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#### State labor reforms are booming now due to strong labor movements. That’s key to jumpstart democratic localism and create durable worker protections, but the plan trades off.

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Along with administrative innovation, the new labor federalism described above entails significant constitutional innovation, again with relevance beyond the workplace. Over the last few years, labor has won (1) affirmative protection of collective labor rights through constitutional amendments and (2) new labor-friendly interpretations of existing state constitutional law, with implementation by both courts and legislatures. These efforts build on a long tradition of labor constitutionalism at the state level through which labor has sought to guard against corporate capture of legislatures, limit hostile decisions from courts, and enshrine as fundamental not only traditional individual rights, but also collective and positive rights.189 Taken together, labor’s state constitutional efforts suggest some possibilities for a more democratic approach to constitutionalism.

A. State Constitutional Protection of Labor Rights

1. History of Constitutional Labor Rights

Labor’s success at constitutional lawmaking at the state level marks a sharp contrast from the federal level. With the exception of a brief period during the mid-twentieth century, the U.S. Constitution has been interpreted by the Supreme Court to provide few labor rights. The Court has held that the First Amendment protects a right to associate in unions; however, there is no constitutional right to bargain or strike, and constitutional protections for labor picketing and protest are severely limited.190

Numerous scholars have critiqued this doctrine,191 and in the mid-twentieth century it looked like the Court might go in a different direction.192 Yet there is virtually no chance the current Supreme Court will expand constitutional protections for collective labor activity. To the contrary, the Court is increasingly using the Constitution to limit labor rights and to weaken unions, as in Janus v. AFSCME, 193 where the Court held that the First Amendment protects the right of a worker not to pay any union fees even when receiving the benefits of union contracts and representation, 194 or in Cedar Point Nursery v. Hassid, 195 where the Court held that the Takings Clause prevents a state from allowing union organizers access to talk to otherwise inaccessible farmworkers about unionization.196 Moreover, amending the Constitution has become, under the current political alignments, near impossible.197

State constitutions, however, are both more protective of worker rights, including collective worker rights, and easier to amend than the Federal Constitution. This is not surprising given that, from the outset, state constitutions were designed as a device for democratic majorities to control both elected government officials and the judiciary.198 As Emily Zackin has detailed, from the Civil War to the New Deal, labor organizers established state constitutional protections for labor rights in order to respond to judicial decisions finding that legislatures lacked power to enact pro-worker legislation. 199 They also drafted state constitutional provisions to try to force legislatures to protect workers— and to constrain wayward legislators. As Zackin writes, “[s]tate legislatures were often perceived as unscrupulous and on the payroll of corporations. Thus, some labor amendments were passed with the express purpose of circumventing or controlling these corrupt legislative bodies.” 200 Late nineteenth and early twentieth-century labor amendments to state constitutions were also important for movement building, helping to raise citizen expectations.201

Most of the early labor rights provisions added to state constitutions created individual rights to fair treatment at work or enabled legislatures to enact protective legislation. 202 For example, dozens of provisions enacted between the 1880s and 1940s created rights to safe workplaces, maximum hours, and minimum wages, among other rights.203 But several states also enacted protections for collective labor rights, with some guaranteeing the right to organize and bargain collectively,204 and others prohibiting employment discrimination because of union membership. 205 The advocates for constitutional labor rights offered three main justifications for why such provisions were needed: (1) to ensure that legislatures did not succumb to corporate influence and undermine collective bargaining contrary to popular preferences; (2) to prevent courts from invalidating collective bargaining legislation as violations of existing constitutional rights, by instead making collective bargaining rights coordinate with other traditional constitutional rights; and (3) to recognize that the right to unionize had become “deep seated,” “inalienable,” and “fundamental” in the same way as traditional constitutional rights and should be placed beyond the reach of ordinary politics.206

2. Amending State Constitutions To Protect Labor

Over the last few years, the labor movement has returned to active use of state constitutions, including by seeking amendments enshrining the right to unionize—and for largely the same reasons as the early twentieth century reformers.207 Most prominently, in Illinois, the labor movement mobilized to add a “Workers’ Rights Amendment” to the state constitution in 2022. 208 It declares that “[e]mployees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing” and also prohibits legislators from restricting union rights, including by enacting right-to-work laws. 209 Because of the preemption doctrine, the provision will not change the process by which private sector workers organize and bargain, but it has expressive value. In celebrating the passage of the amendment, Illinois Governor J.B. Pritzker invoked the state’s “rich union history” from “the 1887 Haymarket Affair to the 1894 Pullman Strike” and celebrated Illinois workers for being “at the forefront of fighting for fair wages, reasonable hours, and safe working conditions.”210 The amendment also has the potential to strengthen efforts to win union rights among those not covered by preemption who currently lack such rights, such as gig workers, domestic workers, and agricultural workers; indeed, it has already been invoked to support the right of workers in the state legislature to organize.211

Numerous other states are considering similar provisions. California’s Legislature is considering Amendment 7, which would constitutionally guarantee collective bargaining rights and prohibit right-to-work. 212 The bill will need to be approved by two-thirds of the members in each chamber and then by voters on a statewide ballot.213 In Pennsylvania, a proposal is moving through the General Assembly to add a clause to the State Constitution specifying that “no law shall be passed that interferes with, negates or diminishes the right of employees to organize and bargain collectively” over certain matters, including wages, terms and conditions, and would prohibit limitations on agreements “requiring membership in an organization as a condition of employment.” 214 Vermont’s Senate unanimously passed a similar provision in April; it next goes to the House.215

3. Litigating Constitutional Rights

In addition to amending state constitutions, unions and worker advocates have been **breath**ing new life into longstanding constitutional provisions. One strategy has been to use such provisions to extend union rights to workers excluded from the NLRA. 216 In New York, for example, worker advocacy groups brought a constitutional challenge to a Jim Crow–era exclusion that denied farmworkers the right to organize and collectively bargain.217 The Worker Justice Center of New York sued the State after its member was fired from his job as a dairy worker for meeting with coworkers and organizers to discuss workplace conditions.

218 They argued that, by excluding farmworkers from the State Employment Relations Act, the State violated the New York Constitution’s guarantee of equal protection and infringed upon workers’ fundamental right to organize and collectively bargain. 219 After the workers prevailed before a state appellate court, the New York Legislature enacted the Farm Laborers Fair Labor Practices Act, providing wage and hour protections; a new tripartite committee, discussed above; and robust organizing rights, including union recognition when a majority of workers sign union cards and a compulsory arbitration process through which farmworker unions can secure first contracts.220 Since the enactment of the law, more than six hundred farmworkers in the state have successfully organized across numerous farms and with several unions.221

In a number of states, public sector workers are turning to state constitutions in an attempt to protect their right to bargain and strike. The rate of labor activity among such workers has skyrocketed since 2018, when large numbers of teachers in red states went on strike and engaged in “sick outs” in what came to be known as “Red for Ed.”222 After a court enjoined a sick out in Las Vegas, the teachers’ union there sued the State and the county school district to try to invalidate a Nevada statute that makes it illegal for public sector employees to strike.223 The union argued the statute is in violation of Article 1, Section 8 of the Nevada State Constitution, which guarantees the rights of free speech and assembly, and claims the statute “‘impinges upon the fundamental rights of speech and association of [the Clark County Education Association] and its members, is overbroad, void for vagueness, and is not narrowly tailored to achieve a compelling state interest.’”224

Unions have also relied on state constitutional provisions defensively to persuade state courts to invalidate legislation that targets specific public sector unions for disfavored treatment as a violation of equal protection and employees’ labor rights. 225 In Missouri, for example, when the Legislature in 2018 limited the rights of all unions except public safety unions to engage in collective bargaining, public sector workers challenged the law on state constitutional grounds.226 The lower court emphasized that the law discriminated based on “an employee association’s exercise of the fundamental right to organize and to bargain collectively,” and that the State could not show that the rules were “narrowly tailored to further a compelling governmental interest.”227 The Missouri Supreme Court agreed, albeit on somewhat different grounds. According to the court, the legislation violated the state’s equal protection guarantee because the State could show no rational basis for “exempt[ing] only public safety labor organizations.”228 In so holding, it noted that Missouri employees have a state constitutional right to bargain collectively “through representatives of their own choosing.”229

B. A Model for Democratic Constitutionalism

The recent experience of labor unions with state constitutional law, like the experience with worker standards boards and administrative governance, offers a model that has relevance beyond the workplace.

First and foremost, **labor**’s experience highlights the promise of focusing energy on state constitutional law; states provide important fora for contestation of rights. Even though sharply constrained by federal preemption, labor’s state constitutional efforts in courts and via the amendment process have yielded both concrete and expressive benefits. That is, labor has won court victories using existing state constitutional provisions for some of the most politically powerless groups, like farmworkers; such victories are inconceivable at the federal level and had long been elusive in legislatures. In addition, by enshrining new rights in state constitutions, labor has been able to highlight the fundamental or essential nature of its claims, while also helping to ensure that legislatures do not undermine rights contrary to popular preferences and that courts do not invalidate popularly enacted labor legislation.

Second, labor’s successes in the states go beyond the effective use of an alternate forum, **offer**ing a fundamentally different approach to constitutional rights. That is, labor’s state constitutional law amendments and court victories support claims that the American orientation around individual rather than collective rights, and negative rather than positive rights, is not inevitable. Consistent with scholarly assessments in other contexts, labor’s recent efforts underscore that constitutional rights in the United States can be conceived as **collective** in nature, protecting the rights of citizens as a group and empowering them collectively. They can also be positive rights, providing social benefits and protecting individuals from the excesses of private power, as well as state power.230

Third, labor’s successes demonstrate the possibilities of using amendments as a strategy for movement building. That is, labor has used the amendment process as a way to build support for its goals and to strengthen its organization—constitutionalism as an organizing tool. Finally, the recent experiences highlight the extent to which courts can play an important role in progressive constitutional rights articulation, particularly under a system in which they have less supremacy. In pursuing constitutional claims in states, labor has positioned courts in a dialogical role with legislatures and with the people, including through the amendment process. Court practice here offers an alternative to the current U.S. **Supreme Court**’s commitment to extreme **judicial supremacy**; it also draws into question the wholesale rejection by some progressives of constitutionalism and courts.231

CONCLUSION: ASSESSING STATE INTERVENTIONS AND THEIR FUTURE

Although state innovation in labor policy is significantly **circumscribed** by **preemption** doctrine, and although the effect of recent state innovations on worker power, labor conditions, and broader public law is hard to measure, early indications are positive. State level reforms have resulted in significant improvements in wages and benefits for a host of workers.232 They have also augmented worker voice in numerous states, while increasing union membership, chiefly among quasi-public workers and, more recently, farmworkers and industrial workers, albeit not yet in large numbers. 233 Reforms have also increased worker participation in democratic governance, helped reshape state administrative and constitutional practice, and served an important expressive function regarding states’ fundamental commitments. These state innovations are all the more **important** given recent developments at the federal level. With Donald Trump having won the 2024 presidential election, federal labor policy is likely to become markedly more anti-union and anti-worker in the coming years.234 But even apart from the change in the executive branch, in the last few years, the Supreme Court has hamstrung federal administrative agencies’ ability to govern, while at the same time employing the Constitution as a weapon against workers.

With regard to administration, the Court has usurped increasing amounts of power from both agencies and Congress. Most recently, in its 2024 decision in **Loper** Bright v. Raimondo, 235 the Court overruled the decades-old Chevron doctrine that instructed judges to accept an agency’s reasonable interpretation of ambiguous statutory language, declaring “agencies have no special competence in resolving statutory ambiguities. Courts do.”236 Also in 2024, in **Ohio v. EPA**, 237 the Court imposed stringent judicial scrutiny on administrative processes, faulting the EPA for failing to respond to alternative proposals despite the agency’s detailed response to comments.238 And in SEC v. Jarkesy, 239 the Court undermined Congress’s longstanding judgment that administrative law judges can adjudicate civil penalties, holding that the Seventh Amendment requires the use of Article III courts to adjudicate securities fraud disputes.

240 These cases build on a series of other recent Supreme Court cases that have limited agencies’ capacity to govern, restricted Congress’s ability to make reasoned judgments about how to structure agencies, and made it easier for deep-pocketed corporate litigants to challenge government action. 241 Meanwhile, conservative lower court judges have gone even further, embracing right-wing corporate arguments that longstanding agencies like the NLRB are unconstitutional because of removal protections for Board members.242

Alongside this evisceration of administrative capacity and congressional discretion, the Court has reshaped federal constitutional law in ways increasingly hostile to working people. Among its recent holdings, it has reversed longstanding First Amendment precedent to find a constitutional right of public sector workers not to pay union fees, threatening union funding;243 and it has revised the Takings doctrine to invent a new property right, making union organizers’ access to employer property more difficult. 244 Meanwhile, for several decades, it has undermined Congress’s ability to effectuate constitutional rights under the Reconstruction Amendments, declaring repeatedly that the Court alone has the authority to define the scope of such rights. 245 More recently, it has repeatedly declined to defer to legislative efforts to limit corporate power and prevent discrimination in public accommodations under the guise of the First Amendment.246

These developments at the federal level make innovation at the state level even more important. To be sure, all of the labor-led state-level efforts are coming under sharp legal challenge from the same groups that pressed for federal retrenchment. That is, conservative and corporate interests are mobilizing many of the same constitutional attacks on the administrative governance at the state level that they have achieved at the federal level, while also engaging in specifically anti-worker mobilization, as discussed above. Nonetheless, the political economy analysis offered at the outset of this Essay suggests that states will continue to be a more fruitful venue for pro-labor and pro-democratic public law innovation, at least in the near term.

#### Even minor labor victories cause labor movements to turn their energy and efforts towards the federal courts.

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Tommaso Pavone citing Michael McCann, “Michael McCann, Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization,” Rights at Work, 04-03-2015, https://static1.squarespace.com/static/5d653034873abb0001dd9df5/t/5d6ee3a224a0c50001004009/1567548323238/McCann-+Rights+at+Work.pdf

At first, pay equity advocates won what were perceived to be some important victories. Two examples in particular are worth mentioning. First, the Supreme Court’s Griggs v. Duke Power Co. (1971) “provided new language that shifted the focus of fighting discrimination from discrete acts of individual “ill will” to systematic biases in institutional practices and policies. . . This judicial recognition of “systemic discrimination” provided a direct catalyst of unparalleled significance to new thinking and action on pay equity issues (Ibid: 50). Second, in County of Washington v. Gunther (1981) the Supreme Court “extended substantial support to the pay equity idea . . .While refusing to explicitly endorse the comparable worth idea, the majority’s willingness to extend Title VII provisions to cover discrimination among different jobs opened a potentially large crack in the door to future legal claims” (Ibid: 53). These courtroom cases generated a “tremendous amount of mainstream media attention,” which tellingly focused disproportionately on litigation rather than other political actions by the pay equity movement, such as labor strikes, union negotiation battles, and electoral campaigns (Ibid: 58-59). In short, these court cases contributed to women’s “perception of expanded opportunities for effective political challenge” (Ibid: 94).

4.2 The Closing of Political Opportunities for Litigation

Under the auspices of the Reagan Administration, in the mid-1980s the conservative legal movement had begun to permate American jurisprudence, and “the courts began closing the door of access to gender-based comparable worth claims” (Ibid: 84). It seemed that “all employers had to do to win judicial vindication in most cases during the 1980s . . . was simply to invoke a “free market” defense at every turn. . . and, if all else fails, to justify discriminatory policies as a legitimate business practice even where a prima facie case has been made” (Ibid: 41). Short of “smoking gun” evidence that “employers consciously designed action to exploit women,” judges were increasingly hostile to the claims of the pay equity movement (Ibid: 39). Hence in the final analysis the pay equity movement achieved “only limited success in federal courts,” and McCann’s interviewees recalled “much bitterness about the palpable conservative turn of the judiciary and government generally,” along with a sense that legal mobilization had been “sapped of its earlier energy” (Ibid: 47; 279). Once courtroom defeats became frequent, movement-associated lawyers were “quick to halt or revise their reliance on the courts” (Ibid: 294).

5 The Constitutive Power of Legal Mobilization for Pay Equity

Despite the short-lived, and ultimately minor, courtroom successes obtained by the pay equity movement, McCann argues that litigation strategies had a series of profound - and ultimately beneficial - effects, to which we now turn.

5.1 Providing Politicizing Experiences

Activists are not born - they are forged by social experience. Most of the pay equity activists interviewed by McCann “recounted. . . remarkably parallel stories about specific politicizing experiences that transformed them into committed activists” (Ibid: 132). In particular, McCann found that a “large majority” of his interviewees “credited the [County of Washington v. Gunther ] decision and other early cases as primary educational cues that generated their own initial personal interest and involvement in the cause” (Ibid: 56)

5.2 Legitimizing Claims via Rights Discourse

Drawing from previous litigation efforts by the civil rights movement, pay equity activists drew upon a rich and empowering legal discourse. “Rights discourse,” argues McCann, “empowered women workers by enabling them to “name” - i.e. to identify and criticize - hierarchical relations in familiar, “sensible” ways” (Ibid: 65). Hence the pay equity movement was able to strategically draw on a language imbued with legitimacy to advance its claims. As economist and pay equity advocate Heidi Hartmann noted, “once the idea of comparable worth or pay equity could be framed by lawyers in terms of rights against wage discrimination, it took on a lot of credibility and power” (Ibid: 51).

