# 1AR---Dartmouth---Round 7

## Adv---Norms

## Adv---Filing

### Link Turn---Assest Value---1AR

#### Employee inclusion acts as a financial early warning system, ensuring long-term stability.

Knopf ’25 [John and Kristina Lalova; February 2025; Associate Professor of Finance at the University of Connecticut; Assistant Professor of Finance at Michigan State University; SSRN, “Predicting Bankruptcy: Ask the Employees,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=4399476]

Our paper demonstrates that employee satisfaction is a powerful predictor of bankruptcy across different phases of the bankruptcy process – years before filing, immediately before filing, and during the restructuring or liquidation phase. We find that two to three years before bankruptcy, employee sentiment provides an early warning signal, outperforming traditional financial models in predictive accuracy. Employees possess unique insider knowledge about operational inefficiencies and declining workplace conditions that financial statements fail to capture at such an early stage. However, in the year leading up to bankruptcy, financial indicators become dominant, reflecting distress that was previously only visible to employees.

When we incorporate employee satisfaction into established bankruptcy prediction models, we observe significant improvements in their predictive performance. Employees’ attitudes enhance the models’ ability to detect financial distress earlier, strengthens their in-sample fit, and improves out-of-sample forecasting accuracy. This suggests that employee satisfaction complements financial metrics rather than merely duplicating their predictive power. Furthermore, during the bankruptcy process itself, employees’ attitudes play a critical role in predicting whether a firm will successfully emerge from bankruptcy or face liquidation. Higher employee satisfaction is strongly associated with successful reorganizations, highlighting the importance of human capital in corporate recovery

We further extend our analysis by leveraging advanced machine learning techniques to assess employees’ attitudes from textual reviews. Our results show that qualitative feedback from employees contains rich predictive signals beyond numerical satisfaction ratings, underscoring the depth of employee insight into corporate distress. This finding contributes to the growing literature on alternative data sources for financial risk assessment.

We use a Cox proportional hazards model to test whether employee satisfaction, financial and market data increase the hazard of bankruptcy emergence. We test whether the company would emerge from bankruptcy given their time of filing to their time of liquidation/restructuring. Our results suggest a complex temporal relationship between employee satisfaction and bankruptcy emergence. While higher employee satisfaction one year before filing may delay emergence, possibly due to reorganization efforts prioritizing employee concerns, higher satisfaction two years before filing appears to facilitate eventual emergence. This pattern suggests that the timing of employee satisfaction measurements relative to bankruptcy filing is crucial in understanding its impact on corporate restructuring outcomes.

Overall, our findings suggest that employees' perspectives offer valuable, forward-looking information that traditional financial models overlook. The results highlight the need for bankruptcy prediction models that incorporate workforce sentiment to improve risk assessment and credit analysis. Future research should explore the causal mechanisms underlying the relationship between employee satisfaction and financial distress, as well as the broader implications of workforce morale for corporate stability and long-term performance.

#### Absent discipline, inefficient invocations of bankruptcy create economic disruptions.

Kimhi ’15 [Omer and Arno Doebert; August 15; Assistant Professor at the University of Haifa Faculty of Law; Doctoral candidate at Bucerius Law School, Associate at Reimer Rechtsanwälte, Hamburg; American Bankruptcy Institute Law Review, “Bankruptcy Law as a Balancing System: Lessons from a Comparative Analysis of the Intersection between Labor and Bankruptcy Laws,” vol. 23]

The second, and perhaps more important, argument for the preservation of non-bankruptcy entitlement is that not only is a bankruptcy specific change in substantive rights not justified, it can also be damaging. Bankruptcy specific changes create bankruptcy abuse and forum-shopping effects, and these effects decrease debtors' value and harm the social welfare. Douglas Baird explains the problem of forum shopping through the following example.182 Imagine there are two cities, each with its own courthouse. The reason for building two courthouses is to allow the residents of each city to resolve their disputes close to where they reside-without having to spend unnecessary traveling costs. If, however, the two courthouses adjudicate cases according to a different set of substantive rules, then the purpose of having two courthouses will be defeated. Litigants will choose the court that applies the rules which maximize their chances of success, even when adjudication in that courthouse imposes unnecessary traveling costs on all parties. The same is true with regard to bankruptcy and non-bankruptcy forums. The goal of creating a bankruptcy specific collection system is to maximize the debtor's value when it becomes insolvent. If, however, substantive laws change as a result of the bankruptcy filing, then the debtor and creditors will choose the forum that implements the law most favorable to their individual claims. They may invoke bankruptcy in order to gain advantages from the substantive law modifications, even when the bankruptcy reduces the debtor's value for all other claimants. This creates economic inefficiency, and in a sense reintroduces the very problem bankruptcy is designed to solve 183

#### The plan does not end bankruptcy filings, it weeds out economically extraneous cases.

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The first problem the labor modifications present is bankruptcy abuse. This means that debtors use bankruptcy proceedings in order to enjoy the labor law privileges bankruptcy law affords, even when there is no real financial or economic necessity for the filing. Since the employer cannot easily dismiss employees outside bankruptcy, he files for bankruptcy and thereby bypasses the general labor law hudles. The existence of bankruptcy abuse is damaging both to employees and to society as a whole. From the employees' perspective, they do not receive the protections they deserve. If outside bankruptcy dismissed employees are entitled to compensation, to a notice period, or to certain procedural benefits, the filing deprives them of these rights and forces them to accept less for their terminations. From a societal perspective the bankruptcy abuse is an unrequired cost. A bankruptcy process is very expensive (it involves lawyers, judges, economic consultants and more), and an unnecessary filing wastes resources with no social gains.225 The bankruptcy decreases firms' value and raises credit prices. 226 Judicial systems, therefore, should aim to minimize bankruptcy abuses, and decrease parties' incentives to file for bankruptcy when there is no financial or economic need to do so.

