# 1NR---Round 5---DRR

## Kickington City

### States---2NC

#### Fifty state fiat is good:

#### It’s a functional limit. ‘CBR’ isn’t a term of art and core controversies like ‘unions good/bad’ are extremely aff-biased. Forcing fed key warrants limits the topic. Alternatives are worse: neg teams flock to Ks that moot the plan or process that steal the 1AC.

#### Topic coherence. The community voted for ‘USfg’ and pre-season prep presumed the counterplan as a functional generic. Post-hoc clarification is unpredictable, unfair, and infinitely regressive.

#### Deficits are infinite. Preemption, forum-shopping, federal workers, modeling, precedent, or straight turning net benefits.

#### Yes real world. State versus federal jurisdiction is a vibrant debate in the lit and preemption checks egregious, anti-educational proposals. It’s reciprocal: substantial CBR in the Trump era is a pipedream.

#### Counterplan isn’t pre-empted---corporate law is squarely within state law, and the states have fully authority to build-in worker protections into corporate codes---that’s Shephard. *Zero* aff cards will say the phrase “corporate law”

#### More importantly, it doesn’t take out the net benefit---preemption challenges take years to resolve, and employers are forced to act as though it’ll be enforced

Daniel P. Hoffer 25. Partner at Venable LLP specializing in employment law. "The Current State of Captive Audience Meetings." Venable LLP. 04/21/2025. https://www.venable.com/insights/publications/2025/04/the-current-state-of-captive-audience-meetings

Other states have faced legal challenges in the past, and more challenges are expected. For example, lawsuits were filed against Oregon and Connecticut challenging their respective captive audience legislation as preempted by the NLRA. More recently, the Illinois Policy Institute filed a lawsuit on August 8, 2024, which it amended on October 30, 2024, in the United States District Court for the Northern District of Illinois (Eastern Division), trying to block Illinois' captive audience law from going into effect January 1, 2025 on First Amendment grounds. Illinois Policy Institute v. Flanagan, Case 1:24-cv-06976. No decision has been rendered yet.

The outcome of the California lawsuits remains uncertain, as both cases are sealed, and the NLRB is in a state of flux, given the current litigation surrounding Board Member Wilcox. For now, employers should apply applicable state law and federal law when it comes to captive audience meetings but remain cognizant of the ongoing litigation.

#### At worst, it still triggers the perception that the states have sold out to the radical libs and causes companies to run for the safety of Delaware

### Equity---2NC

### Midterms---2NC

### Cap K---2NC

#### Perm. Concede Rand 20. It’s an impact for delaware! Says that externaltiies caues environmental destruction NOW nad reuglation is key, which is what the counteprlan does.

## Delaware

### 2NC---!---O/V

#### Unchecked corporate behavior causes extinction---they’ll use their unprecedented power and control of global institutions to push the Earth past planetary boundaries via warming, deforestation, animal and insect collapse, soil degradation, and freshwater scarcity, which are all independently existential. Only holding companies liable for externalities can solve---that’s Lent

### 2NC---AT: No Externalities !

#### Unchecked corporate abuse causes extinction---creating legal safeguards that re-incorporate the price of corporate behavior is key

Ronit Donyets-Kedar & Ofer Sitbon 23. Associate Professor of Law, College of Law & Business, Israel, Global Affiliated Faculty, Emory Law School, and Co-Founder, Corporate Social Responsibility Institute, College of Law and Business, Israel. "Hiding in Plain Sight: Corporate Legal Responsibility." Southwestern Journal of International Law, 24.1, 76-114.

[[Begin Abstract]]

The purpose of the corporation is contested. The heart of the debate is whether corporations ought to maximize shareholder value, or rather balance shareholder gains against the welfare of other constituencies. Lawyers and policymakers alike commonly hold that most corporations rightly regard the interests of shareholders as their highest priority. Even after repeated challenges from scholars,1 high-profile statements from corporate executives,2 and the promise of ESG investments,3 the common view is that maximizing shareholder value is the law. And while other non-corporate legal fields such as labor law, tax law, consumer laws and environmental laws may strive to protect the interests of stakeholders, corporate law instructs officers and directors to prioritize shareholders.

The paper challenges this interpretation of corporate law. It argues that even without any changes to current regulation, a constituency-oriented obligation to consider the social and economic impact of corporate conduct on corporate stakeholders exists within current corporate law.

By analyzing the legal framework of corporate law in Israel, the US, and the UK it is possible to show that corporate law itself is capable of a broader interpretation; and that such interpretation—one that considers the impact of corporate behavior on social welfare—is necessary for a sustainable society. With unprecedented corporate power, and the threats it poses to the environment and to democratic principles, its reinforcement of structures of privilege and its role in deepening inequality, the interpretation of corporate law needs to re-conceptualize corporate purpose. After a series of global crises has exacerbated and exposed the frailty of our social structures, a new interpretation of corporate law is required, one which identifies the duty to consider the wellbeing of the corporate constituencies. We argue that this duty is already embodied in current regulation. The law of corporations in all three jurisdictions allows for such a reading.

[[End Abstract]]

Introduction

On February 24, 2022, Russia launched a full-scale invasion to Ukraine.4 A coordinated response by the West followed; many countries sent military and humanitarian aid,5 and a unified front of the U.S., the EU, and the UK implemented a series of economic sanctions against Russia. The U.S. banned Russian oil imports, and the UK joined in freezing the assets of Russia’s central bank and in seizing assets of the oligarchs of Putin’s inner circle. The objective of these sanctions was to cut Russian economy off from the global markets. Interestingly, the role of transnational corporations in Russia’s isolation was vital. After only a few days of war, large multinational corporations have pulled out of the Russian economy. Oil and gas companies such as BP, Shell, and ExxonMobil cut their investments in Russian energy companies;6 finance companies such as Visa, MasterCard, American Express, and PayPal suspended their business dealings in Russia;7 tech giants Samsung and Sony suspended shipments to Russia, and Apple has restricted its Apple Pay services.8 The most significant blow to Russian economy was its partial disconnection from SWIFT, the global messaging system for financial transactions. SWIFT is a non-state international cooperative of banks, linking more than 11,000 institutions in over 200 countries,9 founded as a member-owned cooperative society under Belgian law, and is controlled and owned by its members.10 While some central banks are also members of SWIFT, its governing structure guarantees that the control of the organization is proportional to the volume of usage of its services. As an organization comprised mostly of private banks, it is regarded as a “neutral third party” and in previous political crises, such as that of Iran in 2012, it was very late to respond to an international campaign pressing it to join the sanctions against Iran. In its attempt to stay neutral in 2012, SWIFT initially insisted that the system is “only a secure messaging service,” and that its activities fell “beyond the remit of current law.”11 A press release from February of 2012 by SWIFT, along the same lines, stated that it was “committed in maintaining its role as a neutral global financial communications network.”12 It wasn’t until the U.S. Senate Banking Committee proposed legislation to permit the sanctioning of SWIFT that it reluctantly joined the effort to cut off Iranian finance. On this occasion, however, SWIFT has joined the sanctions against Russia.

The significance of the private sector’s cooperation with the embargo on Russia in 2022, illustrates the extent to which corporate discretion and conduct impacts geopolitical, economic, and social issues. While the majority of transnational corporations chose to join the opposition against Russia’s aggression on this occasion, it seems that things might have turned out very differently had they acted only in accordance with their financial interests and refrained from acting on ethical grounds. In the past, more often than not, they turned a blind eye. The very same companies that withdrew from Russia have not only ignored, but have also, at times, benefitted from atrocities taking place in other parts of the world. Boeing, for instance, which suspended its operations in Russia in March of 2022,13 has made huge profits from the war in Yemen,14 a war that, according to the UN, has placed over 20 million people in need of humanitarian aid.15 Shell, quick to divest from Russian oil and gas companies, has been accused of complicity in horrific crimes committed by the Nigerian military in the 1990s.16 BP was responsible for the single largest environmental disaster ever, the oil spill in the Gulf of Mexico in 2010.17 Other examples abound.18 For better or worse, corporate impact far exceeds an imagined neutral and detached marketplace.

It is our contention that law does not do enough to hold private power responsible for undermining human well-being. The reason, however, lies not in law itself, but in its cultural environment.19 This is true not only in the face of wars, a global pandemic, or the imminent climate crisis, but also in what may seem the most mundane of circumstances, that in fact shape our public sphere, communities, and lives.

Indeed, corporate power is everywhere. From Google, Amazon, and Meta, to Pfizer and Moderna, state regulators and legal scholars alike express growing concerns with the overwhelming power of corporations.20 But while countless articles and books are written on corporate excessive power, and while high-profile declarations by corporate leaders promise to “ensure a more inclusive prosperity” through corporate action,21 not much real change is in evidence. Corporations rarely consider the detrimental impact of their conduct on other constituencies and focus on share value as the (almost) exclusive measure of their success. The law of corporations, as currently understood, is failing to respond. We argue that the reason for this is that corporate culture pushes the interpretation of law towards an assumption of shareholder primacy. But that this is neither the only possible interpretation of the law, nor a desirable one.