5.3 Forging Political Opportunities and Raising Expectations

Early courtroom victories enabled pay equity activists to reference litigation “as a tactical resource to raise expectations among women workers that wage reform was possible. As a result, legal action greatly enhanced the opportunities for effective political organizing around the pay equity issue” (ibid: 48). Rights discourse empowered women to re-imagine the real, or to “imagine an act in light of rights that have not been formally recognized or enforced” (Ibid: 7). This, in turn, expanded the structure of political opportunities for further legal mobilization, as “new hopes and possibilities opened up by early litigation were translated into a generative force at the grassroots level” (Ibid: 58).

5.4 Cultivating an Enduring Legal Consciousness

What may have originated as the tactical referencing of courtroom victories to raise expectations and legitimate the pay equity movement eventually provoked a profound identity transformation. McCann’s interviewees “repeatedly emphasized. . . that perhaps the single most important achievement of the movement has been the transformations in many working womens understandings, commitments, and affiliations - i.e., in their hearts, minds, and social identities” (Ibid: 230). In particular, union activists repeatedly spoke “in enthusiastic and expansive terms” about how the benefits of legal mobilization for pay equity “transcended “mere” economic redistribution” (Ibid: 258). This “legal consciousness” was instilled not so much via “abstract intellectual inquiry” but from the “practical experience in political struggle for new rights” that followed initial courtroom victories (Ibid: 272). Importantly, this identity-transformation endured the closing of opportunities for litigation in the 1980s.

#### That structurally dooms labor movements.

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Ben Depoorter, “The Upside of Losing,” Columbia Law Review, 04/2016, https://columbialawreview.org/wp-content/uploads/2016/04/Depoorter-B..pdf

Conventional understanding holds that winning is the name of the game in litigation. Many fundamental social rights and liberties were established in historic court victories and influential judicial precedents.2 Constitutional law casebooks highlight the landmark decisions in which courts outlawed segregation, combated gender discrimination, improved labor conditions, created fundamental rights of privacy and free speech, and so forth.3 Historic judicial victories are considered an essential component in the process of developing social change.4

However, after the initial success of public interest litigation in, among others, the New Deal labor movement, the civil rights movement in the 1940s, and the women’s rights movement in the 1960s, contemporary scholarship now expresses a deep skepticism about the effectiveness of pursuing social change on the basis of litigation.5 First, there is a widespread perception that courts have become increasingly reluctant to adopt sweeping and progressive social changes in judicial decisions.6 Some have argued that this has greatly reduced the role of courts as agents of social change. Because judges are perceived as reluctant to declare new, controversial rights, social movements and legal reform communities are being cautioned about the pursuit of legal strategies and court-based activism.7 There is a fear that repeated losses not only strengthen adverse precedents but also reduce the support for the underlying cause.8 If so, litigation in pursuit of social change may prove futile and possibly counterproductive by draining movements of scarce resources. Second, it has been argued that rights-based strategies tend to produce narrow remedies that apply only in limited circumstances and provide no assurance about broader rights-based implementation and enforcement. Questioning the capacity to bring about social change on the basis of litigation, some have argued that legal strategies mostly provide false, “hollow hope” to social movements.9 Critics doubt the ability to bring about social change in litigation because it creates a process of legal cooptation of a social movement, a process by which “the focus on legal reform narrows the causes, deradicalizes the agenda, legitimizes ongoing injustices, and diverts energies away from more effective and transformative alternatives.”1

Other scholars and commentators remain more optimistic about the potential role of litigation in the pursuit of social change. The ultimate value of litigation, it is argued, is not determined by the outcome in court but rather by the ability of litigation to bring attention to and to induce support for the social causes at issue in the litigation.11 From this viewpoint, any individual case outcome is but a small step in a larger, multisequence process in which litigation can be a powerful tool to attract public attention, to communicate a legal and political agenda, and to place pressure on various levels of government and society.12 Accordingly, if the power of public interest litigation lies in generating attention and garnering political support, much of the criticism of rights- and courtbased strategies is misplaced. If an adverse decision can be used to mobilize support for a cause effectively,13 advocates and social movements should push on and litigate even in the face of likely defeat.14

This Essay presents the first examination of the ex ante strategic decisions faced by litigation entrepreneurs who pursue litigation with the awareness that losing the case can provide substantial benefit. It argues that adverse court decisions may be particularly salient in raising awareness about an underlying social cause. Unfavorable litigation outcomes can be distinctively powerful in highlighting the misfortunes of individuals under prevailing law, while presenting a broader narrative about the current failure of the legal status quo. The resulting public backlash may mobilize public and political forces and ultimately slow down legislative trends, and can even prompt legislative initiatives that reverse the unfavorable judicial decisions or induce broader reform.

The analysis presented here revises some common wisdom on litigation. First, the dynamics of successful defeat in litigation provide new and counterintuitive insights into the potential role of courts in the pursuit of social change. While it is traditionally understood that legal reform activists must persuade courts into recognizing unattended rights or to confirm new rights and activist positions,15 this Essay’s analysis suggests, to the contrary, that social changes can be obtained in litigation without requiring the involvement of courts as policymakers. Counterintuitively, as the Essay explains in more detail below, passive courts and judicial deference can even strengthen the mobilizing effect of litigation. Judicial deference clearly shifts the burden to policymakers and their constituents. First, for social movements, an adverse judicial outcome is an opportunity to construct a narrative about the routine failure of courts to effectuate desirable changes.16 This allows social movements to utilize antijudicial sentiments in order to mobilize the public. Also, passive courts and judicial deference render the pursuit of strategic litigation more predictable because courts are more likely to adhere to existing precedent. Additionally, if courts insist that their hands are tied by legislation, some of the public attention and pressure shifts to legislators.17

Second, standard models of litigation describe how a private litigant’s choice between settlement and litigation depends on the probability that he or she will obtain a favorable precedent.18 According to conventional wisdom, parties should only litigate when a favorable outcome is likely.19 Conversely, a litigant is more inclined to settle if the odds of losing are high.20 Similarly, the common understanding is that time and resources should be directed toward those legal disputes that have the best chance of success21 and that litigation is to be avoided if it may establish or strengthen unfavorable precedent.22 This Essay amends this elementary view of litigation. The mobilizing effect of litigation expands the considerations that figure into the decision to settle or litigate. The strategic potential of litigation complicates the decision of when or how to litigate or settle. A settlement eliminates the chance of establishing a favorable precedent but, in some circumstances, may also remove the opportunity to obtain the socially mobilizing effects of an unfavorable precedent. At the same time, in considering whether to pursue mobilizing litigation, a plaintiff must weigh the costs of an unfavorable judicial outcome against the uncertain benefits generated by the mobilizing effect of the adverse decision.

Third, the mobilizing potential of adverse court decisions presents a fascinating conflict between the immediate interests of the actual plaintiff and those of the litigation entrepreneur that supports the litigation with an eye on the underlying long-term goals of a social cause. Because a losing effort imposes immediate costs on the plaintiff, the litigation described in this Essay often features the active presence of a third party providing legal strategy advice and financial counsel to the plaintiff. As shown below,23 ideologically motivated litigation entrepreneurs often actively control the litigation process, making strategic decisions while keeping in mind the overall impact of the litigation on the underlying cause.

Finally, the potential benefits of adverse outcomes in litigation refute some of the criticism about the limitations and downsides of pursuing social change through courts. For instance, some commentators argue that court victories might be counterproductive because they create a false sense of security among supporters, who tend to overestimate the impact of court decisions.24 By the same token, however, the overestimation of the impact of judicial decisions might work to the benefit of movement mobilization because it makes an adverse outcome more salient and likely to generate substantial concern.25

The analysis presented here highlights the relative nature of legislative or judicial accomplishments. Major victories can instill a false sense of security in supporters of a cause, while inspiring opposing groups, who might have an easier road going forward, to erode the benefits of the judicial victory.26 Moreover, when a social movement obtains public support because of an unfavorable verdict, the resulting political reversal of the judicial outcome may in turn become a source of agitation and political mobilization for supporters of the initial court decision.27 Overall, the ongoing process of reaction and counterreaction may increase the degree of polarization in society.

#### Otherwise, those movements unlock gig worker protections.

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Caitlin Dewey, “States and cities eye stronger protections for gig economy workers,” Stateline, 09-19-2023, https://stateline.org/2023/09/19/states-and-cities-eye-stronger-protections-for-gig-economy-workers/

Joshua Wood remembers days during the COVID-19 lockdown when New York City’s streets were practically empty, save for workers like him.

That experience convinced the 25-year-old Brooklynite — who makes deliveries for both Uber Eats and a package delivery service — that the gig economy needed some urgent changes.

Roughly 1 in 6 American adults have engaged in gig work for platforms such as Uber, Lyft and DoorDash, according to a 2021 report by the Pew Research Center. But while those jobs promise flexibility and a low barrier to entry, they often pay less on an hourly basis than the prevailing minimum wage and lack basic protections such as overtime, sick pay and unemployment insurance.

“There was a sense among workers, coming off the pandemic, that something really needed to be done,” said Wood, a member of the labor group Los Deliveristas Unidos, which fights for gig worker benefits in New York City. “So much of the city is dependent on the work that we do — but if we want to make the conditions better for us, we have to be the ones to do it.”

New York City has since passed a package of legislation guaranteeing a minimum wage and other benefits for app-based food deliverers, and communities across the country are following suit. In the past five years, lawmakers in at least 10 jurisdictions — including cities such as Chicago and Seattle, and states such as Colorado, Connecticut and Minnesota — have proposed new protections for ride-share drivers and food delivery workers.

At least 10 states have also considered programs that would make it easier for gig workers to access traditional workplace benefits, such as retirement or paid family leave. Meanwhile, regulatory agencies and courts in states including Massachusetts, New Jersey and Pennsylvania have sought to force Uber, GoPuff and other tech platforms to grant their drivers the same benefits as regular employees.

The push comes amid a resurgent workers’ rights movement in the United States and a global reconsideration of labor rights in the age of the gig economy. Since the start of the summer, both Australia and the European Union moved to strengthen workplace protections for gig workers, while the U.S. Department of Labor is expected to finalize a new rule that may reclassify some gig workers as employees as soon as October.

But gig companies fiercely oppose any effort to reclassify gig workers, a change that would grant the workers new rights and protections under state and federal law. In public statements, legal filings and elaborate marketing campaigns, gig platforms have argued that any significant shake-up to their current labor arrangement would jeopardize workers’ flexibility and independence — as well as raise consumer costs.

In a statement, Uber spokesperson Alix Anfang told Stateline the company “supports comprehensive legislation that protects the flexibility drivers tell us they want while providing important benefits and protections.”

“They don’t want to pay drivers,” said James Parrott, an economist at The New School whose analyses of driver wages informed New York’s new pay standard. “But their pockets are infinitely deep when it comes to fighting regulations they disagree with.”

Pandemic spurred organizing

Tech companies and their detractors can at least agree that gig platforms forever changed work, for better or for worse.

Since their launch in the late 2000s, platforms such as Uber and Airbnb have spawned a sprawling ecosystem of on-demand digital marketplaces, spanning services from food delivery to therapy to child care and education.

For consumers, such marketplaces offer flexibility and convenience, and may fill gaps in existing transportation, logistical or social support systems. Workers flock to gig platforms for similar reasons: In a 2016 Pew Research survey of gig workers whose households relied on their platform income, 45% said they needed control over their schedules and 25% said they lacked other job options.

At the same time, gig work comes with an unusual level of precarity, said Daniel Ocampo, a legal fellow at the National Employment Law Project. Workers generally have no job security, no traditional benefits, no consistent income, and little opportunity to organize or advocate for themselves.

But that last part is changing in the wake of the COVID-19 pandemic, Ocampo said. Spurred by falling wages and growing safety concerns, new advocacy organizations have sprung up in cities from New York to Los Angeles to push for laws that establish minimum wages and mandate paid sick leave, among other protections.

“There’s been a real wave of legislative action, especially in the last year,” Ocampo said. “It’s a very difficult group of workers to organize … but people are fed up with the conditions.”

In addition to New York City — which approved a minimum wage for ride-share drivers in 2018, and for food deliverers in 2021 — gig workers have also notched a string of significant victories in Seattle. The city unanimously passed a minimum pay floor for ride-share drivers in 2020 and app-based delivery workers in 2022. Earlier this year, Seattle mandated paid sick leave and due process procedures for a broader swath of gig workers if they are suspended from the apps.

Lawmakers in Chicago also expect to pass a minimum wage ordinance for ride-share drivers in the coming months, said city Alderman Michael Rodriguez, a Democrat who introduced the bill with 25 co-sponsors. As of 2021, Uber and Lyft drivers in the city earned an average hourly wage of $12.72 after expenses, according to an analysis of 22 million trips by the University of Illinois at Urbana-Champaign and the Illinois Economic Policy Institute.

“Many of these workers have had issues with their pay and with deactivation,” Rodriguez said. “We’re working to get new protections for the people toiling day in and day to provide rides in a city that desperately needs better transportation.”

#### Otherwise, precarity in the gig economy causes extinction.

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Claire Parfitt and Tom Barnes, “Precarity and the Politics of Existential Crisis,” Marxist Sociology Blog, 05-13-2020, https://marxistsociology.org/2020/05/precarity-and-the-politics-of-existential-crisis/]

What new meanings does the concept of precarity adopt when society is suddenly plunged into a deep, prolonged, even existential crisis? While it has been used for decades, the publication of Guy Standing’s The Precariat in 2011 was critical to popularizing this concept. Today, precarity seems to be everywhere. The erosion of the 9-to-5 working day, the emerging gig economy, zero-hours contracts, rising self-employment and agency work are all signs that contingent work is the new normal. In Australia, where we write from, at least half of the workforce can now be regarded as contingent. This figure is much higher in many other places around the world.

But for many, there is nothing ‘new’ about this normal. Feminists in particular have pointed out that ‘standard’ employment relationships were always an exception enjoyed primarily by white men in wealthy economies. Arguments that hinge on the novelty of precarious work have unsurprisingly drawn criticism for their failure to acknowledge the diversity of economic lives across time and space.

In contrast to those who say that this concept has been stretched too far, our recent special issue in Critical Sociology emphasizes the value of a broad, multidimensional understanding of precarity. Following Nancy Ettlinger, we see precarity as a ‘condition of vulnerability relative to contingency and the inability to predict’. Although our work was compiled prior to the coronavirus pandemic, this broad orientation is useful in a context where lives and livelihoods are exposed to so many manifestations of risk. It invites us to think about what makes for vulnerability and resilience, the different types of risks we are exposed to, and how these can be negotiated individually and collectively.

What emerges through this kind of analysis is that exposure to risk and its social and economic impacts are widespread, even in wealthy economies and populations. Many of us find ourselves living in a ‘speculative life-world’ in which we are ‘condemned to decision making under uncertain levels of uncertainty, and to thus precarity and insecurity’. But just as we find exposure to risk in unlikely places, we also observe unexpected instances of resilience and collectivization of risk.

For us, a keynote example which preceded the coronavirus pandemic were the bushfires which ravaged Australia from September 2019 to January 2020. The destruction of forests released hundreds of millions of tonnes of carbon from the ground and increased emissions. In Australia, the coronavirus pandemic emerged on the back of the devastating experience of these bushfires, deepening a sense of widespread anxiety about the future.

Australia’s bushfires fires rendered material the existential threat of climate change in unprecedented ways. A textbook example of Ettlinger’s ‘condition of vulnerability relative to contingency and the inability to predict’, the fires revealed the limits of humanity’s control over nature, our inability to predict it, and the extent of our vulnerability to it.

The bushfires had a profound impact on the continent’s environment and population. Fires killed dozens of people, over one billion animals, and razed over 12.6 million hectares of forest. Around 3500 homes and countless livelihoods were destroyed while millions of people choked on smoke. The bushfires thrust the precarity of life to the forefront and generated a new national mood in which summer. Once a time to look forward to, it became a time to dread. This broader sense of fear intersected with the fields of work and education to generate new types of precarity. The fear of allowing children to play outdoors with hazardous air quality increased pressure on parents and educators. Outdoor-based workers in construction or horticulture were expose to the risk of respiratory illness from smoke haze. This reinforces the findings of one paper in our collection regarding the workplace as a site of ecological struggle.

Having endured the anxieties of the worst bushfire season on record, Australia was immediately drawn into the coronavirus pandemic. The full impact of this crisis is still being understood. But, like in many other countries, it has been met with an economic shutdown which has induced potentially the worst social and economic conditions since the Great Depression. Unemployment is predicted to triple to 15 percent, with some predicting a figure as high as 20 percent.

The depth of the crisis has brought about policy shifts which were unthinkable only weeks ago: the politically-conservative Australian Government has doubled the rate of payment for unemployment insurance, fully subsidised childcare for most households who need it, proposed a moratorium on evictions due to financial distress, and issued income support for businesses to continue paying their workers.

The policy response primarily defends capital from precarity by supporting on-going accumulation, while reinforcing established divisions within labor. The government has promised that the above measures are temporary features. A return to the old ‘normal’ is to be expected, including Australia’s punitive and workfarist model of unemployment insurance. There is no income support for more than a million migrant workers and short-term casual workers. Many migrant workers as well as international students have been denied access to healthcare. Refugees are confined to hazardous detention camps, as they are around the world.

