# 1NR---DRR---Round 7

## Lochnerism ADV

### Defense

#### Courts not going rogue.

Robert Blackburn 25, Writer, The Battalion, "The Supreme Court Is Underrated," The Battalion, 07/19/2025, https://thebatt.com/opinion/opinion-the-supreme-court-is-underrated.

In a political atmosphere that feels ever more divisive and partisan, one branch of the federal government stands out as a beacon of success. Despite existing in the age of the internet, the Supreme Court of the United States has not succumbed to the outside pressures of rampant tribalism.

This is due to several factors. One reason is that the nation’s highest courts’ continued success is the nature of their application process. Justices must be nominated by the president, then confirmed by the Senate. This strenuous process eliminates less qualified candidates which prevents them from negatively impacting the court’s reputation.

Additionally, justices are allowed to serve until their death or retirement, which ensures the nine-member panel is protected from outside political pressure. While this may frustrate decision makers or the public, it does allow for the jurists to vote as they see fit.

Finally, neither political party has attempted to push unqualified candidates into the court. Of the current nine justices, eight attended either Harvard or Yale for law school. The only exception is Associate Justice Amy Coney Barrett, who graduated first in her class from Notre Dame. The panel’s impressive qualifications do not end here. Eight of the nine were jurists at the circuit court level before being nominated for the Supreme Court. Associate Justice Elena Kagan, who is the outlier, served as Solicitor General and as the Dean of Harvard Law School.

This lack of partisanship and incredible qualifications has not stopped the court from being viewed divisively. As it stands currently, six conservatives make up the majority, while three liberals represent the minority.

In the past, these two opposing ideologies have resulted in the most contentious cases being settled six to three, with the panel split along ideological lines. The most famous example of this was Dobbs v. Jackson Women’s Health Organization, which overturned national abortion rights established in Roe v. Wade. In this case, all six conservative justices ruled that the Constitution did not guarantee abortion rights, while the three liberals dissented and claimed that the Constitution did guarantee the right to choice.

As a result, the court’s conservative majority drew the ire of pro-choice individuals. While the case’s decision is a strong example of the ideological divide in the court, similar cases represent a small portion of the court’s workload. More frequently than not, the members of the court agree on issues, resulting in unanimous or near-unanimous rulings.

This sentiment is backed up by the numbers. During the 2023-24 term, three members of the court, Chief Justice John Roberts as well as Associate Justices Brett Kavanaugh and Barrett, ruled as part of the majority over 90% of the time. The same cannot be said for the rest of the so-called conservative super majority. Justices Samuel Alito (80%), Clarence Thomas (78%) and Neil Gorsuch (83%) were less likely to be in the majority. The liberal members on the court all found themselves on the ruling side of a case around 70% of the time.

Although every liberal is significantly less likely to be involved in the majority opinion than any conservative, it is remarkable that the justices agree as often as they do. Ideological divisions are to be expected among any group of people. Despite several high-profile cases being decided along these lines, this divide does not characterize the overall body of work of this version of the Supreme Court.

Recently, examples of both types of decisions have occurred. In Catholic Charities Bureau, Inc. v. WILIRC, all nine justices combined forces to overturn a Wisconsin Supreme Court decision that infringed on religious rights protected by the First Amendment.

However, this is not the most interesting aspect of the decision. The majority opinion, written by the ideologically-liberal Justice Sonia Sotomayor, dismantled the ruling from the liberal majority of the Wisconsin Supreme Court, who were all elected onto the panel. This demonstrates the key difference between polarized national politics and the institution that is the Supreme Court.

In Mahmoud v. Taylor, Justice Alito wrote for the court’s conservative wing, establishing the ability for parents to opt their children out of the curriculum if they find it religiously problematic. All three liberals dissented from this ruling. Despite the courts’ inherent similarity, cases like this demonstrate the different philosophies of the jurists.

Earlier this year, conservatives Kavanaugh and Roberts worked with the three liberal justices to make it easier for individuals to access federal civil rights claims in Williams v. Reed. This ruling provides the most recent example of a minority of the courts’ conservatives ruling with the liberals to achieve a majority. Cases like this are not uncommon and illustrate another important aspect of the court: each justice acts independently of the others

Despite there being a conservative majority on the bench, the members of the panel rely on their jurisprudence rather than the beliefs of their party or ideological group. While holding similar views, the conservative majority is not the republican party. Rather, it is a collection of the six highly talented individuals who hold overlapping beliefs. The same thing can be said about the three liberals on the bench.