The paper challenges the conservative, dominant, interpretation of corporate law in the U.S., the UK, and Israel. It argues that the multifold, and growing, power of corporations, and the threats it poses to democratic principles and environmental issues, its reinforcement of structures of privilege and its role in deepening inequality, mandates the adoption of a different, constituency-oriented, reading of the law. We will show that the law in all three jurisdictions already allows for such a reading and argue that adopting a constituency-oriented interpretation reflects an understanding of the corporate entity which is better fitted for today’s challenges.

The paper proceeds as follows. It starts, in the first part, with a depiction of the growing corporate power, through the lens of a series of global crises that have both exacerbated and exposed much of the frailty of our social structures; it then moves to discuss the changing equilibrium between corporations and states, mainly through privatization in its many forms; the last section of the first part focuses on the rise of the CSR discourse and the changing social expectations from corporations, which have led, in part, to growing doubts about the dominant paradigm of shareholder value maximization. Special attention will be devoted to the web platform corporations, the global impact of which on people’s lives has become unparalleled. The purpose of this part is to present the overwhelming increase of corporate power in the past few decades, in both magnitude and reach. This, we argue, mandates re-thinking the role of corporations that can be facilitated through a broader reading of corporate law.

The most urgent change, we believe, is to re-conceptualize corporate purpose. Corporations are not neutral economic spheres but social institutions, embedded within society. This must lead to recognizing their legal responsibility. The integration of a standard of responsibility into corporate regulation will naturally result in the rejection of the shareholder primacy norm as a legal imperative.

We will not engage with the economic case for rejecting the shareholder primacy norm. Rather, we will build on it, and focus our attention on highlighting the urgency of pushing back on corporate power by re-interpreting current law, and re-conceptualizing corporate purpose. We show that this transformation does not require any legislative amendments, as current law already includes a latent requirement for corporate responsibility and already allows for a broader reading of corporate purpose. What needs to change is the doctrines that coddle corporate interests.

The second part of the paper will analyze the legal status of corporations in Israel, the UK and the U.S. It will show that while much has been written about the purpose of the corporation as more than just a vehicle to enable investment or produce profits, and while the laws prescribing its status allow for a broader understanding than the shareholder primacy norm, these broader interpretations have not been applied.

Against this backdrop, the third part of the paper will offer a different perspective on corporate law. Its essence is a re-conceptualization of the place of corporations in society, one that denies their standing as a private entity operating in an allegedly neutral economic sphere, but rather highlights their status as socio-economic enterprises, inseparable from the broader social context in which they operate.

I. Corporate Power

In 1995, when the Israeli Corporate Law Reform bill was introduced in Parliament, Larry Page and Sergey Brin had only just met, and the Google corporation was, at best, a vague idea. Facebook was founded as an open social network just two months prior to the enactment of the UK Companies Act of 2006, and Apple’s iPhone had not yet been released. The world we live in today, in which the total market value of the five big tech companies is at 7 trillion USD,22 is different from any world the legislators of both company laws could have even imagined. The transformation in corporate power, its ubiquity and countless manifestations, translates into an ever-growing impact on both global and local social realities. Corporate power, and its potential to cause harm, require a more suitable legal perception of the corporate entity. Dethroning the shareholder primacy paradigm as the overarching interpretive norm of corporate law is a necessary first step, as it impedes such change.

Corporate power, however, is only one aspect of the new global reality. The changing equilibrium between transnational corporations and states should be considered as well, as it exposes the diminishing power of people around the world to take part in shaping their own environment. The globalization process, which in many ways was only emerging when the Israeli corporate law reform bill was introduced, played a crucial role in these two parallel processes: on one hand, the boosting of corporate power—legally, economically and politically;23 and on the other hand, the retreat of the state, and the erosion of its sovereignty in shaping independent socio-economic policies, especially in fiscal and monetary aspects, and, in turn, in terms of the robustness of welfare policies.24 Globalization affects the power balance between corporations and governments in various ways: first, the global mobility of corporations induces a “race to the bottom,” reflected in tax breaks and trade agreements, intended to draw corporate investment. Corporate global mobility also allows corporations to make use of tax havens and financial secrecy agreements and regulations. Both practices, in turn, reduce tax revenues for hosting states, and diminish the scale and quality of the social services it can offer.25 In addition, aggressive tax planning allows further wealth accumulation by corporations, fortifying their economic power. This too works in their favor vis-à-vis states. Finally, trade agreements and regulatory contracts that corporations take a major role in drafting, and which are only loosely overseen by parliaments, leads to light, nontransparent regulation that usually serves the interests of capital, rather than those of the public.26

Another aspect of the effects of globalization on the erosion in state sovereignty is the impact of international institutions, such as the world bank and the IMF on the economic policies of many states. These have advanced a neoliberal agenda that has led many poor countries to eliminate trade barriers, as well as reducing subsidies in support of their local agriculture or industry. The direct beneficiaries were banks and transnational corporations.27

Yet another aspect of the weakening of the state is the privatization of public services. Under the neoliberal philosophy, “government is not the solution to our problem; government is the problem,” as President Reagan famously declared.28 The implications are setting the “small government” as an objective, strengthening the private sector, and the recommodifications of goods and services. The culmination of this process is the privatization of services that are traditionally thought of as distinctively public, such as defense, incarceration, and policing.29 The assumption of superior private efficiency, and the quest for international economic competitiveness are important contributors to the retreat of the state from a variety of economic activities. The natural beneficiaries are corporations, who correspondingly acquire a more central position in the social and economic sphere.

The implications of these processes for the public interest are not encouraging. The IMF, in itself an agent of globalization for many years, published in 2017 a comprehensive study concluding that the mobility of capital and labor, coupled with the small government agenda, are a major cause of the rapid growth in inequality.30 Research also shows that when governments are more involved in public services, inequality decreases, and economic growth is enhanced.

One of the most significant aspects of corporate dominance is the growth of the tech platform giants (Google, Meta, Apple, Amazon, etc.), who have become, in the past two decades or so, major actors in the global economy. The “Big Data” age, and the unprecedented monitoring of every aspect of human activity, has turned cyberspace into the most salient locus of the changing equilibrium between states and corporations. The platform corporations have become the gate keepers of the vast content available on the web. Through search engines, social networks, e-commerce and more, these platform corporations control, via nontransparent algorithms, the way information is presented, used, interpreted, and exposed to billions of users around the world. Their advantage in dictating the terms of agreement with individual clients, and the ability to take down, promote or block content or users, endows the platform corporations with de facto control over knowledge, its hierarchy, its traffic, focus, and ultimately over public opinion, and its perception of reality—actual or imagined.31

Under the current interpretation of corporate law, these companies strive to maximize shareholder value, which often leads to harmful business strategies affecting personal autonomy, democracy, mental wellbeing, etc.32 An example is Facebook’s exploitation of user information without their consent or knowledge in the Cambridge Analytica scandal to support Trump’s presidential campaign.33 In this sense, the power of these corporations transcends that of governments, and reflects the potential danger they pose to human rights and wellbeing. This new reality challenges the classic theory that considers the state as the major threat in this regard.

It is not surprising, therefore, that new attempts to better regulate these aspects of private power—in both antitrust and privacy34—are slowly becoming more common. As we will argue below, however, these specific regulatory additions are not enough. What is required instead is a new interpretive paradigm for corporate law—one that is not guided by the shareholder primacy norm but rather takes into account the broad implications of corporate conduct on society at large.35

We have thus far described the shift in power relations between states and corporations, especially as a result of the globalization and privatization processes, and with a focus on the unique position of platform corporations as significant agents of this change. These have resulted in the rise of the corporate social responsibility movement and the changing expectations from corporations.

Since the end of the 1990s and especially following the uncovering of harmful practices by transnational corporations, the discussion of corporate social responsibility has made progress, especially among civil society organizations, but also among the general public. Stakeholder discourse is becoming more demanding and various civil-society campaigns are trying to rein in corporate conduct. As the private sphere expands into the public domain, the interest of the public in the private sphere grows. This includes a deeper scrutiny of harmful corporate practices, production conditions, employment terms, detrimental impact on the climate and human rights breaches. Civil society organizations push corporations to meet higher normative standards. Using consumer boycotts, urging divestments, fair trade campaigns, class actions, etc., these demands may resonate in corporate boardrooms.36

Another aspect of the same phenomenon is the “business and human rights” discourse that has also developed in recent years with an impact on social expectations from corporations. The business and human rights movement argues that human rights law, mostly restricted to states, should be extended to transnational corporations.37 Its efforts are bearing fruit, and in 2011, the UN Human Rights council published guiding principles on Business and Human Rights, asserting that corporations, in addition to states, must also respect human rights.38 While this is not a legally binding document, the UN principles enjoy wide support from leading corporations as well. In 2019, the UN Human Rights Council issued a draft-treaty aimed specifically at corporations in relation to human rights.39 While there is still a long way to go before, and if, it is ratified, the draft is yet another signal for the growing understanding that private power must be restrained, and that managing the company to maximize shareholder value is no longer viable (if indeed it ever was).