The European systems, however, seem to do the opposite. Although few empirical studies have been conducted on bankruptcy abuse in Europe, from the few studies that have been conducted, especially in the Netherlands, it is clear that the phenomenon is not negligible. In research conducted in 1996, for example, Roger Knegt examined this problem by looking into 286 bankruptcy cases (including interviews with administrators and debtors).227 He reports that in eight percent of the cases the need to reduce employment costs was indicated as an important motive for the bankruptcy filing.228 In all these cases, the firm filed for liquidation bankruptcy (in order to enjoy the labor law privileges),229 yet it was not liquidated but rather sold to a buyer that was linked to the firm's former management or shareholders. The firm continued as a new legal entity, but with similar or resembling ownership or leadership. 230 Knegt explains that, although formally prohibited, management and shareholders in these cases used the bankruptcy process in order to circumvent regular labor laws and reduce employment costs in ways unavailable outside of bankruptcy. 231 A more recent study conducted in 2005 confirms the existence of bankruptcy abuse, although on a smaller scale. This study, which focused on 868 bankruptcy cases, shows that approximately four percent of the bankruptcies were filed in order to cut employees' surplus.232 In addition, most of the trustees interviewed for the study said that they are inclined to almost always consider a "technical bankruptcy" as a legitimate way out of financial difficulties. 233 The vast number of trustees that consider bankruptcy abuse as a solution to a firm's economic distress may indicate that the number of unnecessary filings is even greater than the numbers Knegt et al., report.

But bankruptcy abuse is only part of the problem. Even when the bankruptcy filing is economically justified, forum-shopping among different bankruptcy proceedings can create social damage. When a jurisdiction offers several types of bankruptcy procedures-some with labor law modifications and others without-firms tend to choose the bankruptcy procedure that maximizes their labor law privileges, rather than choose the more economically efficient procedure. To better explain this argument, we first examine the different bankruptcy procedures we refer to, and then show the difficulties bankruptcy labor modifications create.

#### The plan would mitigates perverse CBA rejections that do not promote reorganization.

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The foregoing analysis, we believe, can teach us valuable lessons, both theoretical and practical. From a theoretical perspective, the analysis sheds light on the debate between the traditional and procedural approaches to bankruptcy. It shows that even when bankruptcy specific modifications are designed to promote reorganizations, they do not necessarily achieve this goal. Facilitating the termination of employees in bankruptcy may help distressed corporations continue as going concerns, but it also creates perverse incentives that cause forum shopping and bankruptcy abuse. This observation substantiates the arguments brought by the procedural approach. The procedural approach calls for uniformity between the laws in and outside bankruptcy, and this Article shows the consequences of the absence of such uniformity with regard the Netherlands, and to a lesser extent with regard to France and Germany.

From a practical perspective, the analysis is very relevant to the on-going 268 debate regarding the rejection (termination) of collective bargaining agreements. In the United States, outside a bankruptcy procedure, an employer is unable to unilaterally terminate or modify a collective bargaining agreement. 269 A breach of the collective agreement's terms constitutes an unfair labor practice, and may result in proceedings against the employer. 270 Despite the dominant role of the procedural approach in the U.S. bankruptcy law, with respect to collective bargaining agreements, bankruptcy law somewhat changes this legal rule. According to section 1113 of the Bankruptcy Code, 2 71 a debtor in possession may ask the court to unilaterally reject a collective agreement in order to make some necessary modifications and allow the debtor's reorganization. 272 The court examines whether the debtor meets certain conditions specified in the section, and if the conditions are met the debtor is allowed to reject the agreement despite the union's objection.273

Although section 1113 was enacted almost thirty years ago, it is still subject to fierce debate between traditionalists and proceduralists. Whereas traditionalists argue that the section properly balances between the employees and other stakeholders,2 74 the proceduralists oppose the Code's current policy and maintain that the unions' rights should also be respected inside a bankruptcy process.275 [start footnote 275] 275 JACKSON, supra note 7, at 194 ("Outside of bankruptcy, collective bargaining agreements cannot be unilaterally avoided .... In bankruptcy, however, it has been held that collective bargaining agreements are executory contracts that can be rejected, a solution codified in section 1113. This represents a substantive rule change in bankruptcy that is unrelated to a common pool problem. Predictably it creates incentives to use the bankruptcy process simply to gain access to that rule change."). See also BAIRD, supra note 184, at 126 27. Baird agrees with Jackson, but believes the effects of section 1113 should not be exaggerated. See id. at 127. The rejection process set forth in section 1113 does accelerate the end of the collective bargaining agreement, but the management and the unions must still come to terms [end footnote 275] This debate also echoes in different interpretations given to conditions specified in the section by the courts. In the Wheeling-Pittsburgh case the Third Circuit held that the modification to collective bargaining agreements must be "essential" to prevent liquidations in the short term, and that the court should approve only those minimum modifications required to permit reorganizations.276 The Second Circuit, on the other hand, held that the section 1113 standard requires that the debtor's proposed modifications would only increase the likelihood of successful reorganization, and it did not obligate the debtor to offer the bare minimum modifications required to prevent liquidation. 277

The comparative analysis provided in this Article sheds light on this debate, and favors the procedural approach. First, it shows that the greater the gap between the substantive law in and outside bankruptcy, the stronger the forum shopping effects and the dangers of bankruptcy abuse. This effect may be even more relevant in the United States than in Europe, since here the appointment of trustees is not mandatory. The debtor's management retains its control over the debtor, and so it may be more willing to file for bankruptcy in order to cut employment costs. Second, even if we subscribe to a more traditional approach to bankruptcy, there is no point in weakening the unions' powers. The unions themselves have an interest to avoid liquidations, and they should agree to modifications of the collective agreements when such modifications are required to keep the debtor as going concern. As we have seen, even in France and in Germany, which make substantial changes to the general labor laws, the status of the works councils is maintained also inside the bankruptcy procedure.

In the debate between the proceduralists and traditionalists on section 1113, therefore, we support the former. We see no reason to allow the rejection of collective bargaining agreements notwithstanding the unions' objection, especially if the modifications are not "essential" to the successful reorganization of the debtor in the short term. Although modifications to labor protections are sometimes beneficial, forcing them contrary to the interests of the majority of employees enables other stakeholders to transfer value from the employees' pockets to their own. This creates bankruptcy abuse and forum shopping, and at the end of the day decreases social welfare.