For low-paid workers in Australia, the government’s asset-based approach to welfare is an empty gesture. Australia has a compulsory private pension system—known as superannuation – through which roughly ten per cent of workers’ wages is surrendered to financial institutions and held until retirement. This system enables those in secure, high-paid jobs to amass large savings with generous tax concessions, while denying low-paid workers cash when they need it. During the pandemic response, the Australian Government has encouraged workers to access their retirement savings. But those who are most in need of emergency funds, such as workers in tourism, hospitality and retail, tend to have some of the lowest savings balances. Furthermore, given the recent collapse in financial markets, superannuation accounts have been decimated. Workers who are required to draw on those funds will be forced to realize their losses rather than wait for a resurgence in the market.

The crisis is also generating precarity among seemingly stable sections of the population—so-called ‘Middle Australia’. Australia’s high levels of private home ownership are accompanied by unprecedented levels of household debt. Australia’s central bank has repeatedly warned of the risk these debt levels pose, not only to particular households, but to financial stability in the economy. Mass unemployment, and the prevalence of contingent work throughout the economy, has pushed millions of households to the brink of default on mortgages, rent and other debts.

While the financial dimensions of the crisis reflect familiar conflicts of interest between the wealthy and the poor, these interests manifest differently in an economy built on debt and financial assets. Several papers in our special issue consider the role of finance in a world of constantly shifting risks, exploring the ways in which finance can be both a tool for managing risk and a vehicle for its accentuation.

Perhaps unsurprisingly, those most able to manage the economic impacts will be those with access to household wealth, a conclusion that is brought into sharp relief by a paper in our special issue on the experiences of retrenched workers. At the same time, the social crisis of the pandemic, following the socio-ecological crisis of the bushfires, highlights different aspects of precarity. New iterations of vulnerability emerge and are filtered through familiar distinctions of class, gender and race.

### !---Supply Chains---2NC

#### Independently, collapse of the gig economy wrecks supply chains.

Nguyen 23 – Associate Professor and Lecturer at Faculty of Transport Economics with a Ph.D. degree in Economics from the University of Tennessee.

Minh Hieu Nguyen, “What if delivery riders quit? Challenges to last-mile logistics during the Covid-19 pandemic,” Research in Transportation Business & Management, Vol. 47, March 2023, https://www.sciencedirect.com/science/article/pii/S2210539522001626?via%3Dihub

Research on issues related to delivery work is limited (Chowdhury, Paul, Kaisar, & Moktadir, 2021; Rigby, 2021; Xu, Elomri, Kerbache, & El Omri, 2020). On the motivation of workers to leave or stay, most reports are anecdotal. Digital platforms keep their rider turnover rates confidential. Yet turnover is a critical issue, and was even more so at the height of the pandemic (Bellon, Rana, & Bellon, 2021; Meisenzahl, 2021). Given the size of the sector, if a mass of delivery drivers or riders had failed to show up for work, the B2C sector would have become paralysed, leaving individuals in various states of lockdown or isolation without food and supplies.

#### Extinction.

Oluyemi 25 – PhD, Senior lecturer, Department of Political Science and International Relations, Achievers University, Owo, Ondo State, Nigeria.

Opeoluwa Adisa Oluyemi. “Great Power Competition (GPC) and its Implications on the Global Security Architecture” *Canadian Social Science*, vol. 21, no. 3. 2025. DOI:10.3968/13806.

7.7 Technological Decoupling and Security Risks

Perhaps the most disruptive manifestation of GPC is the fragmentation of the global technology ecosystem. Strategic competition in fields like semiconductors, quantum computing, 5G, and artificial intelligence has led to a bifurcation of technological standards and supply chains (Rahman, 2025). The United States has adopted export controls, sanctions, and industrial policies to curtail Chinese access to key technologies, including measures under the CHIPS Act. In response, China has prioritized self-reliance through massive investments in indigenous innovation. This technological decoupling is undermining interoperability, increasing cybersecurity threats, and causing widespread disruption across global markets (Stango, 2024).

8. CONCLUSION

The intensifying strategic competition among the United States, China, and Russia is fundamentally reshaping the global security architecture. In this emerging era of Great Power Competition (GPC), the geopolitical landscape is defined not by cooperation or shared global governance, but by fragmentation, strategic polarization, and militarized rivalry. The post-Cold War aspiration for a cohesive, rules-based international order is giving way to a multipolar reality characterized by the formation of rival blocs, conflicting governance models, and increasingly divergent foreign policy objectives. A primary casualty of this strategic transformation is the weakening of multilateral institutions that historically underpinned global order. Institutions such as the United Nations, the World Trade Organization, and various regional security bodies are now frequently paralyzed by power struggles among their most influential members. On issues ranging from arms control and conflict prevention to digital policy and humanitarian intervention, consensus is often elusive, giving rise to a more unilateral and transactional mode of international engagement. This shift signals a return to classical realist principles, where state interests, power balancing, and competitive advantage shape diplomatic behavior more than collective norms or legal frameworks.

The implications for global security are broad and complex. Foremost is the heightened risk of military confrontation, whether accidental or deliberate. In strategically volatile regions including the IndoPacific, Eastern Europe, the middle-east, and the Arctic, the proliferation of military assets, frequent naval maneuvers, and aggressive signaling heighten the potential for escalation. The dismantling of arms control regimes, notably the collapse of the IntermediateRange Nuclear Forces (INF) Treaty, removes critical mechanisms that previously helped manage great power tensions and maintain strategic stability. Moreover, the evolution of hybrid warfare comprising cyber intrusions, disinformation, and economic coercion has profoundly altered the nature of conflict. These non-kinetic forms of competition erode traditional distinctions between war and peace, complicating detection, attribution, and response. States like Russia have institutionalized such tactics as part of broader coercive strategies, while China increasingly integrates these approaches into its own playbook. These methods exploit societal vulnerabilities in democratic states, exacerbate political polarization, and challenge conventional defense postures.

In addition, the race for technological dominance has emerged as a central axis of contemporary GPC. Strategic competition over artificial intelligence, quantum computing, and space technology is reshaping global power structures and security doctrines. This technological rivalry is not only redefining military capabilities but also transforming global markets, digital infrastructure, and the rules that govern innovation and information. Fragmented supply chains and the erosion of universal digital standards signal the broader economic and normative consequences of this techno-strategic contest. GPC also exacerbates global strategic fragmentation, particularly for middle powers and states in the Global South. These nations increasingly find themselves navigating a geopolitical environment marked by competing patronage systems and diverging norms. While alignment with one bloc may yield material or security benefits, it also risks estrangement from others, thereby reducing strategic autonomy. The resulting diplomatic pragmatism often undermines unified responses to shared transnational threats such as climate change, pandemics, and nuclear proliferation issues that inherently require inclusive and sustained international cooperation.

Against this backdrop, rethinking global security demands a deeper understanding of GPC’s structural drivers and adaptive consequences. Policymakers and scholars alike must confront a global system where cooperative mechanisms coexist with competitive rivalries, and where the stability once afforded by U.S. unipolarity is no longer assured. The development of resilient and responsive international institutions capable of absorbing shocks, mediating conflicts, and facilitating cooperation is now more essential than ever. Ultimately, the resurgence of great power politics signifies more than a temporary geopolitical recalibration, it represents a profound reordering of the international system. Responding to its challenges requires not only the revitalization of diplomacy and multilateralism but also innovative strategies for managing strategic competition without precipitating systemic breakdown. If the international community is to navigate this complex terrain, it must prioritize dialogue, invest in confidence-building measures, and seek flexible yet robust frameworks for global governance. Only through such efforts can the destabilizing effects of GPC be mitigated and a path toward a more stable and cooperative international future be realized.

### Solves Case---2NC

#### It also solves the case through state experimentation.

Velazquez 25 – Associate Professor of Law, University of Indiana. J.D., Harvard Law School.

Alvin Velazquez, “The Death of Labor Law and the Rebirth of the Labor Movement,” Indiana Legal Studies Research Paper No. 543, Boston College Law Review (forthcoming), February 13, 2025, https://ssrn.com/abstract=5136825

B. The Possibilities for State Collective Bargaining Reform

If the Court were to repeal the NLRA, then organized labor and its allies could leverage already existing protections on the books at the state level and push for further innovation without worrying that courts would preempt state and local labor legislation. As noted above, several states already have provisions in their statutes or in their constitutions protecting collective bargaining that would go into effect should the Court strike down the NLRA. However, there would be room for states to further experiment in the absence of preemption, including bargaining at a sectoral level rather than at the company level as NLRA provides.236 Befort observes that “[t]he federal preemption landscape consists of a complex web of rules and precedent, and courts often appear to decide cases on the basis of highly technical distinctions. In short, many perceive the topic of federal preemption as a great mystery to be avoided if at all possible.”237

If the Court interprets the severability clause as discussed in Section I.C, then organized labor and its lawyers can avoid the quagmire that is federal preemption. There are three relevant preemption doctrines for labor law. The Supreme Court has created two of those: Garmon and Machinists preemption.238 In Garmon, the Court held that federal labor law preempts state regulation of core concerns regulated by the NLRA, such as those implicated by Section 7 and Section 8 of the NLRA.239 That doctrine aligns with the arrangement that other federal statutes have with overlapping state regulation. The second doctrine, Machinists, is where the NLRA’s preemption doctrine develops in an especially unusual manner.240 The Court held in that case that the NLRA also preempts all laws regulating what Congress left to economic forces or otherwise did not regulate. The courts have applied Machinists preemption to strike down laws of general applicability providing for paid breaks241 and a California state ban on using the state’s resources to support or oppose union organizing drives.242 The third preemption doctrine is based on Section 301 of the Labor Management Disclosure Act.243 It grants federal courts the jurisdiction to hear contractual disputes between labor and management and requires federal courts to apply federal common law instead of state contractual law to these kinds of disputes.244

The advantage of setting aside federal preemption doctrine for organized labor is that states could then become laboratories of work law and fill in where Congress has not acted. Andrias and Sachs previously noted that engaging in disruptive tactics is much easier at the state level than at the federal level.245

In May 2021, the Harvard Law Clean Slate for Worker Power Project issued a report called “Overcoming Federal Preemption: How to Spur Innovation at the State and Local Level” that succinctly set out what innovations states and localities could implement in the absence of federal labor law preemption or the articulation of a new norm through the PRO Act.246 Those innovations include:

• “[e]xpand[ing] collective bargaining coverage and protections to those not covered under the NLRA,”247

• “[p]rovid[ing] for enhanced labor standards related to wages, hours of work, and/or benefits,”248

• “[r]egulat[ing] employer’s use of state or local funds to attempt to defeat union organizing campaigns,”249 and

• “[c]ondition[ing] state funding on labor peace or neutrality agreements”250

While these remedies certainly help workers seeking to organize into unions, more would be possible under this Article’s analysis because states could not only consider these actions but could actually engage in regulating labor within their own borders. Andrias and Sachs note how “[m]ovement actors translate disruptive capacity into political power that they deploy to secure government concessions.”251 This is especially true at the local government level.252 The possibilities at the local and state level encourage innovation.253

Labor scholars would not have to expand current doctrine but instead think about expanding bargaining protections to wider swatches of the work force. In the case of the gig economy, the change in preemption would allow states to regulate gig company workforces through the imposition of collective bargaining. For example, California could convert its recently formed Fast Food Council into a full collective bargaining regime.254 In Massachusetts, voters will soon consider whether to make gig drivers employees for purposes of a bargaining-like law after efforts to work around bargaining fell short in the legislature. By defining gig workers not as independent contracts but as employees, state law would get around impediments that antitrust law places on gig workers conspiring to bargain.255 Without preemption, Massachusetts lawmakers could simply legislate a bargaining regime for Uber and Lyft drivers through normal mechanisms or ballot referendum.256 Workers could also advocate for state wage boards because, as César F. Rosado Marzán posits, if the NLRA is dismantled and labor politics are disrupted, that could create conditions for the creation of new labor institutions as occurred in Puerto Rico in the 1960’s.257 Although a Court ruling setting aside the NLRA would open new possibilities, such a ruling would also leave certain labor regulations that inhibit union action such as the prohibition on secondary boycotts. This Article now turns to that.

### Link Turns Case---2NC

#### AND, link turns the case. Top-down reform gets circumvented.

Blanc 25 – Ph.D in Sociology from New York University, Assistant Professor of Labor Studies at Rutgers University.

Eric Blanc, “WE ARE THE UNION: How Worker-to-Worker Organizing is Revitalizing Labor and Winning Big,” University of California Press, 2/18/2025

Union leaders are right that this country needs better labor laws— including, as SEIU leaders emphasize, to replace our narrow firm-based collective bargaining system with a broader sectoral bargaining regime, a step that could make it far easier to unionize in today’s decentralized context. The problem is that by downplaying deep workplace organizing in the meantime, a “policy first” strategy makes transformative legal reform less likely.

If history is any guide, national labor law reform won’t get passed without an organizing effervescence that creates intractable crises for economic and political elites. Absent such pressure, labor’s half dozen attempts at labor law reform since the late 1970s have failed to overcome Republican intransigence and Democratic insipidity. And even were Congress able to get past the filibuster and pass transformative labor law reform, it’s all but guaranteed that our reactionary Supreme Court would shoot it down—unless a powerful insurgent movement compels it to retreat or compels a Democratic administration to pack the Court.

### Turns LIO---2NC

#### Democratic localism solves civil conflict AND preserves LIO.

Scipes 25 – PhD, Professor Emeritus of Sociology at Purdue University Northwest.

Kim Scipes, “Looking Ahead: US Unions Must Look Beyond Themselves to Save Themselves,” Class, Race, and Corporate Power, 2025, https://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1255&context=classracecorporatepower

Recognizing these two different possibilities and what union members want to do in light of this understanding is important. It is being argued that workers in every union should get to discuss how they want their particular union to move forward; it is not sufficient to continue with an unexamined “business as usual.” It is important that these issues get discussed by the members of each union themselves; this is not limited to union leadership or even activists. But this consideration is even more than “what can we do for the community?”, as important as that is; it relates to the very survival of our unions.

Ideally, unions becoming or transforming themselves into social justice unions would consider the range of “community” interests from the local to the global, ultimately seeking to join with unions and other people’s organizations around the world to make things better for all. The reality is that the trade union movement today is so weak that unions rarely have a chance to win their battles without gaining public support. Unions have often recognized this and have appealed to community support to help them win their battles. Yet, what do the communities get back from today’s business unions? Usually nothing. This one-way form of “solidarity” is simply not sustainable; you can only withdraw water from a well so many times before it runs dry.

Transforming business unions into social justice unions offers a solution: they build on their foundation in the workplace but join with community members, however defined, to work together in ways to improve life for all concerned. There are issues that simply cannot be solved on a local, regional, or even national basis; the climate crisis jumps immediately to mind, although there are other issues such as global sexual slavery and related issues, pandemics, war and empire that can only be approached from a global perspective. We have to understand issues such as these from a global perspective and begin educating and organizing our union sisters and brothers on this level.7 But our ideas about our unions must at least allow for this, if not actively encourage work on this level by all members. Key to this is implementing an educational program that confronts these issues and encourages workers to think about how their union could work to address issues key to workers in this larger sense. The old slogan, “Think globally, act locally,” encapsulates these ideas.

Social justice unionism offers a viable future for workers. It is based on building collective power in the workplace. It utilizes its power on the shop floor to also fight to better the communities in which its members live. It works to include all members into the decisionmaking processes in the union and works to ensure representativeness of leadership. It is based on the members, not just the formal leaders, running the union (see, for example, Caputo-Pearl, 2024a, 2024b). This also means reporting all major union activities to the membership, and allowing free and fair elections, both for leadership and what they do. A foreign policy, such as business unionism has projected over the last 120 years, would be impossible in the face of extensive member involvement in their unions, which most business unions don’t seek and definitely don’t prefer.

However, the key difference between these forms of unionism is the involvement of each union in their larger community. And this is absolutely crucial in the advancement of unionism in the southern US, which has been the primary site of labor’s weakness since the failure of Operation Dixie in 1948 (Goldfield, 2020). Think, if you can, about the United Autoworkers (UAW) union’s victory in Volkswagen in 2024 in Chattanooga, Tennessee. An important victory by the UAW. With joining the union, the lowest paid workers earn about $32 an hour. While I don’t know what the average wage is in Chattanooga, I’m willing to bet it’s much closer to $12/hour than $32. Other than wishing they had one of those “high paying” jobs at VW, I doubt most workers could care less about what happens at the VW plant. And should the union get attacked by politicians or other fools, most workers will stand by and ignore it as “I don’t have a dog in that fight.” If we are serious about labor and unions, that is not acceptable; we need other workers and the general public’s support if we’re going to win our battles because, excluding a limited number of specific situations, we no longer are strong enough to win our battles without public support. But we must put sincere effort into building that support; it cannot be left at the rhetorical level.

This, however, is not going to change by itself: activists in each union/unionizing effort need to stimulate discussion within their organization about whether they should confine their unionism just to the workplace, or to use that power for the good of all. It is suggested that each of us try to find a group of union members in each local union, or group who is organizing workers into new unions, who think having this debate within one’s union to be crucial, and work to unify this core. Then they could create a campaign to spread this issue throughout the union, initially through one’s workplace and/or local and then through the national or international union they are affiliated with. It should be run the same way as any organizing campaign; and that is to win.

When confronted by this question - how do we want our union to go forward, alone or with our neighbors (from the local area to the globe)? - this is a question that encourages workers to think about these issues and get involved in participating in strengthening the union. Once a union is seen as something everyone participates in, or at least as many as possible, instead of just something that “others” do, we strengthen our individual unions. When we come to common responses, then we can extend our conceptualization of the union to other unions, locally, regionally, and nationally.