In response, corporations themselves and especially those in the public eye, have started to voluntarily adopt a range of socially responsible practices,40 which in turn further stimulated social expectations of responsible behavior. The academic managerial discourse, especially in Europe,41 has also begun to focus more on questions of business ethics, corporate social responsibility, sustainability, and business-and-community relations, reflecting a shift from the contractual-corporate paradigm to a stakeholder model. It seems fair to say, then, the debate today no longer questions the necessity of corporate social responsibility, but rather considers its proper scope.

As will be shown below, however, these changes have not permeated into law itself, or, more accurately, have not informed a broader interpretation of equivocal legal concepts. Corporate and legal actors throughout are still prioritizing shareholder value.42

The first part of the paper focused on the profound transformation in the power relations between states and corporations, showing that globalization, privatization, and the rise of platform corporations have brought about an urgent need to review the overarching principles that inform corporate purpose. A change in public opinion, more aware of the problems of the unregulated power of large corporations and its potential to cause harm, have made possible a normative shift in which corporate social responsibility is now expected. In terms of law, this shift should translate into a new perception of corporate purpose.

It is impossible to discuss the role of corporations in society without mentioning the crises the world has gone through over the past few years— some of which are linked directly to corporate conduct. Most urgent is the climate crisis, defined by the UN as the “defining crisis of our time.”43 Human activity, mostly carried out by corporations, is responsible for the emission of greenhouse gas into the atmosphere. Mining, production, and use of coal, oil and gas releases billions of tons of CO2 causing an unprecedented, and dangerous, rise in temperatures. The consequences are, and will become, devastating.44 The arctic is melting, causing sea levels to rise, threatening the flooding of inhabited lands and cities across the globe; extreme weather conditions, natural disasters and non-perishable human trash lead to soil degradation and desertification. Hyper consumerism leads to reckless deforestation. Business as usual has, literally, devastating implications. However, the fossil fuel industry is still on course to invest billions of dollars into new infrastructure, and to further extract coal, oil and natural gas in both Europe and North America.45 In Europe, it was only following the Russian invasion to Ukraine in February of 2022 that the Nord stream project, owned and led by a consortium of European energy companies, was re-considered. The Nord Stream gas pipeline, described as a climate disaster,46 is one of the largest energy infrastructures in Europe. In addition to its detrimental effect on gas emissions when put to use by consumers, it is also putting the Baltic ecosystem in danger.47 Energy corporations are making huge profits while we edge closer to an ecological disaster. A 2019 study shows that only twenty corporations are responsible for 35% of the total CO2 emissions since 1965, when the dangers of fossil fuel were already known.48

Corporations are accelerating the climate crisis by blocking regulatory initiatives. The hyper consumerist culture corporations strive to foster and spread drives societies across the globe to an excessive use of natural resources. The paradigm of maximizing shareholder value and short-term growth leads these corporations to externalize the costs to society and the environment. As the next part will show, current law allows a much-needed paradigm change. It is up to legal actors to apply a different interpretation to the law, one that corresponds better to the challenges.

#### That’s key to effective regulation

Melissa Mortazavi 15. Associate Professor of Law, University of Oklahoma College of Law. "Tort as Democracy: Lessons from the Food Wars." Arizona Law Review, 57.1, 929-976.

Rather, in the overall context of the modern American legal landscape, tort law may be best understood as playing a critical balancing role in supporting democratic deliberation.6

[[Begin FN 6]]

Tort pushes law to develop beyond its current framework, representing marginalized groups of people and presenting new arguments to the court, regulators and legislators, and to the public at large. “In a very vague general way, the law of torts reflects current ideas of morality, and when such ideas have changed, the law has tended to keep pace with them.” KEETON ET AL., supra note 1, at 21. This is most clearly the case where juries take an active role in adjudicating disputes. Stephan Landsman, Juries as Regulators of Last Resort, 55 WM. & MARY L. REV. 1061 (2014).

[[End FN 6]]

Tort suits bring forth new ideas, create new forums for debate, force fact-finding, and increase back and forth dialogue amongst the public and private institutional actors to develop sound law and policy. The format of reviewing individual harms and compensating them (or failing to) provides a tangible indication of gaps or malfunctions in existing law.7

Filing a lawsuit is, in this context, an engagement in public deliberation, driving individuals and institutions to respond to one another. Many powerful institutions may not be sanctioned directly through adverse judgments. However, these same lawsuits increase public conversation about what law can and should do. This discussion itself alters the institutional structure where repeat players act. Tort has this value regardless of compensation awarded or the actual legal risk of “losing” a case. As such, the validity of tort cannot be evaluated solely by recovery or direct deterrence achieved in any given case. It also must be considered as a critical force in balancing how the public and lawmakers view legal and policy issues moving forward.

Perhaps nowhere is this more obvious today than with the current boom of food litigation.8 Lawsuits over labeling “evaporated cane juice” as sugar or McDonald’s use of beef fat in french fries or granola bars that are “all natural” often seem futile and even silly.9 But whether these cases are litigated to a verdict or settled, these suits serve important purposes in American civil society; they inform public discourse, spurn administrative and legislative bodies into active (or reactive) action, and push public opinion and private industry to contemplate new and conflicting ideas.

Food litigation, like tobacco before it, started as a battleground for public health reform.10 Over time, however, the vastly more complicated social and political meaning of food has come to play out in nuanced sets of lawsuits. This Article tells that story—a story about food and food policy in modern America— but also the broader story about the role tort plays in securing balanced and effective policymaking in a world increasingly dominated by administrative action.

Part I canvasses tort and deliberative democratic theory to provide an analytical framework for examining emerging considerations of the broader role tort can, does, and should play in the American legal system. Part II discusses how current food litigation is altering the substantive focus of food policy. Such litigation infuses food law with an increasingly wide-ranging agenda that includes: broadening how to legally comprehend food safety; moving beyond food safety to situate food as part of a sustainable social and ecological system; and recognizing the cultural, moral, and dignitary nature of food.11 Part III then explores the dialectic between legislative and administrative institutions and tort suits, drawing from current cases to show how these systems work to inform and react to one another. Finally, Part IV considers how tort actions influence private institutions to engage in forms of voluntary self-regulation. The Article concludes that regardless of its ability to achieve compensation for individuals or deter behaviors, tort litigation is valuable as it plays a critical role in developing legitimate policy through public deliberation.

#### Effective regulation averts extinction

Steven Cohen 19. Senior Vice Dean of Columbia's School of Professional Studies and a Professor in the Practice of Public Affairs at Columbia University, 12-2-2019, "The Dangers of Deregulation", State of the Planet, https://news.climate.columbia.edu/2019/12/02/the-dangers-of-deregulation/

From unsafe Boeing 737 Max jets to exploding chemical plants in Houston, we are seeing some visible and dramatic impacts of decades of deregulation. This trend did not start under President Donald Trump but has picked up momentum and increased legitimacy since his inauguration. Regulation is simply another word for policing. Cops inspect behavior for illegality and when they find it, turn it over to courts for adjudication. Rules and their enforcement are a requirement of civilization. Without it, we must all protect ourselves in a war of all against all. Only anarchists oppose all rules and it is difficult to find any pure anarchists. The issue of deregulation is not one of freedom versus tyranny, but simply how many rules we need and what behaviors we need protection from. A secondary issue relates to the method and style of regulation. Opponents of New York City’s police practice of stop, question and frisk did not favor deregulation of the rules of weapon possession, they objected to the method the NYPD used to enforce those rules.

In a world of growing technological complexity, the average person is in no position to understand, evaluate and prevent the potential dangers they might face. About 1 percent of us work on farms and all of us eat food produced by people we don’t know working for companies that are organized to achieve financial profit. We don’t really know much about the food we are eating. The capitalist form of organization provides great incentives for efficiency and creativity as companies seek financial gain. A food company that poisons its customers will find little market advantage in that behavior, and so you might argue that self-regulation is all that is needed, and government policing is unneeded. But we have a Food and Drug Administration and rules on food safety because we worry that the drive for short-term profit might encourage a company to seek short-cuts around food safety requirements. We believe that defining poisoning customers as criminal behavior provides an additional disincentive to take food safety short-cuts beyond the long-term self-interest of a food company. Remove the rule and threat of punishment and the probability of more poisoned consumers increases.

The idea that all regulation inhibits capitalism and that the freer the market the better is part of the ideological perversion of the idea of regulation. The opposite view that all regulation is good and only the state is capable of protecting us from harm is an equally ideological perversion of the idea of regulation. We need rules to ensure that the game is fair and that the players and bystanders are protected from the negative impacts of competition. But it is possible to over-regulate and under-regulate. Regulation can stifle production and creativity, but deregulation can harm us and kill us. Regulation, like policing, is necessary but not self-justifying. I accept the idea that risk is necessary for reward. But I want to calculate the risk and quantify the reward. In the case of highly complex technologies like jet planes and chemical plants, an analysis of risk and reward requires scientific observation, analysis, projection and debate. That can’t be done when anti-regulatory ideologues are blindly moving to dismantle science, rules and enforcement.