### Econ DA---Link Turn---1AR

### Econ DA---UQ---1AR

#### Frivolous matters because labor interests mitigate recession risks. Every worker matters!

Liscow ’16 [Zachary; 2016; Associate Professor, Yale Law School; Columbia Law Review, “Counter-Cyclical Bankruptcy Law,” vol. 116]

This Article builds on insights from macroeconomics showing that departing from these neoclassical assumptions reverses these conclusions.32 Although no specific model is required for the results here, these macroeconomics models provide useful conceptual frameworks for understanding how the results might arise. In general, bankruptcy serves the important function of reallocating capital and labor to more productive uses.33 But this result does not necessarily apply in recessions. Whether due to sticky information,34 sticky wages,35 or some other cause, reallocation does not work as well during recessions. Capital is underutilized. Workers lose their jobs and then become unemployed; they are not reallocated. One way to understand this phenomenon is through the presence of sticky wages. Labor demand falls, but wages do not. As a result, when workers are laid off, they are not re-employed. The economy stays in a recession, so capital too is underutilized. This market failure may justify “interference” with the value-maximizing role of bankruptcy.

Two positive externalities result from keeping workers employed. First, the government does not have to incur spending on items like unemployment insurance required for unemployed workers; due to long unemployment durations, this spending is unusually high during recessions for each job lost.36 Second, as John Maynard Keynes argued in the first half of the twentieth century, keeping one worker employed results in a “multiplier,” through which increased spending by one employed worker results in more employment, further increasing spending and therefore employment.37 Thus, spending a dollar to keep a worker employed is worth more than a dollar in increased economic output.38

### Econ DA---Link Turn---Spillover---1AR

#### Firms are interconnected. Bankruptcy ripples.

Song ’24 [Hao and Xiaoxia Zhao; January 23; Professor at the School of Civil, Commercial and Economics Law, Henan University of Economics and Law; Associate Professor at the School of Applied Science, Jiangxi University of Science and Technology, and the School of Public Administration and Policy, Nanchang University; Finance Research Letters, “The Unexpected Consequences of Company Bankruptcy: An Investigation Into the Spillover Effect of Local Economic Liquidation,” vol. 61]

Bankruptcy is a momentous occurrence in the business realm, frequently accompanied by a surge of media coverage, legal actions, and financial evaluations. The ramifications of bankruptcy, namely for the corporation undertaking the procedure, have been extensively scrutinized and recorded (Yuan et al., 2023). Nevertheless, the impact of firm bankruptcy on the local economies in which they operate has yet to be given as much consideration. This study explores an overlooked aspect of bankruptcy, aiming to reveal any unforeseen outcomes that may occur following corporate insolvency. The importance of this inquiry resides in the framework of China's swiftly changing economic terrain. China, being one of the largest and most vibrant economies globally, has experienced a significant increase in corporate bankruptcies in the last ten years. The causes are diverse, encompassing economic downturns as well as government actions intended to reduce overcapacity and foster economic reform. Consequently, it is now more crucial than ever to comprehend the consequences of these bankruptcies that go beyond their immediate effects on individual companies. In the realm of corporate bankruptcy, the spillover effect refers to the unanticipated and unintentional economic repercussions that might spread throughout the regions and industries closely linked to the bankrupt company. There is a need for more empirical studies in this field, although their importance is growing. Bankruptcy can elicit various responses from suppliers, creditors, employees, and local communities. Furthermore, the abrupt decline in economic activity could have an adverse impact on local property values, municipal tax income, and community welfare. The ramifications of corporate bankruptcy extend well beyond the confines of company boardrooms and financial statements. The phenomenon has a widespread impact on economies and societies, resulting in unforeseen and significant outcomes. Amidst the current era of globalized markets and interconnected financial systems, comprehending the spillover impact of corporate insolvency on local economies has become progressively vital. This study aims to examine the complex process of economic liquidation that arises from corporate insolvency, with a specific emphasis on China. The significance of this research is magnified by China's dynamic economic landscape, which is recognized as one of the largest and most important in the world.

#### Takes down the entire economy.

Song ’24 [Hao and Xiaoxia Zhao; January 23; Professor at the School of Civil, Commercial and Economics Law, Henan University of Economics and Law; Associate Professor at the School of Applied Science, Jiangxi University of Science and Technology, and the School of Public Administration and Policy, Nanchang University; Finance Research Letters, “The Unexpected Consequences of Company Bankruptcy: An Investigation Into the Spillover Effect of Local Economic Liquidation,” vol. 61]

The spillover effect has a wide-ranging impact on various sectors, locations, and industries, resulting in an intricate network of economic consequences. These repercussions frequently materialize as suppliers experience financial hardship (Alramadhan et al., 2017) employees face layoffs and unemployment (Ren et al., 2022) and a decrease in local economic activity that can impact property prices, municipal tax income, and community well-being (Olanrewaju et al., 2017). here needs to be more empirical research on the impact of business bankruptcy on other areas, especially in relation to China (Mitra et al., 2020). However, this research is becoming more relevant due to the increasing number of bankruptcy filings, which is causing concerns about the stability of the overall system and the ability of local economies to recover. The importance of this research is emphasized by the ever-changing economic environment of China, which is one of the major economies globally. In the last ten years, China has experienced a significant increase in corporate bankruptcies. This phenomenon has been influenced by a range of circumstances, such as economic recessions, excessive production capacity, and government initiatives aimed at promoting economic restructuring. With the increasing incidence of bankruptcies, it is crucial to understand the broader consequences of these occurrences. The term "spillover effect" encompasses the main focus of this investigation. It represents the unforeseeable and frequently unintended repercussions that ripple through regions and industries closely linked to a corporation that has gone bankrupt (Li and Umair, 2023). The spillover effect manifests in several ways, impacting suppliers, creditors, employees, and the wider community. There is a need for more empirical research on the spillover consequences of corporate bankruptcy, but its relevance is growing. The bankruptcy of a significant corporation can have a domino effect on the supply chain, leading to financial difficulties for multiple suppliers (Xie et al., 2020). Unemployment among employees might lead to a decrease in consumer expenditure within the region (Wang et al., 2022). In addition, the abrupt decrease in economic activity could have adverse effects on the prices of local properties, municipal tax income, and the overall well-being of the community (Ndubuisi et al., 2021).