This phenomenon has enabled the court to remain a highly-respected body whose rulings serve as the law of the land. Similarly, it has, for the most part, stopped outside influences from attempting to meddle with the affairs of the court. Legally, if the current situation changes, the legislature could move to impeach a jurist from their post, or Congress could expand the court, potentially diluting the importance of each member.

Both of these Pandora’s boxes have remained shut. This should be the case as every member of the court has demonstrated a remarkable ability to rule in an unbiased manner. As long as it continues, the Supreme Court of the United States will remain a sacred institution and the envy of our peers abroad. Entities like the Supreme Court are what make America truly special. It is in all of our best interests to keep this the case. Despite how appealing it may seem, citizens and elected officials should not attempt to interfere with the affairs of the nation’s highest court.

## Court Politics DA

### Trade---Impact---2NC

#### DA outweighs and complicates the case---tariffs cause nuclear war by collapsing global trust, supercharging mercantilist battles over critical resources, and pushing rival powers from trade skirmishes to catastrophic conflict in a world loaded with nuclear weapons---that’s 1nc **Schifferes**.

#### Zaps the case---failing to rule on tariffs ends Court legitimacy for good.

Charles Lane 10/27/25, nonresident senior fellow at the American Enterprise Institute, “It’s Time for the Supreme Court to Confront Trump”, https://www.thefp.com/p/its-time-for-the-supreme-court-to-confront-trump-tariffs

Some Supreme Court cases have the potential to cause sweeping change in the daily lives of millions of Americans. Some test the legitimacy of the court itself. Some determine the balance of power among the three branches of government.

And then there are rare cases that do all three. So it is with Learning Resources, Inc. v. Trump and V.O.S. Selections, Inc. v. Trump, two cases the justices consolidated for oral argument on November 5. At issue in both is the legality of the worldwide tariffs decreed by President Donald Trump earlier this year.

These two cases present one of the most consequential tests for the Supreme Court since Marbury v. Madison, the 1803 ruling that established the justices’ power to declare laws unconstitutional. Maybe the biggest test.

#### That zeroes enforcement of the AFF.

Ava Steinmetz 25, Portland State University, “Did Dobbs Reduce the Supreme Court's Legitimacy?”, Paper 1707, PDX Scholar Library Extension

Legitimacy refers to the public's acceptance and respect for the authority of the judicial system and its decisions. Legitimacy matters in accordance with the Court because it impacts the ability of the Court to function effectively, and the extent they are able to rule their constituents free of coercion; this is because legitimacy is grounded in how the public perceives the institution. I will be researching the topic of legitimacy in correlation with public perceptions of the Court. If the largest legal institution cannot maintain legitimacy, that means the system has no power to enforce rulings independently. The effects of diminished legitimacy impacts trust in the Court to make acceptable decisions. Without legitimacy, there is an increase in resistance against institutional decisions and political conflict. Politicians and the public are more likely to support Court curbing, or reducing its power, which constrains its ability to rule as an independent actor. I believe judicial legitimacy is integral to maintaining our democracy, as the Court has a constitutional role in serving as the ultimate interpreter of the Constitution, and the final arbiter of legal disputes. I plan to analyze high salience decisions made during the Roberts’ Court era, and measures of specific support and diffuse support in response to these decisions in order to see where and when their legitimacy was impacted. By analyzing public perceptions of the Court decision in Dobbs, I will explore if the decision itself led to a decline in institutional support as measured by specific support and diffuse support. Salient cases decided by the Court in recent years will help to determine whether the Dobbs decision showcases a shift in the Court and the ways they chose to vote over controversial issues. I expect to find that Dobbs is a turning point in the Court's legitimacy. Partisanship is not the primary frame through which the public views the Court; rather, the Court is generally regarded as an inherently legitimate institution, distinct from elected political bodies. I will be measuring perceptions of partisanship of the justices and the Court as an institution to see how it correlates with support for the Court, therefore affecting legitimacy.

