistent with democratic accountability, and the vast repository of discretionary authority over policy accumulated in the executive branch could be made the exclusive province of the incumbent.”111 The history and constitutional debates around the unitary executive have been carefully studied by others. Less well known is that it also has been mobilized by conservative activists as the basis for attacking the political independence of the entire federal civilian workforce and the civil service and collective bargaining rights that flow from it.

To understand the breadth of the assault on the merit-based government employment system, it is important to understand that the Supreme Court has lately ruled that the constitution imagines there are three broad categories of federal government employees (other than those who are elected officials): “principal officers,” “inferior officers,” and “employees.”112 Principal officers are those who are nominated by the President and confirmed by the Senate. Inferior officers are those who are appointed by the President, by a court, or by heads of departments.

These two categories are defined in the Appointments Clause of Article II, § 2. It provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.”113 A great deal of writing–more than could be cited here–explores the question of what is meant by this language. Who is an “inferior Officer”? Which government workers are not officers at all? And, importantly, although the Appointments Clause spells out the power to appoint, it says nothing about the power to remove.

A branch of the conservative legal movement seized on the Appointments Clause as a tool to reduce the number of federal employees who can be appointed by any method other than by the President, a court, or a department head. And they embraced the notion that the power of appointment includes the power to remove, except they insist that although the Senate is involved in appointing, nobody but the President or his designee has the power to decide on removal. Both the 2020 and the 2025 Executive Orders claim to expand the President’s unfettered power from officers to all government employees.114 Both the Executive Orders and an issue brief written by its architect insist that exempting federal employees from the civil service to address “poor performance by career employees”115 and the difficulty of firing employees after the one-year or two-year probationary period.116 The EO’s critics point out that poor performance or failure to follow instructions from a supervisor or to enforce law or policy have always been a basis for firing. Streamlining the process for firing poor performers, however, has never been on the Trump agenda. Rather, as noted above, the real justification for the new exception, its architect candidly admitted, is that civil service rules “empower ideological activists in the bureaucracy to pursue their own agendas regardless of who the American people elect to run the government,”117 because civil servants “are disproportionately liberal,” their alleged resistance to presidential policy disproportionately afflicts conservative administrations.118

The 2025 Executive Order directs agency heads to review existing positions to determine which positions should be excepted from merit appointment and for cause firing by identifying “positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not normally subject to change as a result of a Presidential transition.”119 It further states that such people fall into five categories of job responsibilities:

(i) substantive participation in the advocacy for or development or formulation of policy, especially:

(A) substantive participation in the development or drafting of regulations and guidance; or

(B) substantive policy-related work in an agency or agency component that primarily focuses on policy;

(ii) the supervision of attorneys;

(iii) substantial discretion to determine the manner in which the agency exercises functions committed to the agency by law;

(iv) viewing, circulating, or otherwise working with proposed regulations, guidance, executive orders, or other non-public policy proposals or deliberations generally covered by deliberative process privilege and either:

(A) directly reporting to or regularly working with an individual appointed by either the President or an agency head who is paid at a rate not less than that earned by employees at Grade 13 of the General Schedule; or

(B) working in the agency or agency component executive secretariat (or equivalent); or

(v) conducting, on the agency's behalf, collective bargaining negotiations.

(vi) directly or indirectly supervising employees in Schedule Policy/Career positions; or

(vii) duties that the Director otherwise indicates may be appropriate for Schedule Policy/Career. 120

It is worth noting the specific positions that the EO seeks to make subject to presidential fiat. Most of the attention has focused on policymaking, perhaps because those jobs seem most closely related to presidential control over policy, which has intuitive appeal. (Unless one focuses on the fact that Congress is also the constitutionally-designated policymaker.) But making anyone who even views or circulates proposed regulations or guidance an at will employee seems aimed not only at policymakers, but at low-level employees who might be inclined to blow the whistle on (or, as the administration would put it, leak) administrative actions they fear are unlawful or an abuse of power. It thus seemed to be aimed squarely at the threat of whistleblowing, a practice explicitly protected by the whistleblower protections written into the civil service laws.