### Econ DA---AT: Link

#### If there is a link, the plan reduces labor strife. Otherwise, firm collapse.

Hunter ’22 [Olivia; July 25; J.D. 2022, Columbia Law School, B.A. 2016, Earlham College; Columbia Business Law Review, “A Bankrupt Bargain,” vol. 2022]

Maintaining labor peace is another major reason Congress may have chosen to except expired agreements from rejection. In Accurate Die Casting, the NLRB held that "[t]he obligations which survive the expiration of a collective-bargaining agreement are among the most important that are contained in the agreement," and that "[l]abor peace is preserved by the maintenance of established practices." 304 Indeed, after their expired CBA was rejected In re Trump Entertainment, the unionized workers at Trump's casino went on a prolonged strike that ended in the business's closure. 305 This exemplifies the labor strife that debtor corporations may experience after they reject their unexpired CBAs.306 Because labor law preserves only the most important aspects of a CBA's terms after expiration, such as wages, hours, benefits, and work rules, it makes sense that Congress would provide for the maintenance of the these status quo obligations, while providing flexibility to the debtor through the interim relief provision. 30 7

#### The plan is balanced! Even under ‘good faith’ unions cannot make extraordinary demands.

Slade ’25 [Michael; April 1; Judge, United States Bankruptcy Court for the Northern District of Illinois, Eastern Division; United States Bankruptcy Court for the Northern District of Illinois, “In re VMR Contractors, Inc.,” No. 22-bk-14211]

It is critical to understand that as part of the statutorily directed give-and-take of section 1113, a union cannot demand the impossible from a debtor. See, e.g., Nw. Airlines, 346 B.R. at 328; Karykeion, 435 B.R. at 684 (holding that union failed to show good cause for rejecting proposals where the union made no counterproposal concerning the proposed elimination of the successorship provisions in the CBAs and continued to make demands the debtor could not meet); In re Maxwell Newspapers, Inc., 981 F.2d 85, 90–92 (2d Cir. 1992) (a lack of good cause may be demonstrated by union demands that are impossible for the debtor to meet and failure to offer alternatives that take into account the debtors’ plan); Mission Coal, 2019 WL 1024933, at \*30 (“‘Good cause’ does not include demands that are not economically feasible or alternatives that would not permit the debtor to reorganize successfully.”); Walter Energy, 542 B.R. at 895– 96 (same). For that very reason, while the debtor can (and often does) propose that unions make material sacrifices pursuant to section 1113 where doing so is necessary to its reorganization, the same is true in reverse: a debtor cannot demand something that a union is legally unable to do. If, as in National Forge, “[t]he Union’s insistence that the Debtor provide something which was not within its control indicates that the Union’s refusal to accept Debtor’s proposal was without good cause,” 289 B.R. at 812, then a debtor’s insistence that a union do something not within its control must indicate that the union did have good cause to reject the proposal.

For that reason and that reason alone, I cannot grant the motion filed by VMR at this time. The only proposal made by VMR to Local 1 demanded that a third party which Local 1 did not control make concessions. Local 1, quite literally, could not say “yes” to the proposal. Section 1113 does not permit me to authorize rejection of the CBA under those circumstances because Local 1 had “good cause” for saying “no” to doing something it could not legally do.

But as described above, nothing about this changes the reality facing all of the parties in this chapter 11 case. There is no reason to believe that the CBA can survive reorganization. So, if VMR proposes to simply reject the CBA and provide Local 1 employees with go-forward terms of employment similar to what Mr. Robertson testified at trial they would be, it is hard to see any justification (let alone “good cause”) for Local 1 rejecting such a proposal. Such a proposal could permit VMR to reorganize; it would likely lead to any allowed claim from the Fund being treated exactly as VMR has suggested. Local 1 would likely be in a better position than it is in today because VMR could employ its members; its members would certainly benefit. And the Fund would be able to achieve at least some recovery under a confirmed plan—a recovery likely higher than what it could obtain should VMR have to close its doors. Again, I’m hopeful that after reading this opinion, the parties will resume discussions in this direction, but if they do not, all parties retain their rights under the Bankruptcy Code.

### Econ DA---Link Turn---Asset Value---1AR

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The foregoing analysis, we believe, can teach us valuable lessons, both theoretical and practical. From a theoretical perspective, the analysis sheds light on the debate between the traditional and procedural approaches to bankruptcy. It shows that even when bankruptcy specific modifications are designed to promote reorganizations, they do not necessarily achieve this goal. Facilitating the termination of employees in bankruptcy may help distressed corporations continue as going concerns, but it also creates perverse incentives that cause forum shopping and bankruptcy abuse. This observation substantiates the arguments brought by the procedural approach. The procedural approach calls for uniformity between the laws in and outside bankruptcy, and this Article shows the consequences of the absence of such uniformity with regard the Netherlands, and to a lesser extent with regard to France and Germany.

From a practical perspective, the analysis is very relevant to the on-going 268 debate regarding the rejection (termination) of collective bargaining agreements. In the United States, outside a bankruptcy procedure, an employer is unable to unilaterally terminate or modify a collective bargaining agreement. 269 A breach of the collective agreement's terms constitutes an unfair labor practice, and may result in proceedings against the employer. 270 Despite the dominant role of the procedural approach in the U.S. bankruptcy law, with respect to collective bargaining agreements, bankruptcy law somewhat changes this legal rule. According to section 1113 of the Bankruptcy Code, 2 71 a debtor in possession may ask the court to unilaterally reject a collective agreement in order to make some necessary modifications and allow the debtor's reorganization. 272 The court examines whether the debtor meets certain conditions specified in the section, and if the conditions are met the debtor is allowed to reject the agreement despite the union's objection.273

Although section 1113 was enacted almost thirty years ago, it is still subject to fierce debate between traditionalists and proceduralists. Whereas traditionalists argue that the section properly balances between the employees and other stakeholders,2 74 the proceduralists oppose the Code's current policy and maintain that the unions' rights should also be respected inside a bankruptcy process.275 [start footnote 275] 275 JACKSON, supra note 7, at 194 ("Outside of bankruptcy, collective bargaining agreements cannot be unilaterally avoided .... In bankruptcy, however, it has been held that collective bargaining agreements are executory contracts that can be rejected, a solution codified in section 1113. This represents a substantive rule change in bankruptcy that is unrelated to a common pool problem. Predictably it creates incentives to use the bankruptcy process simply to gain access to that rule change."). See also BAIRD, supra note 184, at 126 27. Baird agrees with Jackson, but believes the effects of section 1113 should not be exaggerated. See id. at 127. The rejection process set forth in section 1113 does accelerate the end of the collective bargaining agreement, but the management and the unions must still come to terms [end footnote 275] This debate also echoes in different interpretations given to conditions specified in the section by the courts. In the Wheeling-Pittsburgh case the Third Circuit held that the modification to collective bargaining agreements must be "essential" to prevent liquidations in the short term, and that the court should approve only those minimum modifications required to permit reorganizations.276 The Second Circuit, on the other hand, held that the section 1113 standard requires that the debtor's proposed modifications would only increase the likelihood of successful reorganization, and it did not obligate the debtor to offer the bare minimum modifications required to prevent liquidation. 277