#### Turns case:

#### Trade outweighs diplomatic pressure.

Ilan Manor & Guy J. Golan 20, Digital Diplomacy Scholar, University of Oxford; Associate Professor, Bob Schieffer College of Communication of Texas Christian University, "The Irrelevance of Soft Power," E-International Relations, 10/19/2020, https://www.e-ir.info/2020/10/19/the-irrelevance-of-soft-power/

The irrelevance of Soft Power stems not from its theoretical dimension, but from a changing global landscape. The 21st century will be characterized by growing competition among three giants – China, India and the United States. To contend with this triumvirate, nations will create short-termed strategic alliances that will collectively bargain opposite the giants, or force their hands. These alliances will rest on shared interests, not shared values. In a world governed by increased competition, as opposed to cooperation, the practice of Soft Power will become secondary. The benefit of strategic alliances lies in their malleability. Unlike the Cold-War era, nations will not be bound to one giant. On the contrary, nations will collaborate with different giants towards different ends. National power will emanate from a nation’s status as a desirable member in strategic alliances. This desirability may rest on diverse resources ranging from economic stability to technological infrastructure and geographic location. Now is not the age of uni-polarity or bi-polarity. Now is the age of giants. And in this age, power will function differently, as explained in this article.

Vladimir Putin once stated that ‘I would prefer to abandon the terminology of the past. ‘Superpower’ is something that we used during the Cold War time. Why use it now?’ (Financial Times, 2016). The demise of the Cold War led scholars to reconsider additional terms including power. In a world no longer marked by ideological conflict and a nuclear arms race, collaboration rather than confrontation could be the order of the day. In a seminal article, Professor Joseph Nye introduced the concept of Soft Power. Ultimately, Nye argued, the attractiveness of a nation’s culture, political values, and foreign policy will be more influential on its engagement with other nations than the number of ballistic missiles at its disposal (Nye, 1990; 2008).

In this article we argue that the world is in the midst of profound structural change, and that this change necessitates that the concept of power be examined yet again. Specifically, we contend that this century will see the emergence of a modern day Triumvirate of three giants. While middle powers such as Russia, Iran, Brazil and the EU (European Union) will remain central to global affairs, it is the three giants who will dictate the rules of the game. India’s population size and status as a global telecommunications hub will see its power overshadow that of Iran or Brazil. China’s financial dominance and global military reach will eclipse that of Russia, while the US’s strength will continue to rest on its mass investment in defense, and ardent commitment to consumerism.

#### Diplomacy itself doesn’t work. You can’t just go to a country, beg them for no war, and expect the 2 trillion percent tariffs to magically disappear from their economic calculations.

Alexey Fenenko 16, Political Science PhD, World Politics Professor at Moscow State University Lomonosova, “Soft Power: Reality and Myth,” Russian Council, 1-29-2016, https://russiancouncil.ru/en/analytics-and-comments/analytics/realnost-i-mify-myagkoy-sily/

The use of soft power has natural limits. To put it tentatively, we can single out three such limitations that nullify the effect of soft power.

The first one is geopolitical. Small and medium-sized countries will always be wary of a large and powerful country. At best, their elites will always look for something to counterbalance the cultural and ideological influence exerted by other great powers and, at worst, will reject the powerful neighbor’s cultural policy, perceiving it as a new form of imperialism. It is hardly a coincidence that the strongest Russophobia is peculiar to the countries of Eastern Europe, while the strongest anti-American sentiments are witnessed in Latin America.

The second limitation is historical. The feud between some nations has such deep roots that putting an end to it through soft power instruments is hardly possible [2]. Soft power can do nothing in a country that forges its identity on the hatred for another country or its people. How much should the Soviet Union have invested in Germany in 1934 to make the latter pro-Soviet? It is obvious that nothing could have changed an already established mind-set.

The third limitation is cultural. Different nations and societies assess their role in history in different ways. Russian political scientist T. Alexeyeva rightly notes that Russian society has never had a sense of grandeur about itself. Russia has always considered itself to be a “catch-up country,” seeking the approval of those who “lead the way.” [3] Going into opposition towards other nations has often taken painful and aggressive shape in Germany and Japan. Russia has never had its own Georg Wilhelm Friedrich Hegel, who claimed that the Absolute Idea could self-actualize only in the German world, and that the history had reached its end. Russia has never had its own Paul Rohrbach, who believed that Germany was surrounded by “unhistorical peoples.” [4] Accordingly, the ability to adopt soft power appears to be quite peculiar to each country.