Deregulation by definition leads to increased danger. In place of deregulation, I would like to see more effective and scientifically sophisticated rules, enforced with humility and greater government-industry communication. I’d like to reduce the role of lobbyists and ensure that when self-policing is permitted, it always be subject to random and unannounced inspection.

What we have instead in Washington is actually worse than pure deregulation, but an effort to delegitimize the idea of government regulation of business. The danger of this approach is the same as taking the New York Police Department off the streets of New York City. It’s an invitation to lawlessness and dangerous behavior. Most of us don’t live on acres of land in the wild west, but in cities, whereas Paul Simon once wrote, “one man’s ceiling is another man’s floor.” Our actions almost inevitably impact others, and the behavior of others affects us.

Of course, rules, crime and punishment are not the only methods for encouraging socially responsible behavior. Positive role models, economic incentives, moral suasion, education and technical assistance can have equally positive results. But they require a foundation of law and correct behavior. Socially responsible behavior needs to be defined by law. Reducing greenhouse gasses is difficult to achieve if these emissions are not defined as pollutants. Once they are defined as pollutants, reductions can be achieved through tax incentives, technical assistance, or direct grants-in-aid. They can also be achieved through command-and-control regulation. The issue for policymakers should be: What would be more effective, incentives or disincentives? Or should there be a mix of both? Regulated parties are too often defined as criminals that have not yet been caught. That approach makes little sense if we want to achieve the benefits of production while minimizing the costs.

Two recent examples of under-regulation illustrate the danger of deregulation: The regulation of the Boeing 737 Max jet plane and the explosion of chemical plants in Texas. There are sadly many other examples we could examine.

The regulatory failure of the U.S. federal government and Boeing over the 737 Max is obvious. Due in part to budget cuts and in part to anti-regulatory ideology, the Federal Aviation Administration (FAA) delegated some of the regulatory process to Boeing which was in a hurry to bring its new plane to market. David Gelles and Natalie Kitroeff summarized the findings of a federal task force probing this regulatory process in the New York Times this past October. According to their piece:

“The Federal Aviation Administration relied heavily on Boeing employees to vouch for the safety of the Max and lacked the ability to effectively analyze much of what Boeing did share about the new plane, according to the report by a multiagency task force. The system of delegation is now being scrutinized by lawmakers in the wake of the tragedies. Boeing employees who worked on behalf of the F.A.A. faced “undue pressures” at times during the plane’s development because of “conflicting priorities,” according to the report.”

To Boeing senior management, regulation was just a little check-off process on the way to the market. The FAA has been hollowed out of technical capacity by decades of anti-regulatory ideology which was ineffectively countered by eight years of the Obama presidency. Once the Tea Party took over the budget process, the Obama White House was never able to restore capacity to regulatory agencies. The Environmental Protection Agency lost over 2,000 staff during the Obama years. The FAA did not have the ability to understand and assess the safety of the jet’s technology. Instead of preventing death and destruction, it took two tragic crashes to ground the plane and begin the assessment that should have taken place before the plane was allowed to fly.

And then we have last week’s massive fire and explosion at a chemical plant in Port Neches, Texas. The danger of additional explosions and toxic emissions forced the temporary evacuation of thousands of nearby residents and was not an isolated or rare occurrence. According to Merrit Kennedy of NPR:

“The explosion is the latest in a string of industrial incidents in the region. The Houston area saw three fires at chemical facilities in a month-long span in March and April — including an explosion at the KMCO plant in Crosby that killed a worker, as Houston Public Media’s Florian Martin reported. In July, more than 30 people were treated for minor injuries after a fire at an Exxon Mobil refinery in Baytown… A search of Texas Commission on Environmental Quality records shows that this year, TPC Group [owner of the plant] has been ordered to pay more than $378,000 in fines over multiple environmental violations at two facilities, in Port Neches and in Houston.”

Texas prides itself on its free market-focused, lightly policed approach to business policy, and so along with jobs and growth, they get blown out windows and toxic fumes. A well-managed factory controls its emissions and has enough safety protocols in place to avoid blowing up. But the people who work at the plant that might want to spend a little more time and money to make the place safer and cleaner are delegitimized by the absence of effective government oversight. The only good news is that the first explosion was at 1 AM and not 1 PM or the impact on workers and residents could well have been greater.

The danger of deregulation is that without adequate policing of complex technical processes, the public is left to the mercy of the market. Most businesses are well run and pay attention to safety and emissions. But clearly, some are poorly run and place short-run profits over health and safety. Regulation reinforces correct behavior and justifies investment in safety. Deregulation reinforces a Wild West mindset that is inappropriate for the crowded planet that we all live on.

### 2NC---AT: PDB

#### Perm do both can’t solve the net benefit. It would create the same labor standard across the United States, which means companies have no incentive to re-incorporate to Delaware---that’s Shephard

#### It also doesn’t trigger any uncertainty. The perm is the status quo since corporate law *already* imposes the duty to comply with federal law

Thomas W. France 20. Partner, Venable LLP. "Complying with Oversight Fiduciary Duty Obligations in Response to COVID-19." Venable LLP. 06/04/2020. https://www.venable.com/insights/publications/2020/06/complying-with-oversight-fiduciary-duty-obligat

As America begins to restart its economy in the midst of the novel coronavirus (COVID-19) pandemic, businesses that are reopening and/or ramping up their operations will need to take measures reasonably designed to protect the health of their employees and customers, including the implementation of practices and procedures that comply with state and local public health regulations. Additionally, business entities of all types—publicly traded and privately owned corporations and limited liability companies alike—will need to have board-level monitoring and compliance systems in place to ensure their directors and managers are able to comply with fiduciary duties regarding oversight of the business in the COVID-19 era. In exercising these oversight fiduciary duties, directors and managers should take the following actions:

* Identify risks relating to COVID-19 that are critical to the business;
* Ensure the board has in place appropriate reporting and monitoring systems and policies to deliver material information to directors and managers;
* Engage in a proactive review and consideration of information and issues regarding COVID-19's impact on the company; and
* Document contemporaneously the board's actions in monitoring and responding to COVID-19 issues and risks.
* Fiduciary Duties of Directors and Managers and the Oversight Function

The board of directors is charged by statute with overseeing the business and affairs of a corporation, and although the board appoints officers to run the day-to-day operations, the directors ultimately are responsible for the management of the corporation and have certain fiduciary obligations to the corporation and its stockholders. Fiduciary standards of conduct that apply to a corporation and its directors will depend in the first instance on the statutory and case law of the state in which the corporation is incorporated, but the two principal fiduciary duties under corporate law in most states are the duty of care and the duty of loyalty. Compliance with the duty of care generally requires directors to fully inform themselves of all material information reasonably available to them and to act with care in the discharge of their duties. The duty of loyalty generally requires directors to have the interest of the corporation and its stockholders ahead of their own personal interests.

Limited liability companies have become the preferred form of entity for many businesses, particularly privately held entities, and understanding the fiduciary obligations of managers and members of a limited liability company can be complicated, for a variety of reasons. For instance, there may be a lack of statutory guidance in the applicable jurisdiction or there may be a lack of well-defined case law, given that LLCs are relatively new, at least compared to corporations. Also, governance of these entities, including the scope of fiduciary obligations, generally is a matter of contract law, as set forth in the operating agreement. While state law can vary on the nature of these fiduciary duties, managers of an LLC generally owe certain fiduciary obligations to the entity and possibly its members, and the analysis of these fiduciary obligations will be similar to that for directors of a corporation.

Oversight Function and Judicial Standard of Review

A board of directors of a corporation or board of managers of an LLC1 generally has two principal functions: (1) decision-making and (2) oversight. The decision-making function typically entails approving or rejecting certain material actions, for instance, transactions involving the sale of the company or an equity or debt financing. Oversight involves supervising the business and affairs of the company, such as identifying and overseeing major risks to which the company is or may be exposed, establishing policies and practices to foster the company's compliance with legal requirements, and implementing internal controls to ensure the board receives adequate and timely information.

#### That means only the counterplan upends predictability in non-Delaware states by establishing an entirely novel duty *separate* from the duty to comply with the law

### Perm: OI---2NC

#### Other issues is not a winner.

#### It adds [X] so it’s functionally intrinsic---that’s asinine. Counterplans need only be functionally competitive and can never fiat the plan:

#### 1. FAIRNESS. 3 internal links:

#### a. Predictability. ‘Should’ proves the rez entails function, and text is intersubjective, making evaluating it arbitrary. Unpredictable rules are worse than none at all because debatibility benefits occur at the expense of pretournament strategy.

#### Legal precision. Federal line-item vetoes are unconstitutional.

Quinn Yeargain 23. Associate professor at the Michigan State University College of Law, J.D. from the Emory University School of Law. "Tony Evers and the Vanna White veto." Guaranteed Republics. 7/5/2023. guaranteedrepublics.substack.com/p/tony-evers-and-the-vanna-white-veto?utm\_source=profile&utm\_medium=reader2

In 1930, Wisconsin voters amended their state constitution to give their governor a line-item veto over appropriations bills. All states grant their governors a veto, and forty-four states allow the governor the ability to sign some parts of appropriations bills while vetoing other parts. In most states, this required a constitutional amendment for the exact same reason that the U.S. Supreme Court struck down the president’s line-item veto—it violates constitutional provisions that govern how legislation is presented to the executive.