The comparative analysis provided in this Article sheds light on this debate, and favors the procedural approach. First, it shows that the greater the gap between the substantive law in and outside bankruptcy, the stronger the forum shopping effects and the dangers of bankruptcy abuse. This effect may be even more relevant in the United States than in Europe, since here the appointment of trustees is not mandatory. The debtor's management retains its control over the debtor, and so it may be more willing to file for bankruptcy in order to cut employment costs. Second, even if we subscribe to a more traditional approach to bankruptcy, there is no point in weakening the unions' powers. The unions themselves have an interest to avoid liquidations, and they should agree to modifications of the collective agreements when such modifications are required to keep the debtor as going concern. As we have seen, even in France and in Germany, which make substantial changes to the general labor laws, the status of the works councils is maintained also inside the bankruptcy procedure.

In the debate between the proceduralists and traditionalists on section 1113, therefore, we support the former. We see no reason to allow the rejection of collective bargaining agreements notwithstanding the unions' objection, especially if the modifications are not "essential" to the successful reorganization of the debtor in the short term. Although modifications to labor protections are sometimes beneficial, forcing them contrary to the interests of the majority of employees enables other stakeholders to transfer value from the employees' pockets to their own. This creates bankruptcy abuse and forum shopping, and at the end of the day decreases social welfare.

## T---CBR

### T---CBR---CI---1AR

### T---CBR---Precision---1AR

#### Our interp is enshrined in statute and history AND has clear intent to define.

Kaufman ’82 [Joseph S., Linda R. Hirshman; April 21; Attorney for Petitioners, Baltimore, Maryland; Attorney for Respondent, Chicago, Illinois; Supreme Court of the United States, “Oral Arguments: Jackson Transit Authority et al. v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC,” No. 81-411]

MRS. HIRSHMAN: No. Your Honor, the Congress made it I think quite clear what it was intending to do in this case. Without amending the National Labor Relations Act it was requiring the recipients of federal transit grants to make binding [\*22] commitments to their employees and also to the United States that they would not divest the employees of their labor rights, and they are enumerated in the statute.

QUESTION: So you think the condition was that they subject themselves to the National Labor Relations Act?

MRS. HIRSHMAN: No. I think that the condition was that they continue collective bargaining rights as that --

QUESTION: What rights? What rights?

MRS. HIRSHMAN: Well, in this case it's the right to a binding collective bargaining agreement. If there's one thing that we --

QUESTION: Under what?

MRS. HIRSHMAN: Pardon me?

QUESTION: Under what, what right to a collective bargaining agreement, the federal right?

MRS. HIRSHMAN: Yes, Your Honor.

QUESTION: So you say yes, they were agreeing to subject themselves to the National Labor Relations Act?

MRS. HIRSHMAN: To the rights that were created by the Labor Act which by virtue --

QUESTION: So your answer is yes, they just, that's the way you construe the act.

MRS. HIRSHMAN: It was preserved to them through the vehicle of Section 13(c).

QUESTION: All right. So in order to get the grant they had to agree to be bound by the National Labor Relations Act.

Is that what [\*23] you’re saying?

MRS. HIRSHMAN: What I'm saying is that the substantive rights that we understand when we use the phrase collective bargaining rights includes certainly the years of history under the National Labor Relations Act, including binding collective bargaining agreements.

QUESTION: Well, let me ask, let me ask you this. Suppose there was a collective bargaining agreement in effect and the city says, well, sure, we'll continue that collective bargaining agreement for as long as it lasts. Well, the contract expires, and so there's no more contract rights right then, and then you say, well, now you must bargain for another one.

MRS. HIRSHMAN: Right.

QUESTION: Now, what right is there to do that? I mean, what -- is the basis for it the National Labor Relations Act?

MRS. HIRSHMAN: The basis for it is Section 13(c) of the Urban Mass Transportation Act which obliged them --

#### CBAs are *the* critical ‘CBR’ and aligns with Congressional intent.

Kaufman ’82 [Joseph S., Linda R. Hirshman; April 21; Attorney for Petitioners, Baltimore, Maryland; Attorney for Respondent, Chicago, Illinois; Supreme Court of the United States, “Oral Arguments: Jackson Transit Authority et al. v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC,” No. 81-411]