This can be extended globally when we find out what is happening elsewhere: there are workers around the world seeking to join globally to fight for a better world for all. Yes, this is happening among workers in other imperial countries but, as we see particularly in the case of SIGTUR (Southern Initiative on Globalization and Trade Union Rights), workers in Africa, Asia and Latin America are finding ways to unite across their geographical regions and the globe to organize for a better world for all (O’Brien, 2019; see a review by Scipes, 2020). I think they would be delighted to have North Americans join in their project, and that can only happen when unions take that broader, social justice union approach.

In short: innovate or stagnate. Business unionism of the past 40 years (in particular) has been a failure: union density in the early 1950s was approximately 35 percent of the private sector; today, it is less than six percent. Public sector unionism—basically non-existent in the early 1950s—adds some, but the total number of workers in unions today is still less than 10 percent of the workforce. Either we think about unionism in new ways and establish new ways of thinking about and joining other movements, or most of our unions die a long, slow, painful death. It’s time we started to rebuild the labor movement: for the good of all!

There are two ways of thinking about this that come immediately to mind.8 First, like the Packinghouse Workers’ “Back of the Yards Council,” a union can join with other people in the community to address problems in the community, such as youth unemployment, lack of skills training, drug abuse, things like these that people in your community need. Projects like this are important and each union needs to buy into and initiate such projects.

Secondly—and I think this needs even more thinking and development—is the idea of building “community” unionizing. What if the union, say in some industrial plant, developed this idea of unionizing every business possible in the local area, however defined? What if union activists joined with community organizations to train as many people as organizers as possible, put up some serious money to support these efforts, and worked to supply strategic thinking to these processes? What if every fast-food joint in your community were unionized into the same union, so the owners of Wendy’s could not support McDonald’s when a union drive was taking place?

And as this developed, say what if workers unionized in home improvement services like Menards or Lowe’s or whatever, had developed ties of solidarity to the fast-food workers’ union who has ties with the gas station attendants’ union…? And what if they developed ties of solidarity with the school bus drivers’ union? And the teachers’ union? In solidarity, there is strength. And what if such a high level of solidarity was created over time—obviously in close connection to the industrial union—that if a community coalition union obtained a set level of support, say 70 percent of a strike vote, whereby the workers in the industrial plant would also walk out and join the strike effort of others, giving the strike additional strength? What I’m talking about here is building a pathway to support everyone who was willing to work for it to improve their standard of living. What if we decided to struggle, not snivel? Now, excuse me: this is total fantasy; you can’t make it happen; you are dreaming!

Well, 30 years ago, the great late labor historian and activist, Staughton Lynd, edited a book titled ‘We Are All Leaders’: The Alternative Unionism of the Early 1930s (Lynd, 1996). In this book, Lynd presents accounts of different versions of community-based unionism that I think are worth revisiting. And the one I remember the most is by my friend, Peter Rachleff, and his article is titled “Organizing Wall to Wall: The Independent Union of All Workers, 1933-37.” In it, Rachleff reports the efforts in efforts to build a community-wide union, the Independent Union of All Workers, in Austin, Minnesota, site of a packinghouse and a UPWA local (later known as P-9). But even more interesting was that the IUAW was not just limited to Austin but spread throughout the area. According to Rachleff, Between 1933 and 1937, the IUAW organized locals in Austin, Albert Lea, Faribault, Thief River Falls, Bemidji, Owatonna, Mankato, and South St. Paul, Minnesota; Mitchell and Madison, South Dakota; Fargo, North Dakota; Alma, Wisconsin; Waterloo, Mason City, Algona, Ottumwa, Ft. Dodge, and Estherville, Iowa. The IUAW also influenced activists in Madison, Wisconsin, Cedar Rapids and Sioux City, Iowa; Sioux Falls, South Dakota; Omaha, Nebraska; Kansas City, Kansas; and Oklahoma City, Oklahoma. In many of these cities, the IUAW sought only to spread industrial unionism among packinghouse workers but also to organize “wall to wall.” Their efforts—expressed in organizing drivers, strikes, strike supporters, local politics, and various ‘cultural’ activities— threatened entrenched power throughout the region (Rachleff, 1996: 52).

Now that is what I’m talking about: building grassroots power from the ground up, in social justice unions controlled by their members, closely connected to each other and to their respective communities, and for the purpose of working together to improve conditions for all involved. Obviously, any project thinking on those kinds of terms would take not only financial but human resources with significant dedication, determination, and desire. But it offers a way forward, benefitting the large majority of people, building solidarity across each region involved, and looking for ways to expand even farther, including uniting with workers in other countries around the world.

### UQ---Movements Up---2NC

#### Local movements are growing due to worker dissatisfaction AND will succeed due to social media enhancement.

Hyderally 25 – Employment Law Attorney at Hyderally & Associates, J.D. from UC Berkeley

Ty Hyderally, “The Surge in Labor Strikes and Union Organizing,” 06-24-2025, https://www.tyhyderally.com/2025/06/24/the-surge-in-labor-strikes-and-union-organizing/

Over the past two years, the United States has seen an extraordinary shift in labor relations. More than 60 major labor strikes have occurred alongside over 3,800 union elections, according to the Bureau of Labor Statistics and the National Labor Relations Board.

These figures represent some of the highest levels of collective labor action in decades. As Ty Hyderally, an employment attorney practicing for over two decades, I can tell this is a transformation in how workers respond to economic pressure, workplace treatment, and the broader labor climate.

Workers across several industries are organizing at unprecedented rates. Moreover, these efforts are no longer isolated incidents. Instead, they represent a broader movement toward collective empowerment, fueled by growing dissatisfaction and renewed confidence in union protections.

I’ve seen waves of labor activity before. But, what’s happening now is different in tone, intent, and scale.

About the Author

Ty Hyderally is a respected employment law attorney based in Montclair, New Jersey. He is the principal of Hyderally & Associates, a law firm focused on employment-related legal matters such as:

Labor law

Wage and hour violations

Workplace discrimination

Retaliation claims

With decades of experience in representing both employees and employers, Mr. Hyderally is frequently sought out for his deep understanding of employment, wage, and labor law.

What’s Driving the Rise in Labor Strikes?

The main drivers behind increasing labor strikes are multifaceted. Wage stagnation tops the list, followed closely by unsafe working conditions and growing frustration with employer practices, especially after the pandemic.

Additionally, workers feel more empowered than ever before. Social media connects and combines their voices, and public support for unions continues to grow.

In 2023, the United States recorded 33 major work stoppages, the highest annual total since 2000. These strikes involved over 458,900 workers, according to the Bureau of Labor Statistics.

The trend continued into 2024, with 31 more strikes involving another 271,500 workers. While the raw number of strikes matters, so does the the volume of people involved. That metric reveals the depth of worker engagement and dissatisfaction.

Much of this unrest stems from conditions that worsened during the COVID-19 pandemic. Essential workers, particularly in healthcare and education, bore the brunt of staff shortages and burnout.

Meanwhile, private sector employees in manufacturing and information industries pushed back against stagnant wages and increased productivity demands.

Today’s workers are also more connected than previous generations. Social media has amplified organizing efforts and publicized labor disputes. That led to gaining sympathy from the public.

Combined with broader economic pressures, these forces help employees take action where they may have stayed silent in the past.

Rising reports of workplace discrimination have also fueled worker dissatisfaction, further contributing to the momentum behind strikes and organizing.

### UQ---Gig Movements Succeed---1NR

#### Here’s more of 1NC Dewey:

\*Grey in 1NC.

Dewey 23 – Labor Correspondent at Stateline.

Caitlin Dewey, “States and cities eye stronger protections for gig economy workers,” Stateline, 09-19-2023, https://stateline.org/2023/09/19/states-and-cities-eye-stronger-protections-for-gig-economy-workers/

Joshua Wood remembers days during the COVID-19 lockdown when New York City’s streets were practically empty, save for workers like him.

That experience convinced the 25-year-old Brooklynite — who makes deliveries for both Uber Eats and a package delivery service — that the gig economy needed some urgent changes.

Roughly 1 in 6 American adults have engaged in gig work for platforms such as Uber, Lyft and DoorDash, according to a 2021 report by the Pew Research Center. But while those jobs promise flexibility and a low barrier to entry, they often pay less on an hourly basis than the prevailing minimum wage and lack basic protections such as overtime, sick pay and unemployment insurance.

“There was a sense among workers, coming off the pandemic, that something really needed to be done,” said Wood, a member of the labor group Los Deliveristas Unidos, which fights for gig worker benefits in New York City. “So much of the city is dependent on the work that we do — but if we want to make the conditions better for us, we have to be the ones to do it.”

New York City has since passed a package of legislation guaranteeing a minimum wage and other benefits for app-based food deliverers, and communities across the country are following suit. In the past five years, lawmakers in at least 10 jurisdictions — including cities such as Chicago and Seattle, and states such as Colorado, Connecticut and Minnesota — have proposed new protections for ride-share drivers and food delivery workers.

At least 10 states have also considered programs that would make it easier for gig workers to access traditional workplace benefits, such as retirement or paid family leave. Meanwhile, regulatory agencies and courts in states including Massachusetts, New Jersey and Pennsylvania have sought to force Uber, GoPuff and other tech platforms to grant their drivers the same benefits as regular employees.

The push comes amid a resurgent workers’ rights movement in the United States and a global reconsideration of labor rights in the age of the gig economy. Since the start of the summer, both Australia and the European Union moved to strengthen workplace protections for gig workers, while the U.S. Department of Labor is expected to finalize a new rule that may reclassify some gig workers as employees as soon as October.

But gig companies fiercely oppose any effort to reclassify gig workers, a change that would grant the workers new rights and protections under state and federal law. In public statements, legal filings and elaborate marketing campaigns, gig platforms have argued that any significant shake-up to their current labor arrangement would jeopardize workers’ flexibility and independence — as well as raise consumer costs.

In a statement, Uber spokesperson Alix Anfang told Stateline the company “supports comprehensive legislation that protects the flexibility drivers tell us they want while providing important benefits and protections.”

“They don’t want to pay drivers,” said James Parrott, an economist at The New School whose analyses of driver wages informed New York’s new pay standard. “But their pockets are infinitely deep when it comes to fighting regulations they disagree with.”

Pandemic spurred organizing

Tech companies and their detractors can at least agree that gig platforms forever changed work, for better or for worse.

Since their launch in the late 2000s, platforms such as Uber and Airbnb have spawned a sprawling ecosystem of on-demand digital marketplaces, spanning services from food delivery to therapy to child care and education.

For consumers, such marketplaces offer flexibility and convenience, and may fill gaps in existing transportation, logistical or social support systems. Workers flock to gig platforms for similar reasons: In a 2016 Pew Research survey of gig workers whose households relied on their platform income, 45% said they needed control over their schedules and 25% said they lacked other job options.

At the same time, gig work comes with an unusual level of precarity, said Daniel Ocampo, a legal fellow at the National Employment Law Project. Workers generally have no job security, no traditional benefits, no consistent income, and little opportunity to organize or advocate for themselves.

But that last part is changing in the wake of the COVID-19 pandemic, Ocampo said. Spurred by falling wages and growing safety concerns, new advocacy organizations have sprung up in cities from New York to Los Angeles to push for laws that establish minimum wages and mandate paid sick leave, among other protections.

“There’s been a real wave of legislative action, especially in the last year,” Ocampo said. “It’s a very difficult group of workers to organize … but people are fed up with the conditions.”

In addition to New York City — which approved a minimum wage for ride-share drivers in 2018, and for food deliverers in 2021 — gig workers have also notched a string of significant victories in Seattle. The city unanimously passed a minimum pay floor for ride-share drivers in 2020 and app-based delivery workers in 2022. Earlier this year, Seattle mandated paid sick leave and due process procedures for a broader swath of gig workers if they are suspended from the apps.

Lawmakers in Chicago also expect to pass a minimum wage ordinance for ride-share drivers in the coming months, said city Alderman Michael Rodriguez, a Democrat who introduced the bill with 25 co-sponsors. As of 2021, Uber and Lyft drivers in the city earned an average hourly wage of $12.72 after expenses, according to an analysis of 22 million trips by the University of Illinois at Urbana-Champaign and the Illinois Economic Policy Institute.

“Many of these workers have had issues with their pay and with deactivation,” Rodriguez said. “We’re working to get new protections for the people toiling day in and day to provide rides in a city that desperately needs better transportation.”

#### Here are more examples.

McSwigan 24 – Deputy Director of Economics at Third Way.

Curran McSwigan and Fredrick Hernandez, “What’s New on Benefit Models for Gig Workers,” Third Way, July 17, 2024, https://www.thirdway.org/memo/whats-new-on-benefit-models-for-gig-workers

Approach 1: Pursuing portable benefits models

Numerous states are experimenting with a unique approach: flexible and portable benefits accounts. With this model, contributions from companies (as well as workers if they choose) are placed into accounts that workers can then use for things like paying for health insurance, paid time off, or retirement.

Pennsylvania

DoorDash recently announced a new portable benefits savings pilot program in Pennsylvania which will run for six months this year. Through the program, DoorDash will contribute an amount equal to 4% of eligible workers’ pre-tip earnings to accounts that workers can use for benefits such as retirement accounts and health insurance.1 DoorDash drivers can also contribute funds themselves. Notably, these funds remain portable and stay with the individual, whether or not they continue to drive for the company.

Wisconsin

At the end of last year, the Wisconsin state legislature introduced legislation which seeks to expand portable benefits to app-based drivers. If passed, the bill would allow state-approved companies or financial institutions to provide portable benefit accounts to eligible app-based workers.2 The driver, company, or both have the option to contribute to the benefits accounts for the driver. Workers may use their portable benefits funds to purchase health insurance, make contributions to a retirement account, or replace lost income in certain circumstances.3

Minnesota

In 2023, Minnesota’s legislature passed a law increasing rideshare drivers’ compensation and bolstering safeguards for rideshare drivers in the deactivation process.4 In 2023, Governor Tim Walz vetoed the bill arguing that it would make the state one of the most expensive places in the country for rideshare. However, he did establish a commission to make policy recommendations to better support rideshare drivers.5

In March 2024, a new bill seeking to expand portable benefits to delivery platform drivers was introduced, which would require delivery network companies to make quarterly contributions to eligible portable benefits accounts.6 Workers may use their portable benefits to purchase health insurance, contribute money to a retirement savings account, and replace lost income in certain circumstances. The bill would also require delivery network companies to provide free occupational accident insurance for all drivers, which some companies currently do voluntarily.

Utah

In March of 2023, Utah signed into law SB233 which authorizes companies engaging independent contractors to voluntary contribute to portable benefits plans.7 This bill is more expansive in that it captures all contractual workers who are not regularly employed by a company, not just drivers of app-based companies.8 The law does not require companies that elect to create a portable benefits program to contribute to it, nor does it prescribe what benefits any portable benefits program should include.9

Approach 2: Expanding benefits and protections directly

Several places across the country are looking to directly expand benefits and protections to gig workers. The following cities have each approached expanding benefits by using legislation to enshrine access to supports such as paid leave and minimum pay requirements into law.

New York City

New York City was one of the first places to implement an earnings floor—which sets a baseline for how much a worker must be paid per hour—for rideshare drivers in 2018 and then for delivery workers in 2021.10 The minimum wage floor recently came into effect, making New York City the first major city to institute a wage floor, guaranteeing at least $18 per hour for app-based delivery workers.11 Proponents of the law see it as a victory for delivery workers, pointing to research that suggested these workers saw an hourly rate below the new wage floor. But other research finds that now some workers have reported a decrease in pay because tips have fallen off dramatically and some platforms have limited work hours. The decline in tips may, in part, be due to changes in the tipping interface for app users, which was highlighted by the city of New York as a potential way for companies to address consumer costs.

Chicago

A Chicago ordinance is looking to create higher safety standards for rideshare drivers while enshrining their right to certain benefits. The ordinance raises drivers’ minimum pay per ride, caps the amount rideshare companies can take per trip, increases pay transparency, and amps up safety protocols to better support drivers.12

Seattle

Seattle legislators are continuing to push forward efforts to provide benefits to gig workers. The city passed a pay floor for rideshare drivers in 2020 and then extended that to app-based delivery workers in 2022. Last year, the city enshrined a pandemic-era policy into law, which would allow all app-based workers to accrue paid sick and safe leave time.13 (Rideshare drivers already have access to up to 12 weeks of paid leave through a broader state law in Washington passed in 2022.14)

As a result of these efforts, many app companies have started charging additional fees per order.15 One study from DoorDash noted that the law resulted in 30,000 fewer orders over a two-week period stemming from fees implemented to account for higher operating costs associated with accommodating the new legislation.16 In response, the Seattle City Council is considering a reform bill that would amend the new earnings standard.17

Approach 3: Increasing pay transparency

There are various differences in how gig workers are paid, depending on the type of work. For example, a passenger using a rideshare platform pays a fare to the driver, and the platform takes a cut. However, pay for delivery drivers is not correlated with the amount a consumer pays for an order—a driver delivering $10 tacos is paid the same as one delivering a $50 steak. There have been several state-level efforts focused on improving pay transparency for gig workers so that people better understand how fees are being used to pay workers. In some instances, states may pair increased transparency with wage floors.