While Wisconsin’s grant of a line-item veto isn’t unique, its execution is. While most line-item veto amendments allow the governor to veto individual “items” from an appropriations bill, Wisconsin’s constitutional provision allows the governor to approve an appropriations bill “in part.” Since the 1930s, the Wisconsin Supreme Court has interpreted the use of “part” to signify something different than “item”—and it has allowed expansive vetoes.

Over time, what developed was alternatively called the Frankenstein veto or the Vanna White veto—because it effectively allowed the Governor to transmogrify existing language by striking out letters, numbers, clauses, sentences, paragraphs, and pages to create entirely new sentences that the legislature had never written.

#### b. Neg flex. Internal net benefits get erased---those are the only way to produce offense on this topic. Perms snowball into full intrinsicness, deleting germane offense. Independently: Texts get shuffled to add unpredictable functions. 2As shave words from advantage counterplans to fiat out of disads. 2As distort plan functions by inserting extraneous words into the text.

#### c. Textual topicality. There’s no non-arbitrary delineation between competition and T because both define the scope of the plan. Text or function justifies removing functions of the rez if the aff retains partial resolutional wording. It unleashes a slew of discourse-based advantages and textually topical plans like ‘states should strengthen workers’ that eliminate neg ground.

#### 2. CLASH.

#### Real world. Decisionmakers consider function before semantics. Word games are useless, solved by other forums. Justifies removing ‘ban plan’ or ‘ban CEP’ which is unpredictable.

#### Now, defense: other perms, decisionmaking theory, and structural aff advantages check. 2021 finals proves judges arbitrarily inflate deficits, and NB offense is prevalent.

## Filings

### Link---2NC

#### Strengthened collective bargaining rights in bankruptcy proceedings skyrockets filings.

Joseph T. Halford et al. 24. associate professor of finance at the University of Nevada, Reno. Rachel M. Hayes. George S. and Dolores Doré Eccles Presidential Chair in Financial Reporting and Professor of Accounting at the University of Utah. Valeriy Sibilkov. Professor at the University of Wisconsin-Milwaukee. “Personal bankruptcy costs, union bargaining power, and capital structure.” *Journal of Banking & Finance*. Volume 168, November 2024, 107271. https://www.sciencedirect.com/science/article/pii/S0378426624001857.

1. Introduction

We document that, on average, the financial leverage of unionized firms decreases following the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA, or “the Act”) of 2005, legislation that increases personal bankruptcy costs. We argue that this decrease in leverage is due to a reduction in union bargaining power following the passage of BAPCPA.

Firms use financial leverage to counteract the bargaining power of labor unions (Chu 2012; Hennessy and Livdan 2009; Matsa 2010). By increasing leverage, equity holders effectively “sell” the firm to debtholders ex ante, leaving little ex post residual value to be extracted by labor unions.1 When labor unions gain bargaining power, firms may increase leverage to reduce the piece of the pie that unions may capture. Correspondingly, when unions lose bargaining power, it is optimal for firms to reduce leverage. Union bargaining power is affected by personal bankruptcy costs because a work stoppage increases the likelihood of personal bankruptcy for union members.2

For our analyses, we utilize a difference-in-differences regression framework to control for unobservable differences between unionized firms and nonunionized firms. Our baseline analysis indicates that, on average, unionized firms reduce leverage by about two percentage points relative to nonunionized firms following the passage of BAPCPA. We then undertake additional analyses to control for the effects of omitted variables and to examine whether BAPCPA reduces union bargaining power.

First, we control for time-varying differences in labor markets, economic conditions, contemporaneous changes in state laws, or changes in state tax rates that potentially have differential effects on the leverage of unionized and nonunionized firms. Second, we document that the effect of BAPCPA on leverage is stronger in cases where the effect of BAPCPA on union bargaining power is stronger and in cases where firms are more likely to use leverage to counteract union bargaining power. Third, we provide corroborating evidence that BAPCPA reduced union bargaining power by documenting reductions in firms’ labor costs surrounding the Act's passage. Fourth, we document that BAPCPA reduced the number of union certification elections conducted by the National Labor Relations Board (i.e., employees’ attempts to officially unionize). The results of both the labor costs and certification election tests are consistent with a decrease in union bargaining power following BAPCPA's passage.

This paper contributes to the evidence surrounding the stakeholder view of corporate finance. The empirical evidence on the relation between capital structure and weaker union bargaining power proxied by the adoption of right-to-work laws is mixed. For example, Matsa (2010) and Chava et al. (2020) document that firms reduce leverage surrounding the passage of right-to-work laws, while Woods, Tan, and Faff (2019) and Avenancio-León, Piccolo, and Pinto (2023) document leverage increases during similar circumstances for firms in Oklahoma and Indiana, and in highly unionized industries, respectively. We contribute to this debate by examining firm-level measures of unionization and using an alternative shock to union bargaining power, both of which are unique to this literature.3

Additionally, extant studies show that capital structure is affected by the degree of employee protection (Ellul and Pagano 2019; Simintzi, Vig, and Volpin 2015) and unemployment risk (Agrawal and Matsa 2013; Berk, Stanton, and Zechner 2010). We present novel evidence that personal bankruptcy costs are reflected in capital structure decisions of unionized firms through their effect on union bargaining power.

This paper also contributes to the growing literature examining the effect of BAPCPA on firms. For example, BAPCPA increases credit supply to mortgage companies (Lewis 2023), decreases expected and realized bank loan losses (Heitz and Narayanamoorthy 2021), increases derivative availability and usage by financially distressed airlines (Giambona and Wang 2020), increases the amount and duration of trade credit offered to firms (Costello 2019), and increases the amount of mortgage-backed securities (MBS) financed with repo debt (Srinivasan, 2019). Chen, Halford, Hsu, and Lin (2020) also present evidence that firms reduce leverage in response to BAPCPA. They attribute this reduction to a general increase in expected unemployment costs related to BAPCPA's passage. We build upon Chen et al. (2020) by showing that reductions in leverage following BAPCPA are moderated by union bargaining power. Finally, this paper presents unique evidence that personal bankruptcy costs affect union bargaining power.

2. Motivation

2.1. Union bargaining power and capital structure

The link between union bargaining power and capital structure is developed in Hennessy and Livdan (2009), Matsa (2010), and Chu (2012). Matsa (2010) shows that a firm uses leverage strategically to limit the amount of excess liquidity (realized cash flows less required debt payments) that the union can extract from the firm. The reasoning is akin to Jensen's (1986) hypothesis that leverage reduces funds available to managers. In the presence of a powerful union, leverage removes excess liquidity that might otherwise be captured by the union.

In Matsa (2010), the firm trades off corporate bankruptcy costs with the potential for the union to extract excess liquidity. Positive cash flow shocks expose unionized firms to rent seeking by unions. As a result, unionized firms with greater cash flow volatility have greater incentives to use debt to shield cash flows and have higher optimal leverage than similar nonunionized firms.

We build on Matsa's (2010) insight to link personal bankruptcy costs to firms’ capital structure. We posit that if higher personal bankruptcy costs weaken a union's bargaining power, a unionized firm will decrease leverage relative to an otherwise similar nonunionized firm following an increase in personal bankruptcy costs.

There are several reasons why personal bankruptcy costs reduce a union's bargaining power. Perhaps the greatest bargaining chip of a union is its threat to strike or withhold labor. However, workers forgo wages during a strike and risk financial distress, particularly as most states offer no unemployment benefits to striking workers. Furthermore, there are anecdotal reports of firms shutting down plants or filing for bankruptcy due to labor disputes, leaving union members without jobs.4 Because labor disputes—whether in the form of a strike or management lockout—expose union members to financial distress and personal bankruptcy, higher personal bankruptcy costs will weaken unions’ ability to credibly threaten firms with a strike, as well as strengthen the threat of a lockout by management, both of which reduce unions’ bargaining power.

Congress signed the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) into law on April 20, 2005, and most of its provisions became effective as of October 17, 2005. BAPCPA made significant changes to the U.S. Bankruptcy Code, including an increase in the costs of filing for personal bankruptcy.

For example, the Act places greater restrictions on who can qualify for Chapter 7 bankruptcy, which allows the debtor to discharge most unsecured debt (Evans and Lewis 2008).5 The Act also places restrictions on homestead exemptions, gives greater priority to domestic obligations, requires bankrupts to obtain credit counseling, and requires bankrupts’ attorneys to certify clients’ ability to repay debts. According to the U.S. Government Accountability Office (2008) the Act increased the costs of filing for personal bankruptcy by 50 % to 70 %.