Now, if there's one thing that collective bargaining rights means, it means that when you sign a collective bargaining agreement, it is binding on the parties and enforceable by them. That was certainly Congress' understanding in 1964. That is certainly the only reasonable understanding of the language of the act. And that is what the sponsor of the act said about collective bargaining rights when he amended the preparatory language of encouragement to make collective bargaining rights mandatory. Senator Morse said if we only wanted to nudge the recipients of federal grants with language of encouragement, then, he said, under the committee's indefinite language, collective bargaining agreements could be ignored or set aside by systems of public ownership. <<TEXT CONDENSED, NONE OMITTED>> QUESTION: Where is the language you are referring to, on what page? MRS. HIRSHMAN: Page 15 of our brief, Justice Burger. So that we know I think from the passage of the act through Congress, we know two things. First of all, we know that Congress was not intending to nudge transit authorities. Congress was intending -- and they had that option. They had [\*27] the language of encouragement of collective bargaining in an early version of the bill. They took it out and they fought hard over taking it out. And one of the justifications that Senator Morse gave to the Congress for strengthening the law to make collective bargaining rights mandatory, not just encouraging them, was that the scenario that you have heard today would, under the old language, have taken place. QUESTION: What is at issue here, the enforceability of the collective bargaining contract that was entered into pursuant to 13(c)? MRS. HIRSHMAN: We have both issues, Your Honor, whether the collective bargaining rights preserved to the employees through the vehicle of 13(c) includes the common understanding that collective bargaining agreements are enforceable by the parties to them in federal court. QUESTION: All right. MRS. HIRSHMAN: And whether -- QUESTION: You mean, and that federal law would apply? MRS. HIRSHMAN: Federal law would apply, Your Honor -- QUESTION: And why would it? MRS. HIRSHMAN: Well, the second option that Congress had in front of it when it was considering Section 13(c) was whether to subordinate the protections of Section 13(c) to state law, and [\*28] they rejected that option five times. It was proposed in committee. Senator Tower proposed it twice on the Senate floor. After Senator Morse -- QUESTION: Well, that doesn't necessarily -- it doesn't necessarily follow from that that a collective bargaining agreement entered into pursuant to 13(c) would be governed by federal rather than state law. Obviously there's a binding contract that's enforceable. It's just a question of whether state law or federal law would apply. MRS. HIRSHMAN: Okay. Your Honor, what happens, the situation that Congress was facing was the Dade County scenario where the state law not only prohibited collective bargaining, but also did not provide the employees with an action to enforce their collective bargaining agreement, so that when, you know, to understand how the law is supposed to function you have to look at the problem that Congress was trying to solve. Congress was trying to solve the Dade County situation, and in that case the state law simply did not provide the employees with an action to enforce their collective bargaining agreement. Congress said if there's one thing we're going to do with Section 13(c), it's make sure that federal funds do [\*29] not fuel repetitions of the Dade County scenario. The fact that the law of a particular state at the moment that the grant issues is or is not hostile to the federal rights that Congress sought to protect, it seems to me, is largely irrelevant. Should this Court require an example of a situation in which a transit authority signs 13(c) agreements under then satisfactory state law and the law -- the state then changes its law, the First Circuit's decision in Division 589 v. The Massachusetts Bay Transportation Authority is a classic example of that. The State of Massachusetts did what Your Honors were asking the Petitioner about. They took the money and they changed their law in a way which affected the rights set forth in our 13(c) agreement. The legislature of the State of Georgia has passed a similar law. It is awaiting the Governor's signature. When the 13(c) agreements are remitted to state court for enforcement, a host of unexpected state law defenses surfaces. For example, in Georgia, where the Eleventh Circuit's ruled that although 13(c) agreements must be honored, the honoring of them must be honored, and that their contents, the federal contents are assured by the supervision [\*30] of the federal Secretary of Labor, actions to enforce them belong in the state courts. QUESTION: When you say 13(c) agreement, are you talking about the collective bargaining contracts entered into, or the agreement entered in between the recipient and the government? MRS. HIRSHMAN: There are actually three agreements at issue here, Your Honor. There is a grant contract with the United States. QUESTION: Well, which one are you referring to? MRS. HIRSHMAN: I was referring to the labor protective agreement entered into between the grant recipient and the union representing its employees which Congress required to be made as a condition of the receipt of federal funds. QUESTION: Is that Exhibit C in the Joint Appendix? MRS. HIRSHMAN: I don't have it with me at this moment, Your Honor, but I am sure it is. QUESTION: And is -- would the suit that would be brought be brought to enforce that agreement technically? MRS. HIRSHMAN: This lawsuit happens to enforce both agreements because in this case the transit grant recipient both abrogated our collective bargaining agreement and abrogated the 13(c) agreement which required them to bargain with us and make and maintain enforceable collective [\*31] bargaining agreements. So the grant recipient violated both. This case really presents the -- QUESTION: Well the National Labor Relations Act doesn't even require people to enter into an agreement. <<PARAGRAPH BREAKS RESUME>> MRS. HIRSHMAN: No, the National Labor Relations Act operates by its own terms, to generate a process of collective bargaining -- QUESTION: Well, you have to bargain. You don't have to enter into any agreement. MRS. HIRSHMAN: Right, right. QUESTION: Let alone an enforceable one. MRS. HIRSHMAN: Well, but once you enter into it, Your Honor, you're bound by it. QUESTION: Mm-hmm. MRS. HIRSHMAN: And I think that that is the critical collective bargaining right which we are seeking to enforce here. Once the agreement is entered into, it must be enforceable by the parties thereto.

#### Rights” are not “agreements.”

Hayes 15, Director of the Office of Labor Management Standards, JD from Cornell University (Michael J. Hayes, August 13, 2015, “Re: FTA Application Sacramento Regional Transit District FULL FUNDING GRANT AGREEMENT South Sacramento Corridor Phase 2 Project (Extension of South Corridor LRT Service from Meadowview Road to Cosumnes River College) CA-03-0806-03 and CA-03-0806-04,” Document 87-3 in ECF for Amalgamated Transit Union International, et al v. USDOL, et al, United States Court of Appeals for the Ninth Circuit, No. 23-15503, University of Kansas Libraries, Lexis)

The key terms in section 13(c)(2) are "continuation" and "collective bargaining rights." The term "continuation" means "a keeping up or going on without interruption; prolonged and unbroken existence or maintenance." Webster's New World Dictionary of the American Language 319 (college ed. 1962). Thus, "when the transit employees had collective bargaining rights that could be affected by the federal assistance \* \* \* these rights must be 'continued' before assistance will be awarded to the public transit authority." United Transportation Union v. Brock, 815 F.2d 1562, 1564-65 (D.C. Cir. 1987). The phrase "collective bargaining rights" refers to employees' right to designate a representative and to bargain collectively through that representative with the employer with respect to wages, hours, and other conditions of employment. See 29 U.S.C. § 158(d); Allied Chemical and Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 164 (1971); cf. State of California v. Taylor, 353 U.S. 553, 560 (1957) (under Railway Labor Act, "(E)ffective collective bargaining has been generally conceded to include the right of the representatives of the unit to be consulted and to bargain about the exceptional as well as the routine rates, rules, and working conditions") . "Collective bargaining rights" are therefore not substantive terms of collective bargaining agreements. Instead, the phrase refers to a process that was universally understood in 1964, and now, "to require, at a minimum, good faith negotiations, to a point of impasse, if necessary, over wages, hours and other terms and conditions of employment." Donovan, 767 F.2d at 159.