Colorado

Colorado Governor Jared Polis recently signed two bills into law, which would increase pay transparency for both delivery drivers as well as rideshare drivers. Both bills require companies to provide information on how much of a fare goes to the driver. Delivery drivers would also be able to see the destination before accepting a ride.18 Additionally, the law would require rideshare companies to develop a clear and fair deactivation policy and establish an appeals process.19

Connecticut

Senate Bill 1180 was introduced last spring in the Connecticut legislature.20 The bill sought to adopt a wage floor for driver compensation (which would be based on a per mile minimum) and set a minimum requirement on how much income a company must share with a driver.21 The bill would also have allowed Connecticut drivers to pick up passengers in out-of-state locations, which has been a point of concern for many drivers.22 In 2024, a similar bill was introduced but died in committee after bipartisan opposition.23

Approach 4: International gig worker efforts

Internationally, different countries continue to pursue varied approaches to gig benefits. These efforts range from creating regulatory bodies to set key benefit standards, to allowing worker commissions to bargain on behalf of gig workers, to closing labor loopholes.

European Union

The European Union’s new regulatory agreement on gig workers allows member states to make determinations on whether they want to consider gig workers as employees or not.24 The new regulations come after a push to mandate that all countries treat gig workers as employees failed.25 The new agreement will also place new rules on how workers can be de-activated on the apps.26

Australia

Australia’s Fair Works Commission, which is responsible for maintaining a safety net for wages and working conditions, is at the center of efforts to better regulate the gig economy and ensure gig workers are entitled to key protections. Recent laws passed by the Australian Parliament allow gig workers to retain their status as independent contractors but allows the Fair Work Commission to set standards on their behalf and enforce those standards on companies failing to comply.27

South Korea

In 2020, the South Korean government passed amendments to its labor code after a series of gig worker deaths heightened concerns over a lack of protections for these types of workers. The new laws also expanded paid leave benefits to gig workers as well as guaranteed access to unemployment benefits and accident coverage and closed loopholes that could leave workers without occupational insurance.28

Conclusion

Different countries, states, and cities are experimenting with ways to get gig workers better protections—while still maintaining the flexibility and independence core to their jobs. As gig work continues to be an integral part of our day-to-day lives—and the broader economy—it is critically important that there is a series of protections for the workers who keep the system going.

### Link & AT: Thumpers---1NR

#### Groff doesn’t thump. It was under the radar AND paired with a series of other decisions in the same week. The Court isn’t going to hear anything about labor soon.

Dr. Tashlin Lakhani et al. 24, PhD, Assistant Professor, Management & Organizations, Cornell University; David Sherwyn, JD, Professor, Hospitality Human Resources, Cornell University. Academic Director, Cornell Center for Innovative Hospitality Labor & Employment Relations. Presidential Fellow, Cornell University; Paul Wagner, JD, Adjunct Assistant Professor, Hotel Administration, Cornell University, "Same Words, Different Meanings— Same Courts, Different Leanings: How the Supreme Court's Latest Religious Accommodation Holding Changes the Law and Affects Employers," Cornell Hospitality Quarterly, Vol. 65, No. 4, pg. 420-428, 2024, SAGE. [italics in original]

As expected, the Supreme Court dropped several of its most anxiously awaited and controversial cases during the last week of June 2023. While two of the cases, *303 Creative LLC v. Elenis and Students for Fair Admissions., Inc., v. President & Fellows of Harvard College*, received most of the press, a third case will likely be the most consequential of the three for the hospitality industry. In *Groff v. DeJoy*, Postmaster General, the Supreme Court, in a 9-0 decision, rejected a 25 year+ interpretation of a Supreme Court case defining employers’ obligations to accommodate religion. Because the Court released its Groff decision during the same week as the release of both 303 Creative and the Harvard cases, Groff was lost in the shuffle. Moreover, because it was a 9-0 decision and, on its face, seems somewhat benign, there was little fanfare surrounding the case. In fact, one MSNBC commentator, who was decrying the outcomes of *303 Creative* and *Harvard*, stated that Groff simply means large intractable employers will no longer be able to deny employees their rights to practice their religion. If only it were that simple. *Groff*’s imprecise but radical change of what constitutes an undue hardship for religious accommodations under Title VII of the Civil Rights Act (CRA) of 1964, as amended (Title VII or the CRA of 1964) will create confusion, may cause dissention, and will add to an already difficult labor market in hospitality and other industries. To support our proposition, this article examines (a) the development of religious accommodation law before 1977, (b) the 1977 Supreme Court case that the Groff Court rejected, (c) the subsequent precedent of that 1977 case, (d) the passing and development of the Americans with Disabilities Act (ADA), and then, (e) the effect of Groff.

#### Unions face a trade-off between litigation and other action. They only choose litigation when they think they’ll be successful OR face internal pressure to do so, which judicial victories cause.

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Ruth Dukes and Eleanor Kirk, “Legal Change and Legal Mobilisation: What Does Strategic Litigation Mean for Workers and Trade Unions?,” Social and Legal Studies, 10-19-2023, https://journals.sagepub.com/doi/10.1177/09646639231204942

High profile courtroom victories made it easier for the union to acquire pro bono legal advice and representation and to increase crowdfunding donations.

[S]ome lawyers are more comfortable admitting this than others, but they all want to argue cases that have lasting effect and set precedents …. They all want to be involved in the sexy legal point.

With better legal advice and representation, the union's ability to win cases increased, these in turn attracted more offers of support, and a kind of virtuous circle developed.

All that said, it was also emphasised by interviewees that unions can create structures which improve their ability to spot potential cases and to integrate litigation with organising, mobilising and recruitment and with wider industrial strategies. Legal officers from Unison and Unite explained that it was important that they be kept abreast of industrial strategy, through inclusion in relevant meetings (Unison2) or good, personal relations with other office-holders (Unison4). Where legal work was contracted out to panel firms, vigilant management of the firms’ solicitors became important (Unison1; Unite3) and good communication, and ‘connections’, between the solicitors and union officers (Unison4): ‘unless someone comes to me personally … and says, this is, or this could become a really important piece of litigation, we wouldn't necessarily have sight of it’ (Unite3). A leading barrister underscored the importance of close relationships when he reflected on his personal friendship with Bob Crow, former general secretary of RMT:

Over a beer I said, ‘If we can find a case to challenge the ban on secondary action let's have a go’ …. Months later, he gave me a ring to say, ‘I think we’ve got one here,’ and so I said, ‘Right. Let's run through it together …. Get the local officials in and let's see what we can do’ (Barrister1).

In an effort to improve the union's ability to spot and manage strategic litigation, Unite set up a ‘Strategic Case Unit’ 4 or 5 years ago (Unite3). ‘We set up the unit to bring in [quarterly or bi-monthly meetings] with our panel lawyers, to discuss what are kind of priority areas, and ask them to filter down to their various assistant solicitors, or whoever, who were dealing with cases to see if they had anything of interest to us’ (Unite3). Within IWGB, the legal team was primed to look out for disputes that might form the basis of strategic legal challenges – for example, to the self-employed status of foster carers (IWGB3). At the national level, too, efforts had been made to ‘get much more strategic’ (TUC2). A network of Union Legal Officers aims to update TUC affiliates on legal developments and to coordinate strategies across them (TUC2). In September 2022, 11 affiliate unions acted together, with coordination from the TUC, to seek judicial review of the Government's move to allow striking workers to be replaced with agency labour.8 Working together in this way allows the unions to share the cost of the litigation and to demonstrate the breadth of resistance to the new law in terms of their combined membership. In recent years, equivalent networks have been set up in the EU and internationally to coordinate the strategic litigation of affiliate trade unions and lawyers representing unions and workers.9

To the Courtroom or the Picket Line?

Regarding decisions to engage – or not – in strategic litigation, the importance of the unions’ accountability to their membership was highlighted by several of our interviewees. ‘Democratic structure is a crucial thing, the re-election of officials, that sort of thing’ (Barrister1). Democratic accountability meant that union decision-makers were likely to weigh up the potential costs and benefits to the membership. Costs could be ‘astronomical’ (Barrister2), and a courtroom win would only truly amount to a significant victory if it translated into ‘something meaningful’ for the members (Unison6).

If you change some esoteric piece of the law through some strategic litigation, your members are saying what discernible effect is this going to have on me though? Does it mean that I get more holidays, does it mean I get more, do I get more pay? And the vast majority of the time you've got to say, well, not really (Unite3).

That said, benefits could also be indirect, with courtroom wins used down the line, for example, as a communicative resource: legal officers might cite legal precedent in the course of their day-to-day dealings with employers (IWGB4), or to communicate to members, politicians or the general public what was at stake in a particular campaign (Unison5; Unison6). Litigation concerning the blacklisting of workers was successfully used by Unite, for example, as a focal point in a recruitment drive in the construction sector (Unite3). In opting to embark on strategic litigation, unions might also act out of a feeling of general responsibility towards workers extending beyond their own membership, recognising, in the case of issues such as tribunal fees, that if they didn’t support or bring litigation, no one else would, since only they had the financial and organisational resources to do so (Unison4). Responsiveness to members’ interests could be complicated where different cohorts of members had different interests. Special efforts might be needed to litigate in furtherance of equality and equal pay, for example (TUC1). ‘[H]aving a strategic impact in discrimination on grounds of race … requires a – a vigilance that borders on aggression’ (Unison1).

Even where the substance of members’ interests was uncontested, actors could disagree about how best to further them (Barrister2). Some participants spoke of an enduring scepticism regarding the efficacy of litigation in industrial disputes and a wariness of legal experts who would always advocate ‘legal solutions’ (TUC2). ‘There is the phrase, “it's the last refuge of the rogue” when you try to defend or to, to pursue a case on, on human rights grounds’ (Unison3). There was also a suggestion that such scepticism might have waned over the decades as many unions became industrially weaker and political lobbying seemed less likely to be effective. ‘[I]ndustrial and political action is shut down … So people start thinking about whether there's a legal way forward’ (Barrister1). Opportunities for strategic litigation had been closed down and opened up over the years as a result of constitutional change – the passing of the Human Rights Act, devolution, Brexit – and the waxing and waning receptiveness of particular courts to particular kinds of argument. There had been a period, for example, when U.K. courts had been particularly sympathetic to claims that workers characterised as self-employed were, in fact, dependent contractors with employment rights: ‘[IWGB] were hitting the courts at the right time’ (Barrister2). In contrast, ‘I’d be very sceptical now about taking cases to the European Court of Human Rights in view of the defeats that we’ve had there’ (Barrister1).

Consideration of the costs and benefits of litigation often proceeded on the basis that legal action would be combined with other forms of action. If the aim was to force an employer to concede to the union's demands, explained the former general secretary of IWGB,

there's a bunch of different ways you can do that, you can pressure their reputation, you can do strikes, you can make things, you know, make it hard for them to operate …. So the law, using the law is quite similar to a protest …. I’m not saying use the law and not collective action, but you want to use all the tools you have at your disposal.

Along similar lines, a Unison legal officer characterised litigation as one ‘tool in the box’ and emphasised that it would always be used ‘in conjunction with industrial and organising approaches’ (Unison3). It would be unwise to ‘see it as a dichotomy between … like either there's the legal route or there's the organising route, we can't see them as going hand-in-hand … the organising is more like the centre of the galaxy’ (IWGB4).

Assessing the success of litigation after the event was not always easy, interviewees reported, partly because of a perennial strain on resources. ‘[E]ven in the bigger unions … you're always responding to day-to-day and the ability to step back and commission someone to look at things and see, how much did this case or that case produce in terms of membership benefits’ (Unite3). For that reason, perhaps, legal officers sometimes placed weight on the responses of actors external to the unions:

The point at which you realize that a case is taking on a strategic importance is when [prominent scholars] start commenting on Twitter about it. That's when you actually know that you’ve done something or are doing something which may actually be more important than your run-of-the-mill …. It's a small community; you’re speaking to barristers, and to solicitors …. And people talk about cases, you know the Industrial Law Society,10 that's another community which decides whether your case is a big case or not (Unite3).

While efforts were made within the unions to publicise victories on websites, social media feeds and communications departments, some participants thought that more could be done in this respect: ‘We don’t blow our trumpet enough’ (Unison4).

Reflecting on differences between the three unions and the reasons for them, legal officers for Unison confirmed that gender equality had been a priority for the union in recent years (Unison1) and highlighted the importance of strong leadership in this regard: of general secretaries leading strategic priorities for the union and lending support to legal departments (Unison4). An officer from Unite commented on the union's perception of itself as an organisation that ‘resolves things industrially’, considering that this might have been a barrier, at times, to greater involvement in strategic litigation (Unite3). In comparison to Unison, which tended to focus very much on ‘the issues that are important to their members, sleep-ins and all the rest of it’, Unite had litigated in defence of workers’ freedom of association, understanding the ‘legal stuff’ to work ‘hand in hand’ with collective bargaining, union recognition and so on (Unite3). Even where litigation had involved individual rights, Unite tended to be keen to find ‘industrial solutions’, using court victories as leverage to secure collective agreements, for example (Unite3). Different unions had different capacities to mount effective industrial action and this could be an important factor in deciding whether to litigate or not: ‘If you're the RMT and you have the industrial muscle to shut a country down … yeah, you don't need the law, you know, just go on strike’ (former general secretary of IWGB). The more established unions might hesitate to litigate where they had long-standing relationships with the employers in question: ‘industrial relations is a lot about relationships and building them. They’re not often very cosy but they are at least trustworthy’ (Unison3).

Officials from the older unions were well aware of the IWGB's greater involvement in strategic litigation, expressing some admiration for its ‘nimbleness’ and ability to act fast and admitting that they had been prompted, by observing the IWGB in action, to reflect on whether they should increase their own use of strategic litigation (Unite3). At the same time, these officials also pointed out that the IWGB might have been constrained in its strategizing in ways that the more established unions were not: ‘they don't have the collective bargaining, so they’ve got little option but to go down the legal route’ (Unison3). In addition to the union's success in crowdfunding and securing pro-bono representation from lawyers, protective cost orders granted by the courts had clearly facilitated its comparatively frequent recourse to litigation (Barrister2). ‘[Y]ou’re never going to get that for a big union’ (Barrister2).

The former general secretary of IWGB considered that their size and lack of bureaucracy had aided quick decision-making and action-taking. He also suggested that the relative lack of bureaucratic structures could be problematic, rather than facilitative, if it meant a lack of established rules and procedures concerning union decision-making. This had sometimes been the cause of internal disagreements with significant consequences for the union. The former general secretary identified the nature of the union membership as relevant to its litigation strategies, largely comprising atypical workers, who may be characterised by employers as independent contractors with no employment rights. If the workers contest that characterisation, courts and tribunals are the only place to get an authoritative ruling to the contrary:

When it came to worker status … it's trying to establish that the problem here isn't about the law being arcane or confusing or unclear or whatever. It's about companies not obeying the law and we established by proving over and over and over and over again that they are disobeying the law. Right?

Discussion and Conclusion

Our research findings suggest that both the call to identify ‘windows of opportunity’ for litigating strategically and the caution to beware of de-politicising effects may be based on somewhat narrow understandings of strategic litigation and its potential costs and benefits to workers and trade unions. According to our interview data, union legal officers and other officials understand strategic litigation to encompass a wide range of activities: landmark legal decisions that effect a change or clarification in the law but also more modest, routine litigation if it is instigated or defended for strategic reasons. Strategic litigation might aim to ensure compliance with existing law, in other words, rather than the kind of twist in the tale of precedent that legal scholars find exciting. The approach of each union to strategic litigation is shaped by many factors, including its history and traditions, current leadership, internal structures and procedures, external relations with employers and others, and the personal characteristics and preferences of key actors, including appetite for risk or risk aversion. The size and nature of the union membership are important insofar as they impact directly on the union's income and on its capacity to organise effective collective bargaining and industrial action – these being the most obvious alternatives to litigation, but also potentially something to be combined with litigation as part of broader campaigns. Above all, perhaps, each union's approach is shaped by the priorities of its membership. Trade unions exist, first and foremost, to further their members’ interests; they are democratic organisations, directly answerable to the membership in the form of periodic elections of general secretaries and other officials.

It follows that decision-making regarding litigation involves weighing up the likely costs and benefits of going to court as against, or in combination with, other kinds of action – though this may be difficult to do with any confidence, given the inherently unpredictable nature of litigation. General secretaries and union officials tend to be quite sober in their assessment of the transformative potential of even landmark courtroom victories when it comes to the terms and conditions of members; however, they also recognise that law can be used in a variety of ways and to a variety of ends with courtroom victories – and even defeats – figuring, potentially, as important communicative resources. In our interviews, union officials and lawyers alike acknowledged the limitations of strategic litigation and emphasised the importance of aligning litigation strategies with wider industrial, political and social strategies. Through their narration of past involvement in litigation, they demonstrated a capacity to hold multiple uses of the law in dynamic tension and to alter their chosen courses of action flexibly as circumstances demanded.

#### It doesn’t fly under the radar. Labor movements uniquely pay attention to legal opportunity structures, and they’ll believe the plan is their key window.