If the additional costs of filing for bankruptcy due to BAPCPA are binding on consumers, bankruptcy rates should fall once the Act is effective. In Fig. 1, we report the personal bankruptcy filing rates along with the expected filing rates over the 1994–2015 period. Personal bankruptcy filing rates in each quarter are the number of households that file for bankruptcy (data are obtained from the American Bankruptcy Institute's website) divided by the number of U.S. households reported in the Federal Reserve Economic Data (FRED). Guided by prior studies, we estimate the expected filing rates using the following regression:

filing rate\_t = β₀ + β₁PI\_t + β₂DS\_t + β₃GDP\_t + β₄CPI\_t + β₅RF + β₆TP + β₇NOHI + ε\_t

where PI is the average U.S. per capita personal income, DS is the average U.S. personal debt service ratio (the ratio of debt payments to disposable personal income), GDP is the percentage change in Gross Domestic Product, CPI is the percentage change in the Consumer Price Index, RF is the yield on one-year U.S. treasury securities, TP is the percentage change in government transfer payments, and NOHI is the proportion of the U.S. population without health insurance. These variables proxy for the economic cycle, individuals’ wealth, debt service, and medical expenses, which are significant determinants of personal bankruptcy filings (Domowitz and Eovalid 1993; Domowitz and Sartian 1999). NOHI is measured annually and is obtained from the U.S. Census Bureau; other variables are measured quarterly and are obtained from FRED. The model is estimated for the pre-BAPCPA period of 1994 through 2004 and captures a large portion of the variation in bankruptcy filings (the R-squared is 86 %). Then, we use the coefficient estimates from the model to compute the expected filing rates post-BAPCPA for 2005–2015. This process provides an estimate of the filing rate had BAPCPA not been passed.6

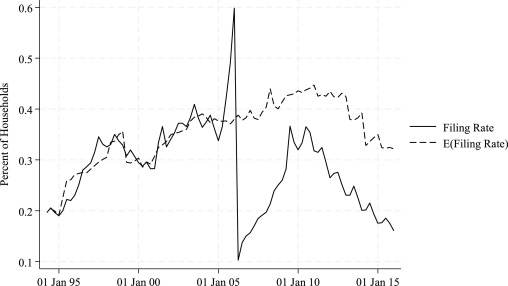


Fig. 1. Personal Bankruptcy Filing Rate.

This figure presents the quarterly time series of the personal bankruptcy filing rate in the United States compared to the expected pre-BAPCPA filing rate. The computation of the expected filing rate is described in Section 2.2.

Fig. 1 reveals a large spike in personal bankruptcy filings immediately following BAPCPA's passage in April 2005. The spike suggests that to avoid the new costs imposed by the Act, individuals rushed to file for bankruptcy before the new law became effective in October 2005. After the Act became effective, personal bankruptcy filings fell dramatically and have not recovered to pre-BAPCPA levels. This evidence supports the argument by Athreya et al. (2015) that without BAPCPA, bankruptcy rates would have been much higher during the “great recession” beginning in 2008. The evidence in Fig. 1 is consistent with BAPCPA's additional costs being binding on consumers.7

While the evidence in Fig. 1 indicates that BAPCPA is a shock to personal bankruptcy costs, Hennessy and Strebulaev (2019) demonstrate that exogenous shocks are insufficient to identify causal effects or even the correct sign of the effect in dynamic economies. The necessary condition for identification is that the shock is unanticipated and permanent or that market participants behave as if the shock is permanent. BAPCPA is likely to satisfy at least the latter of these two conditions.

The Act had a long and tumultuous legislative history, which increased the likelihood that market participants did not fully anticipate its passage.8 In the 108th Congress (2003 to 2004), Chairman Sensenbrenner remarked, “Perhaps the seventh attempt will prove to be a charm and finally lead to the enactment of these critically important reforms” (Jensen 2005 p. 560). After Republicans acquired a sufficient majority in the House and Senate in November 2004, BAPCPA was finally passed in the 109th Congress. The period between Republicans acquiring a majority in November 2004 and the Act's passage in April 2005 was likely not long enough for market participants to act in anticipation of the Act's passage. Fig. 1 supports these conclusions, as bankruptcy rates do not rise above expected rates until immediately after the passage.

Also, bankruptcy reforms are rare, and it is likely that market participants viewed the Act as a permanent event. BAPCPA was the first major consumer bankruptcy reform in 25 years, with no major bankruptcy reforms since its passage. The Act's unexpected passage and permanency satisfy Hennessy and Strebulaev's (2019) conditions and support the notion that BAPCPA is a valid setting in which to uncover causal effects.

#### Union strength alone generates greater bankruptcy risk.

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We posit that the increase in personal bankruptcy costs due to BAPCPA has the effect of reducing unions’ bargaining power, which in turn reduces unionized firms’ incentives to use leverage as a countermeasure. If so, we expect that unionized firms reduce leverage following the passage of BAPCPA relative to nonunionized firms. We test this hypothesis utilizing a difference-in-differences research design. We run regressions of the form,

Leverageijt = β0 + β1Unionij × BAPCPAt + β2Xijt + γjt + ϕi + ϵijt

where Leverageijt is the book or market leverage of firm i in industry j at time t; BAPCPAt is an indicator that the Act is in effect (one in years 2006 and 2007 and zero in years 2003 and 2004); Unionij is one of two measures of unionization (an indicator that equals one if the firm has unionized employees in 2004 and zero otherwise; alternatively, the percentage of the firm’s employees that are unionized in 2004); Xijt is a vector of firm-level control variables; γjt denotes industry-time effects, which control for unobservable time-varying industry effects, ϕi denotes firm fixed effects, which control for time-invariant firm characteristics; and ϵijt is a mean zero error term.15 The primary coefficient of interest is β1 (referred to as the difference-in-differences or DD estimator), which estimates the differential effect of BAPCPA on the leverage of unionized firms relative to its effect on the leverage of nonunionized firms. Because unionization is measured at the firm level, we conduct statistical inference using standard errors clustered at the firm level to control for timeseries within-firm error term correlation.

The regression results are reported in Table 3. The coefficients on BAPCPAt × Unionij are − 0.019 (statistically significant at the 1 % level) and − 0.016 (statistically significant at the 5 % level) in the book leverage and market leverage regressions, respectively. The coefficients indicate that unionized firms reduce book (market) leverage by 1.9 (1.6) percentage points relative to nonunionized firms in the post-BAPCPA period. In percentage terms, these effects correspond to a reduction of 9.3 % (9.5 %) in book (market) leverage in the years surrounding BAPCPA.

When unionization is measured as the percentage of unionized employees, the coefficients on BAPCPAt × %Unionij are − 0.001 and − 0.001 (both statistically significant at the 1 % level) in the book and market leverage regressions, respectively. A one-standard-deviation increase in unionization results in a 7.5 % (9.0 %) decrease in book (market) leverage surrounding BAPCPA.

The magnitudes of the percentage point effects we document are consistent with the average effect of right-to-work laws on leverage. For example, Chava et al. (2020) document that right-to-work laws enacted between 1950 and 2016 reduce leverage by about three percentage points. Woods et al. (2019) find that the introduction of right-to-work laws increases leverage by about two percentage points. However, our effect sizes are smaller than the reported effects from the passage of right-to-work laws for firms in highly unionized industries. Matsa (2010) reports an 11 percentage poin1t decrease in leverage.16 In contrast, Avenancio et al. (2023) report a 14 percentage point increase in leverage due to the passage of right-to-work laws.

More broadly, Simintzi et al. (2015) find that an increase in country-level employee labor protections increases leverage by about two percentage points, and Heider and Ljungqvist (2015) document that on average firms respond to state-level corporate income tax increases of 1 % by increasing leverage by 40 basis points.17 Agrawal and Matsa (2013) report that a one unit increase in unemployment benefits is associated with a 4.5 percent leverage increase.18

While the average effect sizes we document are smaller than those related to right-to-work laws for firms in highly unionized industries, the effects are similar to those reported for right-to-work on average for all firms, and similar to those reported for country labor protections, changes in state-level corporate tax rates, and changes in unemployment benefits. The 7.5 % to 9 % change in leverage we document in response to a modest change in union bargaining power may seem high given that only 25 % of unionized firms’ workforces, on average, are unionized. However, the importance of unionized employees to firms’ profitability is likely to determine the effect. For example, a writers’ strike halts television production even though writers comprise a small percentage of a studio’s workforce.19

Given the potential importance of unionized employees to a firm’s production, it is plausible that small changes in union bargaining power result in substantial changes in leverage. Ultimately, the magnitude of the effect of BAPCPA on unionized firms’ capital structures is an empirical question—one that our analysis aims to answer.

#### It forces companies to increase leverage to counteract bargaining.

Joseph T. Halford et al. 24. associate professor of finance at the University of Nevada, Reno. Rachel M. Hayes. George S. and Dolores Doré Eccles Presidential Chair in Financial Reporting and Professor of Accounting at the University of Utah. Valeriy Sibilkov. Professor at the University of Wisconsin-Milwaukee. “Personal bankruptcy costs, union bargaining power, and capital structure.” *Journal of Banking & Finance*. Volume 168, November 2024, 107271. https://www.sciencedirect.com/science/article/pii/S0378426624001857.