These limitations result in a circumscription of the successful application of soft power. Soft power is a tool for enlisting the sympathies of undecided people, rather than of making enemies change their mind.

#### It sparks nuclear conflict AND collapses multilateral cooperation over AI, cyber, climate, terror, prolif, and transnational crime.

Sean Sturm & Dr. Michael A. Peters 24, MA, International Relations, International Islamic of University Islamabad; PhD, Professor, Faculty of Education, Beijing Normal University. Emeritus Professor, University of Illinois, Urbana–Champaign, "The Emerging International Order: Debating Polarity in Global Politics," PESA Agora, 2024, https://pesaagora.com/columns/the-emerging-international-order-debating-polarity-in-global-politics/. [language edited; initials inserted for clarity]

SS: 5: What factors do you believe contribute most significantly to shaping the existing polar structure of global politics?

MP: The existing polar structure of global politics is shaped by a complex interplay of various factors. While it is difficult to pinpoint a single factor, several contribute significantly to the current international landscape. The rise of new global powers and the relative decline of traditional ones have led to shifts in the balance of power. The competition between the United States and China, as well as other power dynamics such as the European Union, Russia and India, has created a multipolar world where strategic interests often clash. The global economy is interconnected but also marked by fierce competition. Economic interdependence can lead to cooperation but also to conflict as countries vie for markets, resources and investment opportunities. Trade wars and protectionism can exacerbate these tensions. The spread of different political ideologies, such as liberal democracy and authoritarianism, can lead to ideological clashes. The promotion of certain values by one country can be seen as a threat by another, leading to political polarisation. The rapid development of technology, especially in areas like artificial intelligence, cybersecurity and communication, has created new frontiers for international competition and cooperation. Countries often view technological superiority as a key factor in maintaining or gaining geopolitical advantage. The finite nature of resources and the growing threat of climate change can lead to competition, especially in regions where access to resources is critical. Environmental degradation can also create shared challenges that require international collaboration, often amidst differing priorities and levels of commitment. The rise of populist and nationalist movements in many countries has led to a shift towards more inward-looking policies, prioritising national sovereignty and interests over international cooperation. This can lead to a more confrontational approach to global politics. Terrorism, weapons proliferation and transnational crime pose security challenges that require international responses. However, differences in approach and priorities can lead to disagreements and even conflicts among states. The role and effectiveness of international organisations and the norms they promote can influence global politics. The perception of whether these institutions are fair and representative can lead to either cooperation or pushback, contributing to polarisation. Population movements, whether due to conflict, economic opportunity, or environmental factors, can create challenges for recipient and source countries, leading to policy responses that can increase international tensions. The ability to control and influence information flows, as well as the rise of disinformation and fake news, can manipulate public opinion and political discourse, contributing to polarisation and distrust among nations. All these factors are interconnected and often feed into each other, creating a dynamic and often volatile international environment. The polar structure of global politics is a reflection of these complex interactions, where the actions of one country can have far-reaching effects on the international system.