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Jack Meakin, “Labour Movements and the Effectiveness of Legal Strategy: Three Tenets,” University of Leeds, https://eprints.whiterose.ac.uk/id/eprint/188397/1/Meakin.%20Three%20Tenets.%20IJCL2022009.pdf

Notwithstanding important interventions by legal scholars, political scientists and political sociologists have carried the baton for law and social movement scholarship. A key insight from such studies has focused on ‘legal opportunity structures’, analysing judicial attitudes and the role of legal structures in making litigation more or less attractive and/or effective in different jurisdictions.13 Lisa Vanhala has inserted an important caveat to this focus on structures by analysing the ‘agency’ of social movements in their legal mobilization strategies.14 For Vanhala, it is important not to reduce the ways that social movements engage with law to the ostensible opportunities presented by law but to recognize how litigation strategies also confront and shape legal opportunity structures. Furthermore, there is a vast literature focusing on social movements and transnational activism.15 It describes the multi-level nature of contemporary mobilization strategies and the opportunity structures created by the globalization of law and politics. This literature tends not to highlight specific legal doctrines or mechanisms but analyses the ways that social movements have engaged in contentious politics by mobilizing various processes in international institutions, formed transnational networks, organized mass protests, and the impact of such actions on domestic politics.

To explore the issue of effectiveness in the context of strategic litigation, this article will bring the socio-legal legal mobilization literature into conversation with legal theory. The contribution of legal theory to our understanding of strategic litigation aims to highlight the legal context of strategic litigation. There is a small but burgeoning literature that draws on interdisciplinary approaches to explore the use of strategic litigation to confront doctrinal legal concerns, or how certain areas of law have been targeted by social movements. For example, labour law issues have been analysed using methods and insights from socio-legal studies, empirical legal studies, and industrial relations scholarship.16 Moreover, the potential impact of strategic litigation has been explored in fields with extensive case lists, including human rights law and issues ranging from arbitrary detention to land rights.17 Indeed, we can identify numerous interdisciplinary analyses and categorize them as contributing to a wider discussion about the use of strategic litigation at the domestic and transnational level,18 as well as reflexive debates about the nature and form of legal mobilization.19 Despite such interdisciplinary insights and the breadth of concern for strategic litigation, it remains a challenge for contemporary legal scholarship to rationalize the factors that determine the success of litigation strategies and the reasons why social movements identify law as an important tool.

This article draws together labour law and legal mobilization scholars’ shared concern for strategic litigation alongside legal theoretical insights in order to confront and rationalize the factors that determine its effectiveness for labour movements. I argue that to better comprehend the practice and potential of strategic litigation, we must recognize how labour movements’ legal arguments confront (and/or are subjected to) processes of legal ordering and are reliant upon the capacity of legal institutions to respond to their claims. This will provide insights about the articulation of legal arguments, the effects of legal ordering and law’s normative boundaries on the political objectives that motivate litigation, as well as offering an opportunity to reflect on the institutional context of litigation. This is particularly pertinent in the labour law context for two reasons: First, the worker-protective aims of labour laws often come into conflict with the law’s protection of freedom to contract, property rights, and other corporate interests. Second, in spite of these challenges, workers and trade unions rely upon law’s capacity to redress grievances and enforce fundamental worker protections.

#### Which is empirically proven.

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Ruth Dukes and Eleanor Kirk, “Legal Change and Legal Mobilisation: What Does Strategic Litigation Mean for Workers and Trade Unions?,” Social and Legal Studies, 10-19-2023, https://journals.sagepub.com/doi/10.1177/09646639231204942

Interest in strategic litigation has recently been sparked by a number of high-profile ‘wins’ for trade unions and workers.1 Several of these have involved platform workers and claims concerning the workers’ employment status and entitlement to employment rights (Bertolini and Dukes, 2021; Moyer-Lee and Kountouris, 2021), most prominently, the ‘landmark’ decision of the U.K. Supreme Court in Uber v Aslam ([2021] UKSC 5). Some cases have not only been a landmark in a legal sense, they have also prompted employers to reach voluntary and not-so-voluntary recognition agreements with the unions (Bertolini and Dukes, 2021; Blackburn, 2022), or have inspired or galvanised organising efforts (Kirk, 2020; Marshall and Woodcock, 2022). For some authors, landmark victories chart a road that could be more travelled by trade unions seeking to achieve concrete improvements in members’ terms and conditions (Cefaliello and Countouris, 2020). For others, suspicions remain concerning the propensity of litigation to depoliticise industrial disputes (Adams, 2023). The concern, in short, is that legal form only ever poorly captures the nature of the class conflict at stake (Fraenkel, 1930). If litigation is the tool, only formal legal rules (usually individual rather than collective in form) and contractual terms figure as relevant, even when it is underlying socio-structural matters that are actually at issue (Fischer-Lescano et al., 2021).

#### AND ensures they don’t fight for progress at the sub-federal level.

Elmore 21 – Associate Professor, University of Miami School of Law

Andrew Elmore, “Labor’s New Localism,” Southern California Law Review, Vol. 95, 2021, https://southerncalifornialawreview.com/wp-content/uploads/2022/05/Elmore\_Final.pdf

Millions of workers in the United States, disproportionately women, immigrants, and people of color, perform low-paid, precarious work. Few of these workers can improve their workplace standards because the National Labor Relations Act (“NLRA”) does not sufficiently protect their right to form unions and collectively bargain. Lacking sufficient influence in federal and state government to strengthen labor and employment law, unions and worker centers have increasingly sought to build power in cities. The shift to local labor lawmaking has delivered local minimum wage, paid sick leave, and fair scheduling ordinances covering millions of low-wage workers, as well as groundbreaking unionization and collective bargaining agreements,

including in regions of the United States historically hostile to unions. This has positioned cities as a primary staging ground for labor law reform.

This Article examines this trend as a rejuvenated labor localism and this trend’s effects on state and local government law and labor and employment law. Labor localism advances the democratic values of labor and local law by channeling worker and community protests and bargaining through the direct democracy mechanisms of cities, instead of or in addition to the NLRA. While provoking fierce employer campaigns seeking state preemption of local lawmaking, labor localism can often manage these state-local conflicts by engaging in state law reform and pivoting to adjacent areas. Modest home rule reform can improve its stability and reach and, contrary to conventional wisdom, improve local accountability. Labor localism, finally, reveals the central roles of localism in enabling a bottom-up reform effort to counteract the weaknesses of federal labor law and in safeguarding democratic norms in the United States.

## Distinguish CP

### CP---1NC

Distinguish CP---

#### The United States Federal Government should narrow exemptions for religious freedom but clarify that factors specific to collective bargaining rights render it inapplicable in that context.

#### That solves and avoids the DA.

Rice 19 – Associate, Institute for Constitutional Advocacy and Protection, Georgetown University Law Center.

Daniel B. Rice and Jack Boeglin, Associate, Covington & Burling LLP, “Confining Cases to Their Facts,” Virginia Law Review, Vol. 105:865, 2019, https://www.virginialawreview.org/wp-content/uploads/2020/12/RiceBoeglin\_Book.pdf

Perhaps this hypothetical is not as far-fetched as it seems. Through the little-known practice of “confining a case to its facts,” courts can achieve the near-equivalent of overruling with only a fraction of the trouble. Under our definition, when a court engages in confining, it repudiates the legal principle underlying a case, replacing it with a new, “correct” principle.5 In this respect, confining is very much like overruling. But unlike overruling, confining preserves the precedential force of a repudiated principle for future cases presenting the same facts as the one being confined.6 Confining thus splits a doctrinal area in two. When a confined case’s facts recur, the case will continue to be treated as good law. In all other factual scenarios, however, the confined case will be regarded as having been overruled. 7

How, one might ask, does creating this doctrinal fissure reduce the costs of overruling? Remember first that courts’ desire not to disturb reliance interests ordinarily functions as a brake on legal correction.8 Confining eases off this brake by enabling certain reasonable expectations— those formed in reliance on the particular facts of the confined case—to remain unaffected by a principle’s repudiation. Under certain conditions, then, confining can permit a court to move the law in its preferred direction and avoid overly disrupting reliance on an earlier decision.

Of course, respect for reliance interests is not the only reason courts maintain fealty to precedent. The pace of legal change is slowed, too, by the formal constraints courts have imposed on themselves when deciding whether to overrule a case. Confining has found use as an effective mechanism for casting off these constraints. Consider the Supreme Court’s avowed commitment to overruling a case only when it can articulate a “special justification” for doing so—one that transcends mere disagreement with the case’s reasoning. This requirement has not been understood to apply to confining,9 even though confining eviscerates everything a case stands for except its precise result.10 Similarly, although each federal court of appeals forbids three-judge panels from overruling circuit precedent, panels have frequently gutted earlier decisions through the use of confining.11 By labeling these deviations from precedent “confining,” in short, courts have successfully skirted the formal requirements of stare decisis.

Confining likewise enables federal courts to sidestep the Supreme Court’s prohibition on “prospective overruling”—i.e., continuing to treat a case as good law only with respect to conduct predating its overruling.12 During the Warren Court era, prospective overruling was often called upon to soften the blow to reliance interests occasioned by the Court’s doctrinal course-corrections.13 The Court’s retroactivity doctrine has since made clear, however, that federal courts may not apply new principles selectively in order to accommodate reasonable expectations.14 But this is precisely what happens with confining.15 This discrepancy— oddly—appears to have gone unnoted by jurists and scholars alike. Finally, courts may have engaged in confining precisely because it is so poorly understood. Judge for yourself the more eye-grabbing headline: “Supreme Court Overrules Smith v. Jones” or “Supreme Court Confines Smith v. Jones to Its Facts.” Confining’s relative lack of name recognition has allowed courts to quietly sweep aside disfavored precedents. A confining judge can say “with a straight face, ‘I didn’t vote to overrule it. I simply limited the earlier decision to its facts.’”16

Confining can thus embolden courts to depart from precedent even when overruling might come at too dear a price. But the very features of confining that make it so appealing to judges also pose considerable— and strangely underexplored—threats to a judicial system predicated on principled adjudication. By providing a method for courts to carve out exceptions to generally applicable doctrinal rules, confining encourages judges to decide cases based purely on pragmatic concerns, rather than on principle. By creating an easy workaround to the formal obligations that attend overruling precedent, confining dangerously loosens the constraints of stare decisis. And by allowing courts to undermine precedent in a low-visibility manner, confining impairs the public’s ability to oversee the work of the judiciary.

Confining also runs headlong into fundamental concerns about the nature and scope of judicial authority.17 The practice of confining entails a marked departure from the ordinary judicial role in two key respects. First, it causes courts to decide future cases in a concededly unprincipled manner. Once a case has been confined to its facts, the operative question becomes whether a new case is factually distinguishable from it in any respect—even if the cases cannot be distinguished in any principled manner. And second, confining requires courts to continue applying principles that they have already held to be invalid. In this way, confining causes incompatible legal principles to coexist with one another, with each regarded as “good law” in some sense. No other method of treating precedent calls upon courts to engage in purely fact-bound adjudication, or to construct a jurisprudence at war with itself.18

### Solves---2NC

#### The case can be distinguished.

Re 14 – UCLA Law School Assistant Professor.

Richard Re, November 2014, ESSAY: NARROWING PRECEDENT IN THE SUPREME COURT, 114 Colum. L. Rev. 1861

Pick your least-favorite Supreme Court precedent--the one that, in your view, was most wrongly decided--and imagine that you are a Justice. If asked to apply the precedent in a new case, you would probably try to distinguish it. In other words, you would like to conclude that the precedent, when best understood, does not actually apply to the new case before you. But what if you think that the precedent, when best read, does apply to the new case at hand? You would then be faced with an uncomfortable choice. You could overcome your opposition to the precedent and follow it, notwithstanding its wrongness and any resulting injustice. Alternatively, you could overrule the disfavored case, notwithstanding the drastic nature of that action. Yet another option remains. Instead of either following the precedent or overruling it, you could narrow it. That is, you could interpret the precedent in a way that is more limited in scope than what you think is the best available reading. If you took that last route, then the precedent would survive in an altered form. It would remain on the books and valid within a certain domain. But it would have been denied a zone of application that, when best read, it should have had.

#### It's not distortionary.

Walsh 15 – U. Richmond, Associate Professor of Law.

Kevin Walsh, 2/11/15, Richard M. Re, Narrowing Precedent in the Supreme Court, 114 Colum. L. Rev. 1861 (2014), courtslaw.jotwell.com/expanding-our-understanding-of-narrowing-precedent/

Re argues that “[l]egitimate narrowing is the decisional-law analogue to the statutory-law canon of constitutional avoidance.” The analogy holds insofar as both techniques exploit ambiguities to constrain the legal force of one source of legal authority (a precedent or a statute) as a way of giving effect to other legal principles (whether found in other cases or the Constitution or some background source of legal principles). But another, and in some circumstances closer, analogy may be holding a statute partially unconstitutional coupled with statutory severance. After all, as Re puts it elsewhere in the essay, narrowing effects “a partial erasure of decisional law.” Following this insight a bit further might lead one to believe that when narrowing ventures beyond strained distinguishing (akin to constitutional avoidance), it becomes partial overruling (akin to partial unconstitutionality plus severance).

One benefit of recognizing the functional equivalence of narrowing and partial overruling in certain circumstances is to highlight what may be an unduly constricted but pervasive misunderstanding of lower-court freedom to narrow Supreme Court precedent. Re’s essay understandably brackets off implications for vertical stare decisis; assessing the legitimacy of narrowing by lower courts presents different and harder issues than horizontal narrowing. But by showing that narrowing is common and often legitimate at the horizontal level, the essay’s taxonomy at least reveals that it is a mistake to preemptively rule out the possibility of all lower-court narrowing simply by affixing to it the label of partial overruling.

To explore what this might mean for vertical stare decisis, it would be illuminating to run through each of the examples of legitimate narrowing that Re discusses at the Supreme Court level and to inquire whether a lower court would likewise have been free to narrow. That is, would the lower court have complied with governing stare decisis norms by narrowing precedent in the way that the Supreme Court did? If the answer for a given case is “yes,” even though the kind of narrowing that the lower court engaged in could easily be understood as an instance of partial overruling (i.e., overruling with respect to a particular set of potential applications), then the principle that lower courts may not anticipatorily overrule an undermined precedent may have a more confined reach than many think. Take, for example, Hein v. Freedom from Religion Foundation, in which the Supreme Court held that the taxpayer standing authorized by Flast was limited to specific legislative appropriations rather than executive action funded by general discretionary appropriations. This narrowing of Flast could be understood as a partial overruling of it. And yet the line adopted by the governing plurality decision is the very line identified and applied by the district court. While the Seventh Circuit reversed this decision (and itself was later reversed in turn), the discussion throughout was about how best to apply the set of cases in the Flast line rather than about whether the district court or court of appeals had violated some norm of vertical stare decisis. And that is as it should be.

The practical fluidity of the conceptual boundaries between narrowing a precedent, partially overruling a precedent, and figuring out the best application of a set of precedents gives rise to a final observation. The customary way of thinking about how particular judicial decisions change the content of the law is in terms of their effect on particular legal materials like a precedent or a statute, and usually in terms of subtraction. Narrowing Precedent sharpens this way of thinking. But using Re’s conceptual tools can reveal a different frame altogether, one that is consistent with Re’s even while describing changes in the content of the law in a precisely opposite manner.

Re’s central concept is the idea of the best reading of a precedent. In his taxonomy, the mirror image of narrowing (“not applying a precedent, even though the precedent is best read to apply”) is extending (“applying a precedent where it is not best read to apply”). The reason that both narrowing and extending can be legitimate practices is that precedents are never best read in isolation from all the other relevant legal materials in a case. The inquiry in every case is what the court has added or should add to the law going forward; only sometimes does this also involve the metaphorical paring back or cutting out of some particular source of law. And even then, there is no conceptual or legal need to describe that removal in terms of excision rather than displacement. For instance, the narrowing of Flast is simultaneously the extension of the principles and cases that countervail against taxpayer standing.

### Solves---2NR!!!

#### Here’s a card since they made a deficit for the first itme

IFA 25 – International Solidarity Group promoting Religious Freedom.

Interfaith Alliance, “Do No Harm: Resisting the Misuse of Religious Exemptions,” Interfaith Alliance, 04/10/2025, https://www.interfaithalliance.org/post/do-no-harm-resisting-the-misuse-of-religious-exemptions

In response to the rising misuse of RFRA, Congress introduced the Do No Harm Act in 2016. This legislation aimed to amend RFRA by holding that religious exemption laws could not override federal protections such as Title IX or labor laws. This act would secure religious freedom protections while also ensuring that religious exemption laws “do no harm,” safeguarding against discrimination. The bill was not passed by Congress but has been reintroduced every year since 2016. Interfaith Alliance continues to support and advocate for the Do No Harm Act which was recently reintroduced in Congress in early March of 2025.

At its core, the misuse of religious exemption laws is a stark contradiction to the true principles of religious freedom. Instead of fostering love, inclusion, and compassion, these laws are being used to justify hate, exclusion, and indifference. The true spirit of religious liberty should protect individuals of all faiths or no faith without infringing upon the rights of others.

When businesses, healthcare providers, or schools use religious exemptions to discriminate, they leave LGBTQ+ people, women, and other marginalized groups without access to basic services, healthcare, and protections. This legitimization of religiously motivated harm contributes to a society where discrimination is not only accepted but also protected, creating divisions that hinder social progress.

## Advantage 2

### !D---LIO---1NC

#### No LIO/SOI impact — states are won’t risk war and resolve issues economically.

Mueller 21 – Professor Emeritus in the Department of Political Science at Ohio State University, Senior Fellow at the Cato Institue, holds a Ph.D. and M.A. in Political Science from the University of California-Los Angeles,

John Mueller, “Proliferation, Terrorism, Humanitarian Intervention, and Other Problems,” The Stupidity of War: American Foreign Policy and the Case for Complacency, Cambridge University Press,

It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conﬂict as can be seen in the case of the Cuban missile crisis of 1962 . As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938

Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930 s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish. 128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989– 91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try.