#### Schmidtt is again about internal provision.

Schmitt 22, Attorney General for the State of Missouri, JD from Saint Louis University (Eric S. Schmitt, January 19, 2022, “Appellants’ Brief,” American Fedn. of State v. Missouri, No. SC99179, Supreme Court of Missouri, University of Kansas Libraries, Lexis)

SB 1007's limitations on the State's ability to agree to three types of provisions in a CBA does not violate article I, section 29. SB 1007 prohibits the State from agreeing to for-cause protections, grievance procedures for adverse employment decisions, and seniority protections, all of which conflict with the mandatory at-will provisions of section 36.025. The plain language of article I, section 29 only guarantees the right to "bargain collectively." That is, it guarantees that employees may participate in a particular process, but it does not guarantee that collective bargaining will reach any particular outcome and does not prescribe any additional requirements for the bargaining process. Under its ordinary and usual meaning, both in 1945 and today, the verb "bargain" denotes the process of negotiating, not an outcome. See WEBSTER'S SECOND NEW INTERNATIONAL DICTIONARY 219 (1952) (defining "bargain" as "to negotiate over the terms of an agreement or contract") (A0222); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 176 (2002) (defining "bargain" as "to negotiate over the terms of an agreement or contract") (A0225). Thus, to guarantee that someone may [\*57] "bargain" indicates that they will be allowed to negotiate-it does not guarantee an agreement, a substantive outcome, or even a range of outcomes.

This Court agreed with this definition of "bargain collectively" in its Ledbetter case. It wrote: "By 1945, when article I, section 29 was adopted as part of Missouri's current constitution, the words 'bargain collectively' were common usage for negotiations conducted in good faith and looking toward a collective agreement." 387 S.W.3d 360, 366 (Mo. banc 2012). And as this Court noted in Quinn v. Buchanan-an early case addressing this constitutional right-article I, section 29 "is not a labor relations act, specifying rights, duties, practices and obligations of employers and labor organizations." 298 S.W.2d 413, 418 (Mo. banc 1957) ( overruled on other grounds by E. Mo. Coal. of Police v. City of Chesterfield, 386 S.W.3d 755, 761-62 (Mo. banc 2012)). Thus, contrary to the circuit court's holdings, the right to "bargain collectively" and to have the State bargain in good faith does not require that the State be able to agree to every conceivable CBA provision, or even agree to any provision regarding so-called "core" or "mandatory" topics.

### T---CBR---AT: Limits---1AR

### T---Reasonability---1AR

## CP---Advantage

### Add-On---1AR

## CP---Distinguish

### Deficit---1AR

## CP---Injunctions

### AT: Deficit---1AR

### New Plans---1AR

## DA---Humphreys

### AT: Overview---1AR

### UQ---1AR

#### Erksine says they’ve already destroyed it! inserted for reference.

Erksine and Vladeck 25 – Editor of SCOTUSblog; Professor of law at Georgetown University, J.D. from Yale University.

Ellena Erskine interviewing Stephen Vladeck, “Will the court overturn a 1930s precedent to expand presidential power, again?,” SCOTUSblog, 04-10-25, https://www.scotusblog.com/2025/04/will-the-court-overturn-a-1930s-precedent-to-expand-presidential-power-again/

EE: So back to where Humphrey’s Executor sits today, how narrow are those protections?

SV: One of the tricky things about Humphrey’s Executor is that, even though the Supreme Court hasn’t overruled it, it has to at least some degree reconceptualized it. Humphrey’s Executor itself, if you read Justice Sutherland’s opinion, spends a lot of time talking about how what the FTC does is not purely executive power. Instead, he talks about the quasi-judicial role that the FTC plays and even in some respects, the quasi-legislative role that the FTC plays.

Even though the modern court has not overruled Humphrey’s Executor, it has really, I think, heavily watered down that understanding. Indeed, it has increasingly come to treat Humphrey’s Executor as this extreme outlier — as one of two Supreme Court precedents that are at least superficially inconsistent with the broad view of the unitary executive toward which the court has otherwise gravitated, Morrison v. Olson being the other.

#### The court is poised to overturn Humphrey’s, but exempt the Fed by enshrining protections based in originalist reasoning.

Bednar ’10-15 [Nick; October 15; associate professor of law at the University of Minnesota Law School. He writes in the areas of executive politics, administrative law, and immigration. He holds a PhD in political science from Vanderbilt University and a JD from the University of Minnesota Law School; Lawfare, “‘Slaughter’-ing Humphrey’s Executor,” https://www.lawfaremedia.org/article/slaughter--ing-humphrey-s-executor]

By the beginning of Trump’s second term, many legal scholars regarded Humphrey’s Executor as effectively on life support. That perception was reinforced when the Supreme Court stayed a district court order enjoining the removal of members of the Merit Systems Protection Board (MSPB) and the National Labor Relations Board (NLRB). In an unsigned, two-page opinion in Trump v. Wilcox, the Supreme Court concluded that “the Government [was] likely to show that both the NLRB and MSPB exercise considerable executive power.” The majority, however, stopped short of deciding whether those agencies fell within the Humphrey’s Executor exception. Nevertheless, it felt the need to recognize a new exception for the Federal Reserve—an agency not before the Court—reasoning that the “Federal Reserve is a uniquely structured, quasi-private entity that follows in the distinct historical tradition of the First and Second Banks of the United States.” Such an originalist-inspired carve-out would have been unnecessary if Humphrey’s Executor remained firmly intact.

The Supreme Court appears poised to overturn—or at least substantially narrow—Humphrey’s Executor. How far the Court intends to extend the president’s removal power remains uncertain, and any prediction is fraught. Roberts authored the majority opinions in Free Enterprise and Collins, adopting a characteristically incrementalist approach to changing precedent. Yet Roberts is no longer the pivotal vote in the conservative majority. Justices Clarence Thomas and Neil Gorsuch have openly called for overruling Humphrey’s Executor. Justice Brett Kavanaugh has expressed skepticism about the decision, though scholars debate whether he would vote to overturn it. Justice Samuel Alito, who authored Collins, has not indicated whether he would support overruling Humphrey’s Executor. Justice Amy Coney Barrett has yet to write in a case involving removal protections. The coming term will reveal whether the Court is prepared to dismantle Humphrey’s Executor outright or continue its gradual erosion.

The narrowest path forward could preserve Humphrey’s Executor while distinguishing the modern FTC on factual grounds. Today’s FTC exercises greater power than it did in 1935, raising questions about whether it exercises “substantial executive authority” rather than “quasi-judicial” or “quasi-legislative” functions. The D.C. Circuit has interpreted the Trade Commission Act as providing broader authority than originally anticipated, and the Magnuson-Moss Warranty Act greatly expanded the FTC’s jurisdiction over consumer protection. This incrementalist approach would preserve the core holding of Humphrey’s Executor but would require lower courts to undertake the fraught task of parsing agency functions to decide whether a given agency exercises “substantial executive authority.”