6. Conclusion

We present evidence consistent with the hypothesis that personal bankruptcy costs influence capital structure decisions of corporations and, further, that personal bankruptcy costs affect a firm's capital structure via their effects on unions’ bargaining power. The evidence is consistent with the stakeholder view of corporate finance. Under that view, in addition to traditional considerations of capital structure decisions such as corporate taxes and bankruptcy costs, firms and managers also consider strategic use of debt to counteract the bargaining power of key suppliers and unions. Our evidence is also consistent with the findings of Matsa (2010) that firms with high cash flow volatility are more susceptible to the extraction of value by unions and have a greater need to use debt as a countermeasure against unions.

A key innovation of this paper is that we show that personal bankruptcy costs “matter” in corporate finance. This result is important for policymakers, as it raises a previously unexplored externality related to personal bankruptcy laws—their effect on unions’ bargaining power, which in turn affects the capital structures of major corporations. Further, the findings in our triple difference analyses suggest that the effects of personal bankruptcy laws on corporate capital structure vary with industry and geography.

#### That increases bankruptcy risks.

Joseph T. Halford et al. 24. associate professor of finance at the University of Nevada, Reno. Rachel M. Hayes. George S. and Dolores Doré Eccles Presidential Chair in Financial Reporting and Professor of Accounting at the University of Utah. Valeriy Sibilkov. Professor at the University of Wisconsin-Milwaukee. “Personal bankruptcy costs, union bargaining power, and capital structure.” *Journal of Banking & Finance*. Volume 168, November 2024, 107271. https://www.sciencedirect.com/science/article/pii/S0378426624001857.

This study tests the relationship among operating leverage, profitability and financial leverage. Operating leverage boosts profitability and cuts down the optimal financial leverage of the firm. Therefore, operating leverage renders a negative relationship between profitability and financial leverage that is inconsistent with the static trade-off theory. By considering WTO and using data of export manufacturing firms in China for the period 1990–2018, our results indicate that operating leverage and profitability have a positive relationship, and operating leverage is a central cause to create an inverse correlation between profitability and financial leverage when firm's revenue declines. In addition, operating and financial leverages have substitutions effect when the firm operating cost is quasi-fixed. Furthermore, the firm's bankruptcy risk is linked with higher operating leverage. Our study suggests that firms should consider both operating and financial leverage to maximize their profitability because the preference of one leverage on the other increases bankruptcy risk, and operating leverage preference creates an inverse correlation between profitability and financial leverage.

#### Perception alone triggers the link.

Edward Cavanagh 15. a Law Professor at St. John's University, holds a J.D. from Cornell. “Federal Civil Litigation at the Crossroads: Reshaping the Role of the Federal Courts in Twenty-First Century Dispute Resolution.” St. Johns. https://scholarship.law.stjohns.edu/faculty\_publications/131/.

<<FOOTNOTE 227 BEGINS>>

See Marc Galanter, The Day After the Litigation Explosion, 46 MD. L. REV. 3, 3–5

(1986). But see Weinstein, After Fifty Years, supra note 20, at 1907–09 (Concern over excessive litigation in the federal courts is old hat ... [and] also typically exaggeration.... The truth about the "litigation explosion' is that it is a weapon of perception, not substance. If the public can be persuaded that there is a litigation crisis, it may support efforts to cut back on litigation access.”).

<<FOOTNOTE 227 ENDS>>

### Caseloads Low---2NC

#### Caseloads are low:

#### 1. Current slate. Judges are seeing fewer cases every year, they’ve been cut in half in the last 20 which frees up space and makes cases more efficient. That’s Muller.

#### Caseloads are stable now. We’ll insert a chart.

U.S. Courts 25. United States Courts. “Caseload Statistics Data Tables.” *United States Courts*. 06/30/2025. https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.

A screenshot of a computer screen

AI-generated content may be incorrect.

#### Filings are declining.

US Courts 24. United States Courts, created under Article III of the Constitution to administer justice. “Federal Judicial Caseload Statistics 2024.” United States Courts. https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024.

Filings in the 12 regional courts of appeals fell 3 percent to 39,469 (down 1,212 appeals) in 2024. This decrease stemmed from lower filings of criminal appeals, other U.S. civil appeals, U.S. and private prisoner petitions, bankruptcy appeals, and filings of original proceedings and miscellaneous applications. Filings of appeals of administrative agency decisions increased 11 percent (up 491 appeals), and filings of other private civil appeals rose 7 percent (up 648 filings).

#### They have been decreasing.

US Courts 22. Administrative Office of the United States Courts, administrative agency of the United States federal court system. “Federal Judicial Caseload Statistics 2022.” US Courts. https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2022.

The following is a summary of key findings for the year ending March 31, 2022.

In the U.S. courts of appeals, filings decreased 7 percent.

The bankruptcy appellate panels reported that filings fell 7 percent.

Filings in the U.S. Court of Appeals for the Federal Circuit dropped 15 percent.

In the U.S. district courts, filings of civil cases declined 33 percent after rising 39 percent the previous year in response to multidistrict litigation filed in a single district court. Filings for criminal defendants grew 9 percent.

The U.S. bankruptcy courts received 16.5 percent fewer petitions.

#### 2. Trends.

#### Even if there are small increases, they are trending downward.

U.S. Courts 25. United States Courts. “Bankruptcy Filings Rise 11.5 Percent Over Previous Year.” *United States Courts*. 07/31/2025. https://www.uscourts.gov/data-news/judiciary-news/2025/07/31/bankruptcy-filings-rise-115-percent-over-previous-year.

Bankruptcy totals for the previous 12 months are reported four times annually.

For more than a decade, total filings fell steadily, from a high of nearly 1.6 million in September 2010 to a low of 380 [thousand],634 in June 2022. Total filings have increased each quarter since then, but they remain far lower than historical highs.

#### 3. The link. It controls the direction of uniqueness. Union strength historically determines the efficiency of the courts. BACPA weakened unions.

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First, we control for time-varying differences in labor markets, economic conditions, contemporaneous changes in state laws, or changes in state tax rates that potentially have differential effects on the leverage of unionized and nonunionized firms. Second, we document that the effect of BAPCPA on leverage is stronger in cases where the effect of BAPCPA on union bargaining power is stronger and in cases where firms are more likely to use leverage to counteract union bargaining power. Third, we provide corroborating evidence that BAPCPA reduced union bargaining power by documenting reductions in firms’ labor costs surrounding the Act's passage. Fourth, we document that BAPCPA reduced the number of union certification elections conducted by the National Labor Relations Board (i.e., employees’ attempts to officially unionize). The results of both the labor costs and certification election tests are consistent with a decrease in union bargaining power following BAPCPA's passage.

#### That spurred court efficiency.

Samuel Antil & Aymeric Bellon 24. assistant professor of business administration in the Finance Unit at Harvard Business School. Finance PhD Candidate at the Wharton School of the University of Pennsylvania. “The Real Effects of Bankruptcy Forum Shopping.” *NBER Summer Institute*. 12/11/2024. https://ncbankruptcyexpert.com/sites/default/files/2024-12/ssrn-5052176\_compressed.pdf.

Finally, we utilize the unique scope of our dataset to provide new descriptive facts about forum shopping. We find that 23% of firms forum shop. Forum shoppers are dramatically more likely to file in Delaware than in any other court. The high frequency of forum shopping and the preference for Delaware have both been persistent since at least 2010. Interestingly, forum shopping to Delaware declined briefly around 2005. Motivated by this observation, we examine how the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) impacted forum shopping. Our test is based on Iverson (2018), who finds that BAPCPA (i) reduced court congestion by limiting consumer bankruptcy access and (ii) increased efficiency in corporate bankruptcies by freeing up judges’ time. We hypothesize that this improved efficiency motivated more firms to file in their newly-improved home courts. We test this using the difference-in-differences approach of Iverson (2018), which exploits the fact that consumer-bankruptcy-focused courts experienced a greater decline in caseloads after BAPCPA. We compare the period before and after BAPCPA (the first difference) and more versus less consumer-focused courts (the second difference). We find that a firm is less likely to forum shop after its home court becomes less congested (more efficient). This result is consistent with our overall narrative: firms forum shop to Delaware to avoid their less efficient home courts, leading to fewer liquidations and higher post-bankruptcy employment.

### Economy Defense---2NC

#### No impact:

#### 1. Empirics. The U.S. suffered 40 recessions unlinked to war. COVID and 08 thump.

#### 2. Effort. Leaders want a quick, easy win. It won’t escalate.

#### That’s Walt.

### Dollar Defense---1AR

#### Structural forces ensure.

Wang Youming. 25. Senior Research Fellow of BRICS Economic Think Tank at Tsinghua University. “Dollar Power Lingers; BRICS Faces Challenges”. China-US Focus. 9-29-25. https://www.chinausfocus.com/finance-economy/dollar-power-lingers-brics-faces-challenges

In the new century, the collective rise of emerging economies, such as the BRICS nations, has significantly altered the global power structure, but the international financial order and monetary system remain largely unchanged, with the dollar-centric system dominating the landscape. This is evident in five key areas:

First is an imbalanced power structure. The U.S. retains veto power in major international financial institutions, which means this imbalance in the distribution of power is unlikely to change in the near term.