Greater attention needs to be paid to the international finance system, which is based on the US dollar dominance. After Bretton Woods and the settling up of WB and IMF, the gold standard faltered to be replaced with the dollar system which gives the US huge advantages. The global financial crisis, which reached its peak in 2008, exposed significant weaknesses in the international financial system, including the role of the US dollar as the world’s primary reserve currency. Prior to the crisis, the US dollar enjoyed a dominant position in global finance. It was not only the primary currency for international trade but also the major reserve currency held by central banks. This meant that many countries needed dollars to conduct trade and finance their balance of payments. The crisis raised questions about the trustworthiness and stability of the US financial system, which had been considered one of the safest and most reliable in the world. The collapse of major financial institutions like Lehman Brothers and the government’s rescue of others like AIG called this perception into question. As the crisis unfolded, trade and investment flows were disrupted. Global trade volume contracted sharply, and cross-border lending dried up. Since trade is often denominated in dollars, the stability of the dollar was crucial for the recovery of global trade. The Federal Reserve’s response to the crisis, particularly the implementation of quantitative easing (QE), was unprecedented. By purchasing large quantities of financial assets, the Fed aimed to lower interest rates and encourage lending and investment. While this was necessary to stabilise the US economy, it also raised concerns about the dollar’s value and long-term inflation prospects. The crisis led to a significant fall in commodity prices, including oil, which is priced in dollars. This deflationary trend put downward pressure on the dollar’s value against other currencies as investors sought shelter in perceived safe havens like the Swiss Franc or gold. The crisis prompted a reevaluation of the global financial architecture. There was increased discussion about the need for a more diversified reserve currency system, less dependent on the dollar. The International Monetary Fund (IMF) and other international financial institutions have been pressured to consider the role of other currencies, such as the euro or renminbi, in the global reserve system. Over time, the US economy recovered, and the dollar has remained the dominant reserve currency. However, the crisis did lead to a partial decentralisation of financial markets and a shift in liquidity provision, with central banks around the world playing a more active role in managing their domestic economies. The crisis also contributed to the rise of non-bank financial institutions, such as money market funds and shadow banks, which play a significant role in the financial system but are less regulated than traditional banks. This has raised concerns about financial stability in the long term. Although the US dollar’s role in the international financial system has remained robust, the global financial crisis did expose vulnerabilities and prompt a reevaluation of the system’s reliance on the dollar. This has led to a more nuanced approach to global financial governance, with a gradual shift towards a more balanced and diversified international monetary system and the increasing practice of BRICS countries trading in local currencies.

The shape of the existing polar structure of global politics must be understood in terms of the long-term shift from the end of the age of colonisation and the rise of independent states especially populous countries like India and China that have large populations and also domestic markets. Colonisation and globalisation are the twin long-term processes that have been responsible for the existing structure of global politics, sometimes referred to in the grossly simplified notion of Global South and Global North, or even South-South relations. I think here we need a theory of capitalism that embraces both historical phases and interprets the decline of the West – the colonisers – with the rise of the East – the colonised. After the end of the colonial era – the 1950s, ’60s and ’70s – globalisation, while a source of inequalities both within and between countries, also enabled China and other countries more recently to lift large sections of the population out of poverty. Globalisation allowed a form of export open trade to enable competition and, while not equal, provided the basis for development with BRICS countries but not all. Many suffer from excessive IMF debt loading and from little debt relief even though the population is at starving point (e.g., Sri Lanka). Globalisation allowed a foot in the door, and, during the first modern waves, it provided a means for some countries to step aside from general poverty. Now many developing countries are riding the latest wave – India, Indonesia, Vietnam, Uzbekistan. At a certain level investment in education becomes a critical variable, not only universal but also university education, especially in the STEM subjects that lead to digital benefits of larger-scale global markets. Now that AI comprises the latest unicorn investment strategy, with billions invested in the last year we are facing the AI race focus on bots and the US’s active strategic control of the chip supply line to slow China’s development. This is an added complication for Taiwan as the TSMC company makes 90% of the most advanced chips contributing to the Taiwan question of reunification with China. Nvidia’s Blackwell superchip is a game changer, especially with twinning, which is changing the future of industrial capacity coming online.

SS: 6: What are the potential consequences of maintaining or attempting to shift the existing polar structure of global politics?