And what of those who bargain collectively? The EO speaks to that too. It excludes from civil service protection both those who bargain for the government with unions and union representation for anyone who “views” policy. In other words, both union members and labor relations managers are in the group whose civil service and labor rights the EO seeks to eliminate.

In particular, the EO identifies as policy employees those who “conduct[], on the agency’s behalf, collective bargaining negotiations.”121 This is clearly aimed at allowing the White House to directly control the content and enforcement of the collective bargaining agreements that agencies negotiate with public employee unions representing the rank-and-file of government employees.

But the EO goes further. It directs each agency head to “expeditiously petition the Federal Labor Relations Authority to determine whether any Schedule Policy/Career position must be excluded from a collective bargaining unit.”122 Because the EO defines positions subject to reclassification so broadly (to include not just those empowered to make policy but those who may “view” or be involved with the “circulation” of policies or regulations, it may sweep broadly in limiting union rights.

Nothing in the EO itself or in the defenses of it have explained why collective bargaining poses a threat to the efficiency, competence, or accountability of government workers. Rather, the EO and its defender have focused on whether the workers are “required or authorized to formulate, determine, or influence the policies of the agency.”123 But Congress’ decision to allow government workers to unionize reflects the view that one can be authorized to influence agency policy and still have an interest in collective representation on compensation, conditions of employment, and just treatment. To override this legislative determination (one that was enacted by Congress and signed into law by a prior President) is a startling overreach.

These exception to civil service and other labor rights seem aimed at controlling, perhaps without regard to what the law requires, those who might be more inclined to follow the statutes and regulations they believe they are charged to enforce than to follow the unorthodox views of political appointees. Stripping labor rights is the first step toward asserting unfettered power. If you control the lawyers and the unions, you can, as Trump said he wants to do, bring the administrators to heel. Here, too, the focus seems not to be on increasing the competence or efficiency of government work, but rather on controlling those who the new administration fear might have the ability to protect workers or the public from unlawful actions or abuse of power.

The EO’s chief proponent said it would affect 2 to 4 percent of the federal civilian workforce of more than 2.27 million,124 or 45,000 to 90,000 workers.125 But, when the Office of Management and Budget proposed to reclassify its workforce in late 2020, it proposed to strip civil service protections from 88% of its staff.126 Moreover, the 2025 EO directs the Director of OPM to consult with the Executive Office of the President and then to issue guidance about additional categories of positions to include in the excepted Policy/Career Schedule, thus paving the way for the civil service to be narrowed further.

#### Absent unionization, Trump installs loyalists that unquestioningly implement his agenda and cement extremism.

Alejandro Perez 25. J.D. Candidate at Boston University, B.A. in political science and sociology from Boston College. “The Return of Schedule F and the Perils of Mandating Loyalty in the Civil Service.” *Boston University Law Review*, 104(7), 2233-2265.

II. THE RAMIFICATIONS OF SCHEDULE F

B. Reading Between the Lines: Trump’s True Intentions with Schedule F

At the time Trump issued the order, his administration downplayed the significance of Schedule F, deceitfully portraying its implementation as a means to streamline the removal of poorly performing federal employees.63 Yet one specific episode should sound the alarm about Trump’s true intentions for the civil service. A leaked 2017 memo revealed that James Sherk, a senior Trump aide, urged White House Counsel to explore whether the President had the constitutional authority to dismiss any federal employee at will.64 If this were the case, Sherk reasoned, then “civil service legislation and union contracts impeding that authority [would be] unconstitutional.”65 This was not an insignificant document, and it was clear that Sherk had the ear of the President. Many of the suggestions outlined in the memo were later enacted by Trump through a variety of executive orders.66 The Sherk memo thus underpinned the issuance of Schedule F.