Second, the dollar continues to dominate international trade payments with a share of nearly 49 percent; it constitutes 57.7 percent of global foreign exchange reserves, far ahead of the euro, pound and yen.

Third, the dollar’s status as a global currency is underpinned by America’s strong economic, technological and military capabilities, with the independent Federal Reserve providing institutional and credit guarantees.

Fourth, the U.S. has the world’s most developed financial markets, including the New York Stock Exchange, which attract global capital and reinforce the dollar’s central position.

Fifth, the United States controls the SWIFT system, which dominates the global cross-border payment network, further solidifying the dollar’s hegemony.

It is evident that, despite the recent weakness of the U.S. dollar against the euro and the RMB, the foundation of the dollar-centered system remains unshaken: The authority, reliability and stability of the U.S. dollar have not undergone any substantive changes. As the strongest currency in the BRICS group, the RMB accounts for 3.5 percent of international trade payments and 2.12 percent of global foreign exchange reserves.

Both the theory and history of international finance and currency demonstrate that the exit of any dominant international currency from the stage is not something that happens overnight. The U.S. dollar will continue to be at the center of the international monetary system for a considerable period of time.

#### Experts agree. Trump’s policy is not enough to dethrone it.

Yuxuan Jia et al. 25. Jia is a Research Associate at Center for China and Globalization. Zichen Wang is with the Center for China and Globalization and holds a master’s in public policy from Princeton School of Public and International Affairs. Siqi Lin is an Intern at the Center for China and Globalization. “Wang Yongli on U.S. dollar hegemony and digital RMB”. The East is Read. 3-18-25. https://www.eastisread.com/p/wang-yongli-on-us-dollar-hegemony

Wang Yongli, former Vice President of the Bank of China, analyzed the position of the U.S. dollar as the world’s dominant currency and its implications for China’s monetary strategy. He pointed out that many countries, including China, have sought to internationalize their currencies and reduce reliance on the dollar, but these efforts face significant challenges. Despite China being the world’s second-largest economy and the largest trading nation in goods, the RMB’s share in global payments remains low, only around 4%, compared to the dollar’s nearly 50%. The RMB’s share in global reserves is also minimal, at just over 2%, while the U.S. dollar, despite declining from its peak, still accounts for nearly 60%.

Wang explained that the international status of a currency is not determined solely by a country’s GDP or trade volume but by comprehensive national strength, which includes education, research and development, governance, legal infrastructure, military power, diplomatic influence, and openness to the global economy. Even if China surpasses the U.S. in GDP, this does not automatically translate to a stronger currency, as the dollar’s dominance is underpinned by America’s economic, military, and political influence, which was solidified after World War II. The U.S. dollar’s status was institutionalized through the Bretton Woods system, where the dollar was pegged to gold, and other currencies were pegged to the dollar. Even after the system collapsed in 1971, the dollar retained its global position due to America’s financial strength, military presence, and leadership in shaping international institutions.

Some argue that China should require all its exports to be settled in RMB to force its internationalization, as Russia did with its energy exports after the Ukraine war. Wang dismissed this idea as unrealistic, explaining that trade payment currencies are determined by market acceptance and negotiation power, not unilateral decisions. The party with stronger bargaining power dictates the currency of settlement, and in cases where neither party’s currency is widely accepted, they resort to the U.S. dollar or another dominant international currency.

He emphasized that de-dollarization efforts by various countries are often reactive, driven by restrictions imposed by the U.S., such as financial sanctions. Many nations still prefer the dollar due to its unparalleled global liquidity and security. Even Russia, after being sanctioned, did not fully reject the U.S. dollar but sought to maintain access where possible. This underscores the entrenched role of the dollar in global finance.

Wang highlighted that the internationalization of the RMB requires deep and broad financial markets, free capital flows, and strong institutional frameworks. Without these, the RMB cannot become a major international reserve currency. He noted that while China has mechanisms such as QFII and RQFII for limited capital movement, these programs only allow tens of billions in capital flows, which is far from what is required for true currency internationalization. A major concern is managing financial risks—China must ensure that increased financial openness does not lead to instability, as large capital inflows and outflows can create market shocks.

#### There are no contenders.

Vic Langston. 25. J.D. from Georgetown Law, writer at Lex Veritas Media. “The End of Dollar Power?”. Medium. 10-13-25. https://medium.com/the-geopolitical-economist/the-end-of-dollar-power-8d6bd52ffb1f

Yet structural limits constrain the yuan’s ascent. China maintains strict capital controls to curb destabilizing outflows, and the yuan remains only partly convertible. Moreover, Chinese financial markets — vast though they are — lack the transparency, regulatory stability, and openness foreign investors demand. To become a genuine reserve currency, the yuan would need a fully open financial system and a flexible exchange rate — moves that are economically and politically risky for Beijing. For now, therefore, the yuan’s role on the world stage remains limited by domestic policy.

Europe’s common currency, the euro, might seem a natural challenger to the dollar given the EU’s economic size and institutional stability. Yet the euro has never fully realized this potential. It lacks a unified fiscal and political foundation comparable to that of the United States. Fragmented sovereign-bond markets and a limited supply of high-quality securities equivalent to U.S. Treasuries weaken the euro’s global appeal. Investors seeking safety and liquidity continue to prefer American debt instruments, which remain the world’s most reliable assets. The euro’s structural fragility — rooted in the absence of a true fiscal union — constrains its ability to absorb the trust that might otherwise shift away from the dollar.

#### That tanks any risk of dedollarization. Larger, structural alt causes prove.

Vic Langston. 25. J.D. from Georgetown Law, writer at Lex Veritas Media. “The End of Dollar Power?”. Medium. 10-13-25. https://medium.com/the-geopolitical-economist/the-end-of-dollar-power-8d6bd52ffb1f

Meanwhile, U.S. domestic and foreign policy have further eroded confidence in the dollar’s neutrality. Both the Trump and Biden administrations, in different ways, politicized the economic and financial system. Under Trump, trade wars, tariffs, and overt use of the dollar as a geopolitical weapon reinforced perceptions of U.S. unpredictability. Biden, though more restrained, maintained a sanctions-heavy foreign policy. The freezing of Russia’s central-bank reserves in 2022 after the invasion of Ukraine was a watershed. It demonstrated that dollar-denominated assets could be rendered inaccessible overnight through political decision — a precedent that spurred many nations to seek alternatives.

At the same time, the United States faces mounting structural problems at home. Public debt has surpassed $34 trillion in 2025 and continues climbing. Persistent budget deficits, partisan gridlock, and recurrent threats of government shutdowns contribute to an image of long-term fragility. Although U.S. capital markets remain unmatched in depth and liquidity, the dollar’s aura as an unassailable safe haven is gradually fading. The paradoxes of American power — fiscal dominance amid domestic dysfunction — have seldom been more apparent.

Concurrently, the “Global South” has emerged as a collective force in world politics. Across Asia, Africa, and Latin America, countries are asserting independence from traditional Western institutions. The BRICS group — Brazil, Russia, India, China, and South Africa — has expanded into BRICS+, while the Shanghai Cooperation Organization (SCO) unites major Eurasian states. Together they represent nearly half the world’s population and over 40 percent of global GDP. Their shared aim is to democratize global finance and diminish the dominance of Western institutions such as the IMF and World Bank.

Within these blocs, debates are growing about new forms of money — digital or commodity-linked. Proposals for a BRICS digital currency pegged to gold or a basket of commodities illustrate efforts to create an internal trading medium independent of the dollar. Though still conceptual, such plans carry deep political symbolism: they express a yearning for monetary sovereignty and a break from the risks inherent in dollar hegemony.

The geopolitical consequences of this shift are profound. A truly multipolar monetary world would redistribute not only economic power but also global governance. For decades, dollar supremacy has given the United States disproportionate influence over institutions from the IMF to the Basel financial-rules regime. If that dominance wanes, the architecture of global capitalism itself will change. Decisions about reserves, trade settlements, and financial standards will no longer be dictated in Washington alone but negotiated among several centers — Washington, Beijing, Brussels, New Delhi, and beyond.

Yet it remains far too soon to proclaim the dollar’s demise. Despite the headwinds, the dollar is still woven deeply into the fabric of global commerce. Roughly 80 percent of all commodity transactions — particularly in oil, gas, and metals — are conducted in dollars. About half of all trade invoices are still dollar-denominated, even when the United States is not directly involved. The reason lies in both practicality and psychology. The dollar enjoys a self-reinforcing loop: precisely because it is so widely used, it remains the most convenient and efficient medium of exchange. No other currency yet combines convertibility, depth, and liquidity on a comparable scale.

Moreover, the United States still possesses the world’s most sophisticated and transparent financial markets. U.S. Treasury securities continue to serve as the benchmark of global safety. Even countries that advocate de-dollarization — China and Russia among them — retain large shares of reserves in dollar-denominated assets. Switzerland, famed for monetary prudence, holds roughly 40 percent of its reserves in dollars. Washington’s greatest advantage is the inertia of global finance: until a credible alternative matches the dollar’s benefits, the greenback will dominate by default.