MP: Maintaining or attempting to shift the existing polar structure of global politics can have a range of potential consequences, both intended and unintended, which can affect global stability, economic growth and the lives of ordinary people. A polar structure can lead to heightened tensions and competition between major powers, potentially escalating into proxy conflicts or direct confrontations. This can increase the risk of military conflicts and nuclear brink~~man~~ship, endangering global security. The current structure may lead to a decline in multilateralism and the weakening of international institutions, making it harder to address global challenges such as climate change, pandemics and international security threats through collective action. The polar structure can result in economic blocs and trade barriers, leading to economic fragmentation and reducing global trade and investment flows. This can hinder economic growth and development, especially for smaller and less powerful countries. As major powers compete in technology and strategic capabilities, there is a risk of technological arms races and the development of new weapons systems that could increase the risk of accidental escalation and the spread of nuclear weapons. The promotion of different ideological systems can lead to polarisation and a lack of dialogue between countries, making it difficult to find common ground on issues of mutual concern. The polar structure can influence social and cultural dynamics, leading to the spread of nationalistic and xenophobic sentiments. This can negatively impact migrant and minority communities and lead to social divisions within countries. Developing countries can find themselves caught between major power rivalries, making it harder for them to determine their own political and economic futures. They may also face reduced assistance and increased conditionalities from major powers. The polar structure may hinder global cooperation on environmental issues, leading to a lack of effective action on climate change and other environmental challenges that require collective effort. The structure can impede effective global health responses to pandemics and other health crises, as national interests may be prioritised over a collective approach to health security. Countries may engage in diplomatic and soft power battles to shape international norms and narratives, which can lead to a more nuanced and subtle form of competition that still has significant implications for global politics. The consequences of maintaining or shifting the polar structure of global politics are not deterministic and can be influenced by a wide range of factors, including the actions of individual countries, international events and the emergence of new global issues. Efforts to address these consequences and promote a more cooperative and stable international order are ongoing, involving diplomatic negotiations, international cooperation and the development of new norms and institutions. Many countries walk the line between not offending the US and trading with China, like NZ as a traditional ally, but diplomacy has limits, and regional conflicts are likely to persist at the margins, especially for those states like Myanmar and Tajikistan that are not well integrated into either the global market economy or regional security networks. We will have to remember that the US has approximately 750 bases worldwide and an annual military budget of nearly $800 billion. While AI, satellite surveillance and drone warfare are changing the shape of modern conflict, the notion of control of territories still has a dominant place in geopolitics, and, ultimately, it is an international system that is backed by military force, whether it be border protection, control of the sea, peacekeeping or enforcement of sanctions.

### U---AT: Court Capital Low

#### Dodson is ass---most of this card is an FYI that only matters if you’ve let law school cook your brain into thinking random anecdotes substitute for debate args---for example, Citizens United doesn’t thump the DA, that was a decision from 2011, you goofs!

#### First---it concedes we’re on the brink, PC is limited and finite, and the Court needs to save it for the biggest confrontation. We’re yellow.

Scott 2ac Dodson 25. Professor and director of the Center for Litigation and Courts at the University of California Law, San Francisco, J.D. from the Duke University School of Law. "The Supreme Court and Public Opinion." *Iowa Law Review*, 111(117), 145-155.

IV. THE COURT AND PUBLIC OPINION TODAY

Throughout history, the Supreme Court has maintained a high public approval rating despite the occasional unpopular, even severely unpopular, decision. The Court has perennially had the highest reputational ratings of any branch of government.266 Its approval rating was typically above sixty percent until 2010, and its public trust was invariably above sixty percent between 1973 and 2014.267 The Court's public-trust rating even hit eighty percent in 1999, the year before Bush v. Gore.268 But since 2010, the Court's approval rating has been below sixty percent, and, since 2014, its trust rating has fallen below sixty percent four times.269 In 2021, the Court's approval rating sunk to a record low of forty percent.270 As of fall 2023, the Court's approval rating of forty-one percent and trust rating of forty-nine percent have languished near historic lows.271

These low approval ratings seem strange for a Court helmed by a Chief Justice who has publicly pressed a judicial philosophy of humility and minimalism calling balls and strikes, respecting precedent, avoiding controversy, offering political compromises, and striving for narrow opinions that can garner unanimity.272 Indeed, Joan Biskupic has surmised that "Roberts has at times set aside his ideological and political interests on behalf of his commitments to the Court's institutional reputation and his own public image."273 But his efforts haven't done the trick. This Part explores why.

The reason, I submit, lies not in a single, explosive exercise of antidemocratic power by the Court. As even the Cherokee Cases suggest, those shocks fade quickly, often hastened by calculated judicial retreat. Instead, this Court has experienced a confluence of circumstances that have accumulated over time, including: (1) two decades of perceived persistent conservative activism; (2) the Court's dismissive attitude toward a raft of ethics scandals; (3) partisanship surrounding the appointment of new Justices; (4) a handful of unpopular opinions; and (5) a rise in partisan polarization among the populace. Meanwhile, the Court has not issued a heroic opinion like Brown or Lawrence to pick up the flagging public support. The Court has avoided knockout punches, but it has exposed itself to, perhaps even invited, a steady barrage of jabs, and the public has noticed.