If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s ide ´ e fixe that Russia needs to be the leader of a pack of postSoviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?

Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of selfdestruction or descent into stagnati on – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy. However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion of the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well fortified by the defenders. 130

The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels. 131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979 . 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities.

The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.” 133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods.

However, as discussed in Chapters 1 and 2 , the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct. 134

It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace. 135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony.

Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco. 136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945– an issue discussed frequently in this book. 137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony. 138 It seems even more important for the foreign policy establishment to do so.

There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017 , the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.” 139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other.

More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe . When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21 , 2017 , when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence.

In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

### !D---LIO---2NC

#### Litany of recent conflicts prove the LIO was ineffective.

**van de Haar 25** – PhD in International Political Theory from Maastricht University, Past Professor of Political Theory at Brown University

Edwin van de Haar, “The liberal international order is dead. Long live the liberal international order.,” IEA, 6/17/25, https://iea.org.uk/the-liberal-international-order-is-dead-long-live-the-liberal-international-order/

According to Ikenberry, the key feature of the liberal international order is a system of sovereign states (preferably but not limited to liberal democracies) with open, mutual relations, governed by international law, international organisations and other agreements. Although defence cooperation (such as NATO) is an inseparable part of the liberal international order, the larger idea is to constrain power politics through international organisation, not least through the development of mutual interdependence between states. The belief is that global trade, international negotiations, and legal obligations help maintain peace. While there is little convincing evidence for this, as the many wars of recent decades demonstrate, Ikenberry and his supporters still claim that countries in the liberal international order are united by shared values and a common goal of continuous improvement—both materially and in pursuit of a “socially just world”.

Ikenberry’s view is open to criticism, as it’s debatable whether this is an accurate portrayal of international politics over the past decades, where power politics has remained a central tenet. The idea that we are moving towards a socially just world has always been utopian, but is solidly attached to liberalism in world politics, often based on erroneous interpretations of Kant’s Perpetual Peace or the writings of John Rawls. The same applies to the overly simplistic idea (also held by some classical liberals) that trade fosters peace, with Adam Smith as the main victim of misinterpretation.

Recently, Trump’s and Putin’s actions have pushed idealistic notions of international solidarity and progress to the sidelines. Interstate war is back on European soil,

between countries previously tightly bound by mutual trade. International organisations like the WTO have been dysfunctional for some time, and many UN agencies are ineffective. The number of democracies worldwide is also shrinking—The Economist counted only 34 last year. In short: if the liberal international order ever really existed, it’s now largely a thing of the past.

### !D---Civil War---1NC

#### No civil war. Data, history, and academic consensus.

Jensen and Young 25 – Professor of Strategic Studies at the Marine Corps University School of Advanced Warfighting, Director of the Futures Lab and a Senior Fellow for the Defense and Security Department at the Center for Strategic and International Studies, PhD and M.A. from the American University School of International Service; Professor at the University of Kentucky and Director of the Patterson School of Diplomacy and International Commerce, PhD in Political Science from Florida State University.

Benjamin Jensen and Joseph K. Young, “Is the United States Headed Toward a Civil War?,” Center for Strategic and International Studies, 09-16-2025, https://www.csis.org/analysis/united-states-headed-toward-civil-war

Is the United States Headed Toward a Civil War?

The answer is no. These Critical Questions use core findings from the academic literature on civil wars and political violence to situate recent tragic events and fundamentally challenge the notion that the United States is on the verge of an internal conflict. The risks of an actual U.S. civil war in 2025 are negligible, and rhetoric to the contrary is counterproductive and inflammatory when analyzed in relation to studies of political violence. The greatest risk on the horizon is not a civil war, but social media⁠–induced tit-for-tat cycles of sporadic violence by lone gunmen.

Q1: What is a civil war?

A1: Not all political violence is organized or a harbinger of a civil war. Modern scholarship defines a civil war as a state-based armed conflict between a government and an internal opposition group that results in 1,000 battlefield-related deaths. This cumulative death toll separates civil war from other forms of political violence like terrorism. Furthermore, there needs to be at least some proportion of deaths from both sides of the conflict, or it isn’t a civil war. It is a one-sided violence that, in the extreme, becomes genocide.

Second, civil conflict involves incompatibility over the government or territory between a government and an organized opposition. Without a sufficient number of battlefield deaths and the presence of an organized opposition, a conflict does not meet the definition of a civil war. There will be political violence, which is sadly a constant across U.S. history, but even most tragic acts like those witnessed in the assassination of Charlie Kirk aren’t indicative of civil war without these above factors.

Q2: What causes a civil war?

A2: Most literature on civil wars tends not to find ideology or political polarization as a primary catalyst. Identity is rarely the cause of this kind of conflict. Rather, the causes of civil wars are often tied to low GDP per capita, a weak central government, safe havens (i.e., harsh terrain where rebels can hide), access to natural resources that rebels can take, and other structural concerns. Furthermore, many civil wars need a cycle of violence in which states repress citizens, leading to dissent and even armed opposition. Even this cycle often tends to lead to protest movements rather than rebellions.

Seen in this light, there are few structural incentives for a second U.S. civil war. The economy is strong, the U.S. government and military are capable, and no group is trying to secede or annex territory to secure natural resources. Instead, the United States has social media and other voices amplifying differences, leading to a sense of polarization. For this polarization to evolve into a civil war, based on literature and hundreds of years of history, it would likely require years of organized violent conflict between the government and a resistance group, a major split or defections at the upper levels in the military, and likely either an economic collapse or major authoritarian consolidation of power.

Q3: How does recent political violence in the United States compare to historical patterns?

A3: A people “numerous and armed” are bound to have a history defined by periodic waves of political violence and civil conflict. From the 1791 Whiskey Rebellion to Bleeding Kansas and the U.S. Civil War, there were numerous small and larger-scale violent episodes in the formation of the nation.

The United States did fight a bloody Civil War that was a secessionist variety that included large splits in the military, battle deaths on both sides that were well above 1,000 people, and lasted four years. The end of the Civil War led to a decisive victory by the North, a common outcome in civil wars. Reconstruction followed, but political violence—particularly in the South, targeting Republicans and newly enfranchised African Americans—remained widespread.

The 1960s and early 1970s, another volatile political time period, saw daily incidences of political violence on college campuses, the bombing of the U.S. Capitol by the Weather Underground, and the assassinations of President John F. Kennedy, Martin Luther King Jr., and Robert F. Kennedy.

All of these periods likely had more heightened levels of polarization and violence within U.S. society than today. One period that may be more similar to ours is the early 1900s. On the left, anarchists perpetrated attacks like the Wall Street Bombing in 1920, which killed 38 people and injured hundreds more. President McKinley was killed by an anarchist in 1901. During this period, the United States also witnessed a series of mail bombings in 1919 that targeted wealthy industrialists, including John D. Rockefeller. While these high-profile events were tragic and deadly, other violence during this period was from the far-right, including a major resurgence by the Ku Klux Klan in the 1920s. Additionally, the Palmer Raids and First Red Scare were organized repressions by the U.S. government against immigrants and suspected radicals. While these events were tragic and violent, this period was never close to what scholars or observers would characterize as a civil war.

Q4: Do Americans think a civil war is coming?

A4: Regardless of what academic studies find, fears can prevail across the population. Yet, there appears to be a disconnect between media coverage, what trends on social media, and the actual opinions of American citizens.

A 2023 national survey found that only 5.7 percent of Americans strongly or very strongly agree that “there will be a civil war here in the next few years.” Also, only 3.8 percent strongly or very strongly think “a civil war is needed to set things right.” In short, few members of the public concur that we are headed towards civil war or that we need to be. The survey was repeated in 2024 with similar results.

Q5: So, is the United States headed toward another civil war?

A5: Based on data, history, academic literature, and scholars who study political violence, the United States is not headed towards a second U.S. civil war. That does not mean the nation will be spared episodic political violence and other unnecessary loss of life. It does mean that the likelihood of a large-scale battle between the government and an organized rebel group that goes on for years, and claims thousands of lives on both sides, is highly unlikely.

Facts matter in these conversations. There is a distinct need at this juncture to lower the temperature of online rhetoric and calm people’s fears. Polarization and hostile rhetoric and actions at all levels of U.S. society are sadly part of modern politics, but they don’t need to be the defining features. After all, despite its turbulent history, dialogue, engagement, debate, and formal nonviolent disagreement are at the heart of the grand American experiment.

## States CP

### CP---1NC

States CP---

#### The fifty states and all relevant sub-federal entities should

[Plank 2]

#### create sector-wide worker standards boards for religious schools composed of workers, industry experts, and employers tasked with making tailored recommendations on workplace standards and other relevant policies,

#### commit to abide by board recommendations,

#### require public disclosure of meeting minutes and all decisions rendered by the board,

#### require mandatory investigations into employer conduct when 150 or more workers sign a petition,

#### publicly announce and provide financial rewards for workers who successfully report employers,

### Solves---2NC

#### The CP directly regulates desired outcomes.

Galvin 18 – Associate Professor of Political Science, NU. IPR Fellow, NU.

Daniel Galvin, “From Labor Law to Employment Law: The Changing Politics of Workers' Rights,” Northwestern Institute for Policy Research, 12-17-2018, https://www.ipr.northwestern.edu/documents/working-papers/2018/wp-18-14.pdf

Notably, all such reforms share two key features. First, they all represent workaround solutions. Contending with a national labor that is irrelevant for the vast majority of American workers but also an immovable object, they layer new forms atop old forms, exploit loopholes in existing law, and seek to scale up local experiments. Second, each envisions a central role for employment law in galvanizing, empowering, and protecting workers.16 This, I will argue, 5 reflects an historical-institutional development of vast significance: the gradual shift from labor law to employment law as the primary “guardian” of workers’ rights.17

As I will document and explain more fully below, over the last six decades, states (and a growing number of cities and counties) have enacted a rich variety of employment laws aimed at raising minimum workplace standards, establishing substantive individual rights, and providing legal and regulatory pathways for workers to vindicate those rights. 18 At precisely the same time that labor law has withered, employment law has flourished, proliferating at the subnational level and expanding into new substantive domains.19

[Footnote 19]

Although the terms “labor law” and “employment law” are sometimes used interchangeably, legal scholars draw an important distinction between the two: whereas labor law focuses on collective bargaining, unionization, and other issues that may arise between groups of workers and their employer, employment law covers all other laws, regulations, and policies regarding individual workers’ rights and the relationship between the employer and the individual employee. By establishing minimum workplace standards (like the minimum wage, enforced through regulation) and individual rights and protections (like workers’ privacy rights, which may be vindicated in court), employment law uses the alternative delivery mechanisms of regulation and litigation to achieve many of the same objectives labor law ostensibly seeks through collective bargaining: namely, boosting wages and regulating the terms and conditions of employment.

### Preemption---2NC

#### 1. They “functionally…replace…bargaining.”

MacDonald 24 – Co-Chair of the Workplace Policy Institute, Littler Mendelson P.C.

Alexander T. MacDonald, “Predistribution, Labor Standards, and Ideological Drift: Why Some Conservatives Are Embracing Labor Unions (and Why They Shouldn't),” Federalist Society, 09-23-2024, https://fedsoc.org/fedsoc-review/predistribution-labor-standards-and-ideological-drift-why-some-conservatives-are-embracing-labor-unions-and-why-they-shouldn-t#\_ftnref93

The state-approval structure also helps avoid another federal law—the NLRA. Again, the NLRA is built on “enterprise” bargaining.[92] And that enterprise model is generally exclusive: courts have interpreted the NLRA to preempt any conflicting or alternative state laws.[93] That means states cannot simply opt out of the enterprise model and create alternative organizing schemes.[94] If workers are covered by the NLRA, the enterprise process is their only option.[95]

But there is a potential workaround. While the NLRA regulates the bargaining process, states can still establish minimum labor standards.[96] Those standards can include minimum wages, mandatory benefits, and job protections.[97] These minimum standards do affect bargaining indirectly; they take certain proposals off the table (e.g., pay rates below the minimum wage).[98] But they don’t disrupt the bargaining process. They simply set a new floor, and the parties bargain up from there.[99] Both sectoral schemes and labor boards try to fit into that gap. They create new workplace standards through quasi-private negotiations.[100] And while those negotiations mirror collective bargaining, a public official decides whether the negotiated standards take effect.[101] So local governments can present them as essentially regulatory processes. Functionally, they replace private bargaining. But formally, they set minimum work standards by law.[102] [Footnote 102] See Estlund, supra note 7, at 555–56 (arguing that state “co-regulation” schemes solve the “preemption problem” by setting new terms through regulatory processes). [End FN] That approach might solve predistribution’s preemption problems.[103] But it effectively wipes out the idea’s supposed benefits from the conservative point of view. Remember, predistribution policies are supposed to reduce the need for government intervention.[104] But in practice, these schemes only embed the government even further into the workplace. Labor-standards boards can dictate everything from wages and hours to training and hiring policies.[105] And they impose those terms through binding regulations, enforced by state officials.[106] This is not the soft touch of the market, but the iron fist of the law.[107]

#### It doesn’t touch the NLRA.

Elmore 24 – Professor of Law, University of Miami School of Law.

Andrew Elmore, “Confronting Structural Inequality in State Labor Law,” Boston University School of Law, 2024, https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=4963&context=faculty\_scholarship

C. Negotiated Sectoral Standard-Setting

Unions and worker centers, recognizing the structural inequality in the NLRA's framework for enterprise-based collective bargaining at the individual firm level, have recently sought to establish state-created boards within administrative agencies, through which they can negotiate with employer representatives for sectoral, state-level work standards. State laws authorizing negotiated sectoral standard-setting, unlike collective bargaining laws, are laws of general applicability that do not implicate NLRA preemption because the standards are sector-wide, not employer-specific.' 34 Since 2015, after its first, recent, high-profile use by Fight for $15 in New York, negotiated sectoral standard-setting has primarily grown in tentative steps through cities.1 35 But through successive, larger, and more ambitious experiments, it has taken root for home health care in Nevada and, beginning this year, fast food in California. While currently limited to a handful of states, it appears to be gaining momentum as a state-level policy choice.1 36 At the same time, TNCs have sought to establish company-dominated forms of sectoral standard-setting in New York and Connecticut, as part of a "third category" legislative compromise to classify app-based drivers as independent contractors in return for limited forms of representation by organizations that are dependent on TNCs for their existence.

#### Empirics.

CLJE 24 – Harvard Law School’s hub for labor policy research and innovation. Executive Director, Sharon Block, is a professor at Harvard Law School with a J.D. from Georgetown.

CLJE:Lab, “Building Worker Power in Cities & States: Workers’ Boards,” Harvard Law School, Center for Labor and a Just Economy, 09-01-2024, https://clje.law.harvard.edu/publication/building-worker-power-in-cities-states/workers-boards/

Preemption Risk

Since the relatively recent inception of current models of worker boards in the United States, few boards have faced preemption challenges,8 and none of those challenges have succeeded. However, many cases remain ongoing. Some local laws have been invalidated outside the courts, whether by referendum or superseding state laws. In addition, state preemption of wage- or standard-setting at the municipal level may impact the viability of city-level boards.9

Developments surrounding the hotly contested fast-food workers’ board in California offer clues about future preemption challenges. California AB 257, known as the FAST Recovery Act, aimed to establish a sector-wide labor council composed of workers, advocates, government officials, and fast-food company representatives within the fast-food industry in the state of California. It was signed into law in September 2022 but suspended in January 2023 after fast-food companies garnered enough signatures to put it to a ballot referendum.

Opponents claimed that the FAST Act would displace the NLRA’s collective bargaining process and interfere with the “free play of economic forces,” setting grounds for preemption. But such challenges would likely have failed because the council would not have impeded private collective bargaining and minimum labor standards are not preempted by the NLRA.10 It was ultimately repealed in favor of a new bill, AB 1228, which eliminates some provisions of the former bill but keeps intact the structure of a workers’ council that gives workers a seat at the table in determining their wages and working conditions.11

#### 2. The feds won’t bring a case. Empirics.

Bennett 22 – Associate Professor and Wall Family Fellow, University of Missouri School of Law and Kinder Institute on Constitutional Democracy  
Thomas B. Bennett, “State Rejection of Federal Law”, Notre Dame Law Review Rev, Volume 97, Issue 2, 2022, https://scholarship.law.nd.edu/ndlr/vol97/iss2/6/

Or can it? Consider how press reports described Colorado’s Enhance Law Enforcement Integrity bill, a broad package of police reforms enacted in the wake of sustained activism against police violence during the summer of 2020. The Denver Post said the bill “removes the qualified immunity defense.”4 The Hill said the law “includes the end of qualified immunity for officers.”5 U.S. Representative Ayanna Pressley called on legislators in her state of Massachusetts to follow Colorado’s lead and “end qualified immunity.”6 State legislators in New Mexico, New York, and Virginia similarly moved to “eliminat[e] qualified immunity.”7

Because the doctrine of qualified immunity is part of federal law, the simple view of federalism holds that states cannot “end” qualified immunity. In one sense this objection is correct. As some observers noted, Colorado’s bill does not purport to alter the application of qualified immunity as a matter of federal law.8 Rather, the law creates a state law cause of action analogous to the federal civil rights statute, 42 U.S.C. § 1983, and specifies that qualified immunity will be no defense to claims under that new provision of state law.9

Yet in nearly every way that matters, Colorado ended qualified immunity.10 Colorado’s constitution protects the same individual rights as the federal constitution, and its statutory scheme for enforcing those rights matches section 1983—minus qualified immunity. Anyone aggrieved by unconstitutional police practices in Colorado may now use state law to sue for money damages without worrying that qualified immunity will stand in the way. On the other side of the coin, police now face financial incentives to respect constitutional rights during their official duties.