In the end, Schedule F was never fully implemented. Trump introduced the policy in October 2020, and President Biden swiftly revoked it upon assuming office in January 2021.67 Nevertheless, the idea of fundamentally reshaping the civil service endures. Trump has pledged to reintroduce Schedule F.68 During a campaign rally, he boldly stated his intention to make “every executive branch employee fireable by the President of the United States.”69 Trump has the enthusiastic backing of conservative organizations, such as the Heritage Foundation, which is advancing “Project 2025,” an initiative aimed at “replacing existing government employees with new, more conservative alternatives” in positions newly reclassified by Schedule F.70 Indeed, Trump has selected Russell Vought, a co-author of Project 2025, to serve in his second administration.71 During Trump’s first term, Vought was a key architect of Schedule F, and he remains the “lead advocate” of reinstating the initiative.72 These developments all but guarantee the revival of the spoils system of the nineteenth century in Trump’s second term.

C. The Problems Inherent in the Reinstatement of Schedule F

The widespread dismissal of career civil servants in favor of political loyalists poses several critical problems, including: the loss of expertise and continuity; the politicization of scientific research; compromised regulatory standards; diminished government quality; reduced effectiveness and morale; and threats to democratic values.

First, the loss of expertise and continuity is a significant concern. Many federal employees work in highly specialized roles involving complex laws, regulations, policies, and scientific theories. Unlike presidential appointees, most civil servants stay on from administration to administration, ensuring continuity in governmental knowledge and reducing the likelihood of repeated mistakes.73 New political hires, lacking this institutional experience, would likely struggle to match the depth of understanding and stability provided by seasoned civil servants.74

Second, injecting politics into scientific agencies can undermine their effectiveness. Consider the Department of Energy, which provides grants for small businesses to develop innovative projects, such as sustainable aviation fuels and energy-efficient residential heating and cooling systems.75 If suddenly politicized, these research grants “will go not to the most promising ideas, but to the closest allies.”76 Similarly, consider the Environmental Protection Agency (“EPA”), which protects the public from climate pollutants. In such a politicized scenario, officials could argue that there is “tremendous disagreement” about the science behind climate change, as Trump’s EPA Administrator did in 2017.77

Third, compromising regulatory standards can endanger public health. Take, for instance, a poultry slaughter line. There are regulations put in place to prevent meat from harming consumers, such as rules governing the speed at which inspectors in the U.S. Department of Agriculture (“USDA”) must physically examine chickens for defects.78 However, a poultry company, seeking to maximize its profits by selling more chicken, may have an interest in rushing through food regulation processes. Installing individuals at the USDA who are more amenable to corporate interests could lead to these regulations being disregarded. Consequently, caution and safety would be sacrificed in favor of speed and efficiency. This could compromise food safety and public health,79 illustrating the dangers of politicizing regulatory processes.

Fourth, replacing moderate civil servants with extremists undermines the quality of government. Whereas the ideologies of agency leadership regularly swing from left to right depending on who occupies the Oval Office, civil servants tend to be more moderate.80 This contrast serves as a checking function on the other’s power and thus serves as an “administrative separation of powers.”81 Therefore, civil servants act as bulwarks, positioned to resist the efforts of political appointees to push forward hyper-partisan agendas and instead “promote the rule of law, advance reasoned approaches to decisionmaking, and provide intergenerational stability.”82 To witness this in practice, consider Trump’s attempt to install Jeffrey Clark as his acting Attorney General to wield the powers of the Justice Department and overturn the results of the 2020 presidential election.83 In a maneuver that would have brought the department’s operations to a standstill, hundreds of civil servants threatened to resign en masse, prompting Trump to backpedal on his actions.84

Fifth, a politicized civil service results in decreased effectiveness and morale. The theory of neutral competence suggests that nonpartisan civil servants are “more apt to possess specialized policy expertise, meaningful experience, public management skills, and relationships with key stakeholders. . . . and also serve as ‘honest brokers’ in a world of partisan and ideological divisions.”85 Politicized civil service systems, on the other hand, result in shorter tenures, greater turnover, reduced morale, and barriers to recruitment of highly qualified individuals.86

Lastly, politicizing the civil service threatens democratic principles. Such a system fosters public cynicism and distrust of administrative agencies.87 Additionally, a government of sycophants cannot “check authoritarianism or protect the public interest from exploitation for private gain.”88 Federal employees play a crucial role in reporting illegal or unethical activities and misconduct.89 They also release essential information, such as election data, unemployment rates, and government spending figures, so as to ensure transparency and accountability.90 Such information is meant to be unbiased and untainted by partisanship and is a sign of a healthy democracy. By contrast, the concentration of bureaucratic power in the executive is a common strategy used by autocrats to limit oversight, silence opponents, and deny citizens certain rights and liberties.91 A civil service influenced by partisanship would almost certainly result in a decline in democratic values.