A. PERSISTENT CONSERVATIVE ACTIVISM

Some of the hits have been of the Court's own making. Stare decisis adherence to prior precedent is a foundational principle that increases stability and reduces ideological variance.274 Although measuring the Court's relative commitment to stare decisis over time is difficult,275 the public perception is that the Roberts Court regularly revisits important decisions, even delighting in overturning them.276 Key examples include Citizens United (overruling precedent allowing campaign-finance limits),277Dobbs (overruling Roe v. Wade's and Casey's constitutionalization of abortion),278Students for Fair Admissions (effectively overruling precedent allowing affirmative action in higher-education admissions),279 and Loper Bright (overruling Chevron's directive that courts defer to reasonable agency interpretations of implementing statutes).280 That these important decisions have all been outcomes that align with conservative politics, decided along the Court's own ideological split, undermines the role that stare decisis plays in "protect[ing] the Court's legitimacy by reinforcing the public's opinion of an apolitical judiciary."281

Worse, the Court appears to be using its discretionary agenda-setting powers not as Bickel proposed to avoid controversy until the right moment but to actively seek out controversial cases to decide. Scholars have noted "a trend, particular to the Roberts Court, of exercising its certiorari discretion to grant review in cases that present an opportunity to overrule precedent,"282 a trend that appears to be accelerating.283 Indeed, Dobbs presented three questions in the petition for certiorari: (1) whether to overrule Roe ; (2) whether a different constitutional standard should apply; or (3) whether standing existed.284 The Court could have taken the case on the second or third grounds and avoided the question of whether to overrule Roe. But it chose to take the case only on the first question.285 In other words, the Court overruled Roe "because it wanted to, not because it had to."286 This Court has turned the passive virtues discretionary docket control into the "active vices" by reaching out to take cases on certiorari and reframe issues for decision.287

In addition to active use of certiorari discretion, the Court has dramatically scaled up its use of other aspects of its "shadow docket"288 its non-merits docket often under the guise of the need to issue emergency relief, but resolving, in the process, particularly high-profile, partisan issues,289 including immigration, COVID-19 regulations, and other matters.290 The merits docket operates with formalism and transparency including regular procedures, public oral argument, and public written opinions all designed to enhance public respect for the Court. By contrast, the shadow docket exhibits none of these features.291 The Court can use the shadow docket to issue an unsigned, summary order staying the effect of a law or lower-court opinion. On May 22, 2025, for example, the Court, in an unsigned order, granted President Donald Trump's emergency application for a stay of a lower-court ruling blocking the President's ability to remove certain agency heads, despite some precedent to the contrary, and over the dissent of Justices Kagan, Sotomayor, and Jackson.292 The last ten years have seen "an explosion in the use of [the shadow docket] powers and the controversy they create,"293 and the public has noticed.294

And the Court's merits decisions reveal a conservative majority flexing its judicial muscles.295 Some ideologies threaten to destabilize the structure of government. The Roberts Court is strongly skeptical of the power and role of administrative agencies,296 "has consistently issued holdings that restrict the scope of administrative deference,"297 and doesn't think particularly much of Congress.298 Other ideologies reflect views of the Constitution that disable elected officials from addressing the needs of the day, like reasonable gun regulation.299 Some see this agenda as an exercise in judicial aggrandizement, achieved by disparaging other branches and imposing vague standards that help the Court maintain control.300 These observations have led commentators to charge the Supreme Court with imperialism.301 The Court, as one commentator put it, "today is not only the most activist of any Court in the past century, but increasingly the locus of all legal power."302 The Court is exercising that power not through sporadic and heroic decisions but through a series of decisions seen by large swaths of the nation as ideologically driven.

A prime example of all these factors is Citizens United, in which the Court overruled prior precedent and struck down, on free-speech grounds, a popular, bipartisan federal law limiting campaign contributions.303 The opinion generated a largely critical response.304 In fact, the five Justices in the majority had very little on their side, other than the Chamber of Commerce. Opposed were four Justices in dissent, the executive branch, Congress, and many states, all of which supported campaign limits.305 The Court could have avoided controversy by deciding the case as the parties presented it: without preserving the First Amendment question.306 Yet the Court itself put the constitutional challenge back on the table as well as reconsidering two past precedents upholding campaign limits.307 All on its own, the Court chose to engage the constitutional questions, strike down a democratically popular law, and overrule two prior decisions.