This is more than just states going above the floor set by federal law. In adopting the qualified immunity defense, federal courts saw themselves as carefully balancing competing values to reach an ideal legal regime. The Supreme Court’s reasoning rested on a belief that, absent qualified immunity, the threat of liability would deter police and other government officials from doing their jobs to the best of their abilities.11

States that reject qualified immunity thus challenge the policy balance struck by federal law in two ways. First, as a practical matter, those states disrupt the balance by creating a different set of rules and incentives for government officials within their borders. This disruption is a direct challenge to federal courts’ wisdom in crafting the qualified immunity doctrine in the first place. Second, states that reject qualified immunity run an experiment to evaluate empirically that doctrine’s necessity and efficacy. If those states toss the doctrine with no great damage to public safety, federal courts will find it harder to insist on a need to protect government actors through official immunity. For those reasons, these states propose to do more than just exceed the floor for official liability set by federal law.

This phenomenon of states rejecting federal law is not new, nor is it limited to qualified immunity. For many years and across many areas of law, from eminent domain to antitrust, states have intentionally departed from federal law in ways that challenge the simple metaphor of floors and ceilings.

## Advantage 1

### !D---Arrogance---2NC

#### It’s a neo-Malthusian myth and checked by global mechanisms.

Drezner 23 – Professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University

Daniel, “Are we headed toward a “polycrisis”? The buzzword of the moment, explained.,” Vox, Jan 28, 2023, https://www.vox.com/23572710/polycrisis-davos-history-climate-russia-ukraine-inflation

This warning generated a lot of hand-wringing on the narrow streets of Davos. Little wonder — a “polycrisis” sounds pretty bad! But it also sounds to some like a confusing and redundant neologism. In the opening Davos panel, historian Niall Ferguson rejected the term, explaining it as “just history happening.” In a bit of hot FT-on-FT action, columnist Gideon Rachman characterized polycrisis as one of his least favorite terms, asking, “Does it actually mean anything?”

As someone who has written a book about zombie apocalypses and taught a course about the end of the world, I have a smidgen more sympathy for the polycrisis concept. I think its proponents are trying to get at something more than just history happening. They are putting a name to the belief that a more interconnected, complex world is vulnerable to an interconnected, complex global catastrophe.

That is a legitimate concern. Just because the concept of a polycrisis is real, however, does not mean that the logic behind a polycrisis is ironclad. Some of it echoes 1970s concerns about resource depletion combined with an increasing population — in other words, neo-Malthusianism gussied up to sound fancy. A lot more of it can be reduced to concerns about climate change, which are real but not poly-anything. Those warnings about a polycrisis might be well-intentioned, but they also assume the existence of powerful negative feedback effects that may not actually exist.

The future will not be crisis-free by any stretch of the imagination — but the notion of a polycrisis might do more harm than good in attempting to get a grip on the systemic risks that threaten humanity.

The history of the idea of the polycrisis

As with many buzzwords foretelling despair, the origins of polycrisis can be blamed on the French.

In their 1999 book Homeland Earth: A Manifesto for the New Millennium, French complexity theorist Edgar Morin and his co-author Anne Brigitte Kern warned of the “complex intersolidarity of problems, antagonisms, crises, uncontrollable processes, and the general crisis of the planet.” Other academics began using the term in a similar way. European Commission President Jean-Claude Juncker adopted the term to characterize the cluster of negative shocks triggered by the 2008 financial crisis.

So far, so redundant — none of these initial references really seem to mean much beyond “A Big, Bad Catastrophe.” Tooze’s initial column and Substack post, however, referenced the work of political scientists Michael Lawrence, Scott Janzwood, and Thomas Homer-Dixon. They work at the Cascade Institute, a Canadian research center focusing on emergent and systemic risks. In a 2022 working paper, they provide the fullest etymology of “polycrisis” and what they mean by it.

So what the hell is a polycrisis? The quick-and-dirty answer is that it’s the concatenation of shocks that generate crises that trigger crises in other systems that, in turn, worsen the initial crises, making the combined effect far, far worse than the sum of its parts.

The longer answer requires some familiarity with how complex systems work. Complex systems can range from a nuclear power plant to Earth’s ecosystem. In tightly wound and complex systems, not even experts can be entirely sure how the inner workings of the system will respond to stresses and shocks. Those who study systemic and catastrophic risks have long been aware that crises in these systems are often endogenous — i.e., they often bubble up from within the system’s inscrutable internal workings.

For example, when Lehman Brothers declared Chapter 11 in September 2008, few observers understood that Lehman’s bankruptcy would cause panic in money market funds. That was a relatively risk-free asset class seemingly far removed from the subprime mortgage debt that felled Lehman.

Except the Reserve Primary Fund, the oldest money market fund in the country, had invested some of its assets at Lehman, which had enabled it to offer a slightly higher rate of return. With those investments frozen by Lehman’s bankruptcy, the Reserve Primary Fund had to “break the buck” and price its fund below a dollar — hitherto unthinkable for a fund that was seen as pretty secure. That caused credit markets everywhere to seize up, and the Great Recession unfolded. The crisis cascaded so quickly that it was impossible for regulators and central banks to get out in front of the disaster wave.

The folks who warn about a polycrisis argue that it is not just components within a single system that are tightly interconnected. It is the systems themselves — health, geopolitics, the environment — that are increasingly interacting and tightly coupled. Therefore, if one system malfunctions, the crisis might trigger other systems to fail, leading to catastrophic negative feedback effects across multiple systems and affecting the entire world. Or, as Lawrence, Janzwood, and Homer-Dixon put it in their paper:

The core concern of the concept is that a crisis in one global system has knock-on effects that cascade (or spill over) into other global systems, creating or worsening crises there. Global crises happen less and less in isolation; they interact with one another so that one crisis makes a second more likely and deepens their overall harms. The polycrisis concept thus highlights the causal interaction of crises across global systems.

Think of rising commodity prices triggering the Arab Spring in 2010. Or think of the vicissitudes of the Covid-19 pandemic helping to trigger both the stresses in global supply chains and social dysfunction. These are examples of one systemic crisis generating another systemic crisis. Imagine all the myriad crises that climate change can trigger — from food scarcity to new pandemics to a surge in migration. The Cascade Institute paper defines a polycrisis as when three or more systems wind up being in crisis at the same time.

Given all the interconnections in the current moment, a polycrisis is not hard to conceive. To contemplate it is to be overwhelmed by catastrophic possibilities. Here, look at Tooze’s chart:

**[Figure Omitted]**

Or look at the World Economic Forum’s similar chart:

**[Figure Omitted]**

Or, if you prefer sci-fi narratives as a means to better comprehension, watch this clip from Amazon Prime’s The Peripheral, which talks about a cluster of events called “The Jackpot” in a way that sounds awfully similar to a polycrisis.

How real is the polycrisis?

Take a second now and consider all the shocks that have buffeted you, dear reader, in the past few years alone.

There is the largest land war in Europe in recent memory, a devastating pandemic, the surge in refugee flows, high inflation, fragile global governance, and the leading democracies turning inward as they face populist challenges at home. It seems easy — and enervating — to believe that the polycrisis is upon us.

The thing about the previous paragraph is that it does not just describe the current moment; it also captures the global situation almost exactly a century ago. The First World War devastated Europe. The war also helped to facilitate the spread of the influenza pandemic through troop movements and information censorship. The costs of both the war and the pandemic badly weakened the postwar order, leading to spikes in hyperinflation, illiberal ideologies, and democracies that turned inward. All of that transpired during the start of the Roaring ’20s; the world turned much darker a decade later.

So maybe Niall Ferguson has a point; what some are calling a polycrisis could just be history rhyming with itself.

Those warning about a polycrisis vigorously dispute this. They argue that the growing synchronization and interconnectivity of systemic risks increases the chance of a polycrisis. As one recent New York Times op-ed co-authored by Homer-Dixon explained, “complex and largely unrecognized causal links among the world’s economic, social and ecological systems may be causing many risks to go critical at nearly the same time.”

These concerns are borderline Malthusian. Thomas Malthus famously warned that the human population would exponentially outstrip mankind’s capacity to grow food. This proved to be spectacularly wrong, but the power of Malthusian logic remains. Neo-Malthusians are less concerned about food specifically and more about human civilization outstripping other necessary resources.

In the same op-ed, Homer-Dixon and co-author Johan Rockström worry that “the magnitude of humanity’s resource consumption and pollution output is weakening the resilience of natural systems.” The WEF report ranked a “cost-of-living crisis” as the most severe global risk over the next two years.

Concerns about climate change should not be minimized. At the same time, there are ways in which the notion of a polycrisis obfuscates more than it reveals.

Looking at the charts above makes it seem as though little can be done to prevent a polycrisis. Indeed, the Cascade Institute paper is written as though the polycrisis has already happened.

This sort of framing is bound to generate a sense of helplessness in the face of overwhelming complexity and crisis. In The Rhetoric of Reaction, Albert Hirschman warned about the “futility thesis” — the rejection of preventive action due to a fatalistic belief that it is simply too late.

It is far from obvious that there will be a polycrisis (let alone that we’re already in one). As the economist Noah Smith pointed out in his rejoinder to Tooze, its proponents underestimate how much “the global economy and political system are full of mechanisms that push back against shocks.”

Indeed, for all the concerns that have been voiced over the past two years about global supply chain stresses and rampant inflation, both of those trends appear to have reversed themselves quite nicely. Complaints about scarce container ships and computer chips that dominated 2021 have turned into stories about gluts in both markets.

On the sociopolitical side of the ledger, it is noteworthy that as societies emerge from the pandemic, indicators of social dysfunction might start to subside. Political populism has actually been trending downward for the past year or so. Even skeptics of democracy have noticed that autocracies have been facing greater challenges as of late than democracies.

Malthusian arguments rest on producers being unable to keep pace with growing demand, and modern history suggests that the Malthusian logic has been proven wrong time and again. Homer-Dixon in particular has been a strong proponent of neo-Malthusian arguments, positing for decades that resource scarcity would lead to greater international violence. So far, the scholarly research testing his claim has found little empirical support for the hypothesis.

Predicting the unpredictable

The deeper flaw in the polycrisis logic is the presumption that one systemic crisis will inexorably lead to negative feedback effects that cause other systems to tip into crisis.

If this assumption does not hold, then the whole logic of a single polycrisis falls apart. To their credit, the Cascade Institute authors acknowledge that this might not happen, but they posit: “it seems more likely that causal interactions between systemic crises will worsen, rather than diminish, the overall emergent impacts.”

At first glance, this seems like a plausible assumption to make. Remember, however, that the proponents of a polycrisis also assert that the systems under stress are highly complex, leading to unpredictable cause-and-effect relationships. If that is true, then presuming that one systemic crisis would automatically exacerbate stresses in other systems seems premature at best and skewed at worst.

Indeed, over the last year there have been at least two examples of one systemic crisis actually lessening stress on another system.

China’s increasingly centralized autocracy generated a socioeconomic disaster in the form of “zero Covid” lockdowns. Xi Jinping kept that policy in place long after it made any sense, accidentally throttling China’s economy. The timing of China’s lockdown was fortuitous, however, as stagnant Chinese demand helped prevent an inflationary spiral from getting any worse. China’s exit from zero-Covid will likely also be countercyclical, jump-starting economic growth at a time when other regions tip into recession.

Another weird, fortuitous interaction has been the one between climate change and Russia’s invasion of Ukraine. As Europe aided Ukraine and resisted Russia’s blatant, illegal actions, Russia retaliated by cutting off energy exports. Many were concerned that Russia’s counter-sanctions would make this winter extremely hard and expensive for Europe.

Climate change may have provided a weird geopolitical assist to Europe, however. The warming climate is likely connected to Europe’s extremely temperate fall and winter. That, in turn, has required less electricity for heating, leaving the continent with plenty of energy reserves to last the winter. Russia’s ability to wreak havoc on the European economy has been circumscribed.

### !D---Pandemics---1NC

#### 4. Pandemics won’t cause extinction.

Pappas 23 – Science journalist, quoting Amesh Adalja, infectious disease physician at the Johns Hopkins Center for Health Security.

Stephanie Pappas, March 21, 2023, “Will Humans Ever Go Extinct?” Scientific American, https://www.scientificamerican.com/article/will-humans-ever-go-extinct/

The end of humanity is far more likely to be brought about by multiple factors, Kemp says—a pileup of disasters. Though apocalyptic movies often turn to viruses, bacteria and fungi to wipe out huge swathes of population, a pandemic alone is unlikely to drive humanity to extinction simply because the immune system is a broad and effective defense, says Amesh Adalja, an infectious disease physician at the Johns Hopkins Center for Health Security. A pandemic could be devastating and lead to severe upheaval—the Black Death killed 30 to 50 percent of the population of Europe—but it’s unlikely that a pathogen would kill all of humanity, Adalja says. “Yes, an infectious disease could kill a lot of people,” he says, “but then you’re going to have a group [of people] that are resilient to it and survive.”

Humans also have tools to fight back against a pathogen, from medical treatments to vaccines to the social-distancing measures that became familiar worldwide during the COVID pandemic, Adalja says. There is one example of a mammalian species that may have been entirely wiped out by an infectious disease, he says: the Christmas Island rat (Rattus macleari), also called Maclear’s rat, an endemic island species that may have gone extinct because of the introduction of a parasite.

“We are not helpless like the Christmas Island rat who couldn’t get away from that island,” Adalja says. “We have the ability to change our fate.”

### !D---Pandemics---AT: War---2NC

#### Disease disincentivizes war.

Posen 20 – Ford International Professor or Political Science at MIT & Director of MIT’s Security Studies Program.

Barry R. Posen, “Do Pandemics Promote Peace?,” 04-23-20, https://www.foreignaffairs.com/articles/china/2020-04-23/do-pandemics-promote-peace

As the novel **coronavirus infects the globe**, states compete for scientific and medical supplies and blame one another for the pandemic’s spread. Policy analysts have started asking whether such tensions could eventually erupt into military conflict. Has the pandemic increased or decreased the motive and opportunity of states to wage war?

War is a **risky business**, with potentially very high costs. The historian Geoffrey Blainey argued in *The Causes of War* that most wars share a **common characteristic** at their outset: **optimism**. The belligerents usually start out sanguine about their odds of military success. When elites on both or all sides are confident, they are more willing to take the plunge—and less likely to negotiate, because they think they will come out better by fighting. Peace, by contrast, is served by pessimism. **Even one party’s pessimism can be helpful**: that party will be **more inclined** **to negotiate** and even accept an **unfavorable bargain** in order **to avoid war**.  
  
When one side gains a sudden and pronounced advantage, however, this **de-escalatory logic** can **break** **down**: the **optimistic side** will **increase** its demands faster than the **pessimistic side** can appease. Some analysts worry that something like this could happen in U.S.-Chinese relations as a result of the new coronavirus. The United States is experiencing a moment of domestic crisis. China, some fear, might see the pandemic as playing to its advantage and be tempted to throw its military weight around in the western Pacific.  
  
What these analysts miss is that COVID-19, **the disease caused** by the **coronavirus**, is weakening all of the great and middle powers **more or less equally**. None is likely to gain a **meaningful advantage over** the others. All will have ample reason to be pessimistic about their **military capabilities** and their overall readiness for war. For the duration of the pandemic, at least, and probably for years afterward, the **odds of a war between** major powers **will go down**, no

t up.

**PAX EPIDEMICA?**

A cursory survey of the scholarly literature on war and disease appears to confirm Blainey’s observation that pessimism is conducive to peace. Scholars have documented again and again how **war creates permissive conditions** for disease—in **armies** as well as **civilians** in the fought-**over territories**. But one seldom finds any discussion of epidemics causing wars or of wars deliberately started in the middle of widespread outbreaks of infectious disease. (The diseases that European colonists carried to the New World did weaken indigenous populations to the point that they were more vulnerable to conquest; in addition, some localized conflicts were fought during the influenza pandemic of 1919–21, but these were occasioned by major shifts in regional balances of power following the destruction of four empires in World War I.)

That sickness slows the march to war is partly due to the fact that war depends on people. When people fall ill, they can’t be counted on to perform well in combat. Military [medicine](https://www.foreignaffairs.com/articles/world/2022-02-28/when-antibiotics-stop-working) made enormous strides in the years leading up to World War I, prior to which **armies suffered** higher **numbers of casualties** **from disease than from combat**. But **pandemics still threaten military units**, as those onboard U.S. and French aircraft carriers, hundreds of whom tested positive for COVID-19, know well. Sailors and soldiers in the field are among the most vulnerable because they are packed together. But even airmen are at risk, since they must take refuge from air attacks in bunkers, where the virus could also spread rapidly.  
  
**Ground campaigns** in urban areas pose still **greater dangers in pandemic times**. Much recent ground combat has been in cities in poor countries with few or no public health resources, environments highly favorable to illness. Ground combat also usually produces prisoners, any of **whom can be infected**. A vaccine may eventually solve these problems, but an abundance of caution is likely to persist for some time after it comes into use.