#### Trump’s foreign policy is existential.

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Have the concepts of “liberal peace” and “democratic peace” lost their relevance in the emerging and complex unfolding of the “post-western” world? Following the collapse of the Soviet Union and the fall of the Berlin Wall, the world seemed to have reached a unipolar moment, which Fukuyama described as “The End of History.” The United States was at the peak of its hegemonic power, while the European Union enjoyed an unprecedented combination of deepening and enlargement. There was immense confidence in the West regarding the future of liberal international order. Democratic capitalism had triumphed. Profound optimism existed about the possibility of integrating the former Communist bloc and the emerging world into the Western-driven liberal international order. According to this perspective, the world would move steadily towards democracy through a process of interdependence and mutual gains facilitated by open markets and capital flows.

This was the dominant vision of the 1990s and the early 2000s. Within the next two decades, however, the world has unexpectedly changed in a fundamental fashion through a series of unanticipated crises. The state of optimism that characterized the unipolar moment faded away, and confidence in free markets and democracy experienced a drastic decline. Violent armed conflicts in the periphery of Europe and the Middle East, coming on top of a series of multiple crises in the realms of economy, migration, climate change, and public health, generated enormous uncertainties and anxieties and raised deep questions concerning the viability of democratic capitalism and the future of liberal international order.

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In this framework, the concept of “liberal peace,” based on the premise that economic integration of an authoritarian state to the liberal order through economic incentives would generate peace and security (and democratization), has not been endorsed by empirical evidence. Increasingly, we observe the emergence of authoritarian capitalist states that benefit from their economic interactions with the West and the liberal order. The influential leaders of these key states, in turn, have used these economic opportunities to consolidate their stronghold over the political regimes and push the pendulum increasingly in a more authoritarian direction. China has been the primary beneficiary of the liberal international order, capitalizing on large capital inflows. Its authoritarian model of state capitalism flourished, increasingly posing an alternative to the Western models of liberal and social democracy. During the presidency of Xi Jinping, the Chinese system has been ambitious in its global hegemonic ambitions and more autocratic at the same time. As China’s global reach expanded, it became increasingly more attractive as a role model for large segments of the Global South. Russia under Putin is another striking example. Putin was able to expand and consolidate his power in Russia through his ability to capitalize on economic and energy links with the West, notably with Europe. Growing economic interdependence with the West has failed to transform the regime into a democratic direction, and over time, Russia has emerged as a serious security threat to the West in the context of a new Cold War context. The situation is not unique to Russia. Key emerging powers like Turkey and Hungary have benefited through their integration into global financial markets (notably in the Turkish case) and EU funds (notably in the Hungarian case), and the dominant political actors in those countries have used these economic opportunities to strengthen their political power and push their domestic politics in an increasingly illiberal-authoritarian direction in the process. The vision of key European leaders like Angela Merkel, who believed in the logic of liberal peace, failed to materialize. Capitalism has become the dominant norm on a global basis but is increasingly devoid of its democratic content in many national contexts. Turning our attention to the notion of “democratic peace,” the first component of democratic peace theory suggests that major powers, by using military powers and force at their disposal, could help to transform authoritarian regimes in a democratic direction. This argument also failed to be a viable option. Empirical evidence has discredited the key element of democratic peace theory. Costly interventions by the United States in Afghanistan and Iraq proved to be highly counterproductive in terms of instigating regime change and creating stable and functioning democracies over time. Moreover, the attempts to transform these societies by force helped to build enormous anti-American sentiments in the Global South. Rising anti-American and anti-Western sentiments in a large segment of the world have helped the fortunes of authoritarian capitalism, tilting the balance further in the direction of the China-Russia axis.