Alternatively, the Court could simply overturn Humphrey’s Executor, striking down removal protections for most multimember commissions. As suggested by its rhetoric in Trump v. Wilcox, the Court seems poised to recognize an exception for the Federal Reserve Board of Governors. Effectively, the Court may preserve removal protections for entities or officers that had some sort of analog at the Founding. (Such a test, however, has its own problems with respect to the Federal Reserve.)

#### The court is going out of its way to soft launch overturning Humphrey’s but excluding the fed.

Bortz ’25 [Katy; September 25; League of Women Voters, “Humphrey's Executor and Threats to Independent Government Agencies,” https://www.lwv.org/blog/humphreys-executor-and-threats-independent-government-agencies]

In May 2025, however, the Supreme Court ruled on its emergency docket challenging this well-established principle. Without a full briefing on the issue, the Court outlined the dismantling of Humphrey's Executor.

In Trump v. Wilcox, the Court’s majority allowed the president to remove two officers, one from the National Labor Relations Board and one from the Merit System Protections Board, for political reasons. Since then, there has been concern about what the decision means for the other federal agencies, most importantly the Federal Reserve Board of Governors, which governs the central bank of the United States and regulates the financial sector.

In the Wilcox emergency decision, the Court suggested that allowing the positions at issue to be politically appointed does not threaten the Federal Reserve officers. While similarly insulated from politics, the Federal Reserve Board of Governors remains protected because “[t]he Federal Reserve is a uniquely structured, quasi-private entity.” When the Supreme Court deems an agency as “quasi-legislative” and/or “quasi-judicial,” its function is not solely executive, so the officers are protected to serve in good faith. In other words, the President cannot, at will, fire officers of “quasi-legislative” or “quasi-judicial” independent agencies. The “quasi-private” language used in the Court’s decision in Wilcox seems to be a new rule protecting the Federal Reserve Board of Governors.

It remains unclear if any other federal agency positions will also fit this Federal Reserve carve-out and be deemed “quasi-private.” It is safe to say that this decision, at least until the whole case is heard, gives the president dramatically more authority to control the heads of various government agencies.

A yard sign that says "Vote like democracy depends on it. It does!"

And now, it appears the Court will do away with Humphrey’s Executor entirely. On September 22, the Court took up a case concerning the Federal Trade Commission, which will decide whether to overrule this bedrock precedent.

#### This outcome is highly certain.

Estreicher ’25 [Samuel, G. Roger King, and David Sherwyn; June 25; Dwight D. Opperman Professor of Public Law at NYU School of Law; rmer partner with Jones Day law firm and the Senior Labor and Employment counsel for the HR Policy Association; John and Melissa Ceriale Professor of Hospitality Human Resources and a professor of law at Cornell Peter and Stephanie Nolan School of Hotel Administration; On Labor, “Dealing with the Likely Demise of Humphrey’s Executor,” https://onlabor.org/dealing-with-the-likely-demise-of-humphreys-executor/]

The future of the National Labor Relations Board (NLRB or Board), the venerable agency that since 1935 has been the exclusive investigation, enforcement, and adjudicatory body under the National Labor Relations Act (NLRA or Act), is in doubt. As of this writing, it seems likely, that perhaps sometime in fall 2025 or spring 2026, the Supreme Court will overrule or substantially narrow Humphrey’s Executor v. United States (1935). There will be some consternation over imperiling the structure of the Federal Reserve Board, which like the NLRB is a multimember agency whose members are insulated from at-will presidential removal before the end of their terms. The Court will, we suspect, find some way to distinguish the Federal Reserve Board, whether persuasively or not.

One of us (Estreicher) is usually loathe to make short-term predictions, but this one is likely to hold true. We base this on the Court’s order or decision in Trump v. Wilcox, No. A24A966 (May 22, 2025), staying a lower court ruling requiring the reinstatement of a member of the NLRB and a member of the Merit Systems Protection Board (MSPB), a multimember body that handles federal employee disputes. The Court explained that “[t]he stay reflects our judgment that the Government is likely to show that both the NLRB and the MSPB exercise considerable executive power.” The Court did aver that it was not deciding at this stage whether either agency falls within a “recognized exception” from unrestricted presidential removal authority under Seila Law, LLC v. Consumer Financial Protection Bureau (2020), and Free Enterprise Fund v. Public Company Accounting Oversight Board (PCAOB) (2009).

### IL---1AR

#### No impact on FERC! Humphrey’s wont affect since agencies have workaround---that’s Crew.

#### AND, I’m finishing it.

Crews ’12-8 [Clyde Wayne; December 8; Fred L. Smith Fellow in Regulatory Studies at the Competitive Enterprise Institute; Competitive Enterprise Institute, “Two cheers for ending Humphrey’s Executor,” https://cei.org/blog/two-cheers-for-ending-humphreys-executor/]

sweeping statutes unconstrained by enumerated powers;

subsidies, contracting, and public-private frameworks that fuse state and corporate power;

sub-regulatory guidance and other forms of regulatory dark matter that evade accountability.

Trump’s own interventionist impulses, such as partial nationalizations of private firms, are a warning to temper expectations that muscular presidential authorities over agencies will be used to limit state intervention in private enterprise.

Overturning Humphrey’s Executor would sever one of the Administrative State’s oxygen lines, but would by no means asphyxiate it. If, however, the decision forces reconsideration of the Federal Reserve – an institution whose monetary manipulation enables congressional deficit excess – that would brighten the outlook considerably.

Independent agencies arose a century after ratification of a Constitution that never contemplated fourth branch power centers. That makes removal authority a core constitutional function rather than a modern aberration. The anomaly is not merely Humphrey’s Executor; it is the Administrative State itself.

The core abnormality of the past century is the assumption that Washington may legislate on everything – energy, speech, finance, health, education, family – with no constitutional gravity. A win like Humphrey’s Executor reversal is necessary but will ultimately fail to deliver without structural restraint on Congress and a restoration of enumerated-powers principles.

A Congress that legislates broadly will continue to delegate broadly, and presidents will continue to inherit vast power, regardless of whether agencies downstream are deemed “independent” or have leadership that can be readily replaced. The liberty movement’s deeper work lies in recovering the truth that Congress is not omnipotent.

Until then, rolling back Humphrey’s Executor adds insulation but leaves untouched the furnace beneath: Congress’s appetite for wielding non-enumerated powers and the steady erosions of federalism and individualism that accompany powerful central government.