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Yet, there is a second dimension of democratic peace theory that remains relevant today in a subtle way. The argument that “democracies do not fight each other” holds considerable validity. Ironically, authoritarian states emphasize the virtues of stability and security over pluralism, human rights, and democratic norms. The term “human security,” which stresses stability and security, as opposed to “human rights,” appears to be the new buzzword of authoritarian states. However, the pendulum swings steadily in an authoritarian direction, with the United States displaying strong authoritarian tendencies during the second presidential term of Donald Trump, growing insecurity and instability are evident. The post-Western world showcases unprecedented levels of instability and conflict. The Russian invasion of Ukraine and Israel’s strikes on Palestine in response to Hamas’s terrorist attacks underscore rapid departure from a rule-based security order towards a new era, where conquest by the powerful appears to be the new standard. The broad shift to authoritarianism made the world increasingly less secure, naturally leading to the diversion of resources towards the manufacture of weapons and armaments. As a result, funding is pulled away from critical areas such as economic development, social services, and environmental protection, leading to severe human consequences. Furthermore, violence and insecurity increasingly infiltrate the lives of individual citizens. Weakening social protection mechanisms coincide with a rise in everyday violence and crime rates. Deep insecurities characterize the heavily controlled and repressed environments of authoritarian regimes.

Hence, part of the democratic peace framework remains relevant in our quest to establish a peaceful world. There is no simple policy message that follows from this analysis in the sense that there is no straightforward way off the path of authoritarian capitalism, especially as the West is losing its credentials to serve as the key engine of democratic transformation. It is possible, however, that a “democratization counter-wave” may emerge in the coming years where the primary impetus could come from societal pressures from below, with transnational linkages also playing a key part in this process.

#### New plan.

#### Finally, solvency!

#### The aff strikes down Trump’s XOs on the basis that he violated the will of Congress.

Alejandro Perez 25. J.D. Candidate at Boston University, B.A. in political science and sociology from Boston College. “The Return of Schedule F and the Perils of Mandating Loyalty in the Civil Service.” *Boston University Law Review*, 104(7), 2233-2265.

2. Presidential Administrative Actions that Conflict with the Will of Congress Ought to Be Struck Down

The second proposed framework centers on the notion that Trump may have acted in contrast to the will of Congress when issuing Schedule F. As a starting point, it is generally accepted that executive orders that conflict with the Constitution or the intent of Congress are invalid.145 This principle stems from Youngstown Sheet & Tube Co. v. Sawyer, 146 a 1952 case where the Supreme Court invalidated President Harry S. Truman’s executive order authorizing the seizure of the nation’s steel mills during the Korean War.147 Youngstown stands for the idea that “when an executive order conflicts with a statute, the statute preempts the order.”148 In a concurring opinion, Justice Jackson wrote: “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb . . . . Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject.”149

How might a court disable Congress from acting? Simply by holding a particular act of Congress unconstitutional.150 It follows from Justice Jackson’s reasoning that, if a statute and executive order are in conflict with one another, the executive order would prevail only if the statute were found unconstitutional.151 If the statute is deemed invalid, then “Courts can sustain exclusive Presidential control.”152

As applied here, Schedule F and the CSRA are directly at odds. The former stipulates that federal employees are removable at will, while the latter provides that federal employees are protected from such removals. James Sherk has argued that all civil service legislation, including the CSRA, may be unconstitutional.153 According to Sherk, Schedule F would have to prevail over the CSRA. This point can be easily dismissed, however, given the numerous times that the Supreme Court has recognized the legality of the CSRA.154

Given its unequivocal constitutionality, courts should adhere to the principle that the CSRA takes precedence over Trump’s incompatible Schedule F order. An illustrative case is Chamber of Commerce v. Reich, 155 where the United States Court of Appeals for the D.C. Circuit directly applied this principle.156 In that case, the court overturned President Bill Clinton’s executive order that disqualified employers from certain federal contracts if they hired permanent replacement workers during lawful strikes.157 Clinton implemented the order pursuant to the Procurement Act, claiming that the law bestowed on the President the power to “set procurement policy for the entire government.”158 However, the court ruled that Clinton’s action conflicted with—and was therefore preempted by—the National Labor Relations Act, which guarantees employers the right to hire permanent replacement workers as an offset to the employees’ right to strike.159 This case underscores the principle that an executive order cannot supersede statutory protections established by Congress.

Returning to Schedule F, it is important to note that Trump appeared to quote directly from 5 U.S.C. § 7511(b)(2) when attempting to remove civil service protections from individuals in “confidential, policy-determining, policymaking, or policy-advocating positions.”160 However, to issue such an order would be to separate this phrase from its historical context.161 The plain text and legislative history of the CSRA indicate that the “confidential, policydetermining, policy-making, or policy-advocating positions” provision refers exclusively to noncareer, political appointees. As previously discussed, political appointees serve at the pleasure of the President and may be dismissed at any time; they are therefore excluded from the CSRA’s removal protections.162 However, Congress intended the phrase “confidential, policy-determining, policy-making, or policy-advocating” to explicitly exclude career civil servants from its ambit, and these individuals are protected by the CSRA.163

The circumstances surrounding the enactment of the CSRA lend further support to this interpretation. To provide context, we must first go back two years prior to the CSRA’s passage, when the Supreme Court deliberated on the constitutionality of politically motivated dismissals of public employees in Elrod v. Bruns. 164 In his concurrence, Justice Stewart explained that “nonpolicymaking, nonconfidential government employee[s]” cannot be “discharged or threatened with discharge from a job that [they are] satisfactorily performing upon the sole ground of [their] political beliefs.”165 With this background in mind, the CSRA’s legislative history indicates that civil service protections do not apply to “positions which require Senate confirmation” and “positions of a confidential, policy-determining, policy-making or policy advocating character . . . [which are] extension[s] of the exception for appointments confirmed by the Senate.”166 This language suggests that Congress meant to equate that particular term to Senate-confirmed political appointees. The Merit Systems Protection Board has regularly adopted this interpretation as well.167

Congress made some changes to the CSRA through the Civil Service Due Process Amendments Act of 1990, which expanded removal protections to excepted service employees.168 The legislative history of this new law also acted to “retain the exclusion for political appointees.”169 Specifically, the history notes:

[T]he key to the distinction between those to whom appeal rights are extended and those to whom such rights are not extended is the expectation of continuing employment with the Federal Government. Lawyers, teachers, chaplains, and scientists have such expectations; presidential appointees and temporary workers do not. . . . Schedule C, positions of a confidential or policy-determining character. . . . are political appointees who are specifically excluded from coverage under section 7511(b) of title 5. H.R. 3086 does not change the fact that these individuals do not have appeal rights.170

With this language, Congress reaffirmed that the “confidential, policydetermining, policy-making or policy-advocating” terminology applied exclusively to political appointees, as well as temporary workers (who are also not career civil service employees).

Viewed through this lens, Trump’s improper application of the term “confidential, policy-determining, policy-making or policy-advocating” to describe positions held by career civil service employees “would be contrary to congressional intent and decades of applicable case law and practice.”171 Such a move undermines Congress’s careful balance of “the need for long-term employees who have knowledge of the history, mission, and operations of their agencies with the need of the President for individuals in positions who will ensure that the specific policies of the Administration will be pursued.”172

Additionally, the enabling statutes cited by Trump in his order—5 U.S.C. §§ 3301, 3302, and 7511—do not explicitly grant him the power to eliminate civil service protections for employees or to terminate them at will.173 Section 3301 permits the President to “prescribe such regulations for the admission of individuals into the civil service in the executive branch” and to “ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought.”174 Section 3302 relates to allowing the President to except “positions from the competitive service” when “conditions of good administration warrant” it.175 This language alone does not “purport to confer authority on the President to except positions from the scope of [civil service protections].”176

Likewise, nothing in the text of Section 7511 grants this authority to the President.177 A thorough examination of the legislative history related to Section 7511 also reveals no mention of such an authority.178 Supreme Court precedent dictates that where a statute is silent as to conferring the President with the power to remove a certain class of federal employee, the President cannot claim such action.179 Accordingly, based on the frameworks established in Youngstown and Reich, and as a matter of statutory interpretation, Schedule F would have to be struck down as a violation of the will of Congress by the President.

#### 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.