In the aftermath, President Obama took the rare step of criticizing the opinion publicly in his State of the Union Address, with several Justices in attendance; Alito was broadcast visibly shaking his head and mouthing "not true."308 To be sure, Obama's reproach paled in comparison to Jefferson's, Jackson's, and Roosevelt's, but the public noted the condemnation of the Court by a popular President. Citizens United, emblematic of this Court's propensity toward activism rather than restraint, is a part of a gradual accumulation of negative public reactions to the Court.

B. ETHICS SCANDALS

Aside from decisions, certain Justices have been caught in the limelight for conduct implicating judicial ethics. Justice Thomas has repeatedly been under fire for failing to disclose numerous gifts of destination vacations, private jet flights, sports events, tuition payments, and vehicle financing paid by prominent conservative businessmen.309 Justice Alito reportedly was gifted an expenses-paid luxury fishing trip by a conservative donor, whose hedge fund subsequently appeared as a litigant before the Court; Alito neither disclosed the trip nor recused himself from the case.310 In the weeks leading up to the January 6 insurrection of the Capitol by Trump supporters, Thomas's wife, Ginni, a longtime conservative activist, sent more than two dozen text messages to White House Chief of Staff Mark Meadows urging support for claims that the election was stolen from Trump.311 When flags flown during the January 6 insurrection were flown at Alito's house, he refused to recuse himself from pending cases pertaining to the insurrection.312 Both Alito and Thomas voted, in subsequent cases, to vacate the criminal conviction of a January 6 insurrectionist and to provide broad presidential immunity to Trump for his official acts in contesting the 2020 election.313 These matters received widespread media coverage.314

The Court's response to these events has not mollified the public. It has remained, as a whole, silent on media reports involving specific Justices.315 When Congress held hearings about ethics at the Supreme Court and invited Chief Justice Roberts to testify, he declined.316 And the Court has consistently resisted efforts to impose binding ethics standards on its members.317 The Court finally issued a formal Code of Conduct in November 2023,318 but that Code confirms that individual recusal matters are decided solely by the Justice implicated.319 The reaction of the Court to the scandals has generated its own negative media attention and contributed to its declining popularity.320

C. POLITICIZED APPOINTMENTS

New Justices are appointed by the President and confirmed by the Senate. That process, as John Adams's Midnight Judges shows, has always been political and has occasionally been controversial. Abe Fortas, Robert Bork, and Clarence Thomas are prominent examples. But until recently, such polarized partisanship has been the exception rather than the rule. Antonin Scalia and Anthony Kennedy, for example, were unanimously confirmed, and Bill Clinton's appointees Ruth Bader Ginsburg and Stephen Breyer were confirmed by margins of ninety-six percent and eighty-seven percent, respectively. Since 2006, however, only one of the eight Justices confirmed has been so by more than a two-thirds vote, and the votes are invariably divided along partisan lines.

The partisan voting pattern reflects the partisan popular view of the Court. From 1993 to 2016, the Court's political balance remained relatively constant. Conservative Justices held a 5-4 majority, with some conservative moderates namely, Justices Kennedy and O'Connor voting with liberal Justices to uphold key precedents, like Roe v. Wade.321 Republican Presidents would replace conservative retirements, and Democratic Presidents would replace liberal retirements, without dramatically altering the political valence of the Court.

But the political climate surrounding the Supreme Court began to change dramatically in 2015, in the waning years of an outgoing Democratic President and several aging liberal Justices who seemed unlikely to retire in time for Obama to appoint a younger successor. Then, Justice Scalia, a conservative standard-bearer, suddenly died, resulting in a vacancy that President Obama attempted to fill by appointing Merrick Garland, a highly respected judge on the D.C. Circuit at the time. The Republican-controlled Senate, however, refused to act on the appointment, arguing that a Supreme Court confirmation should not occur in an election year when an outgoing President was of a different party than the controlling Senate majority.322 It was not lost on the public that Garland's confirmation would have given liberal-leaning Justices a majority on the Court for the first time since 1970.323

The gambit paid off. Donald Trump prevailed in 2016 and appointed Neil Gorsuch to fill Scalia's seat, securing a conservative majority on the Court. Soon after, Justice Kennedy retired, and Trump appointed the reliably conservative Brett Kavanaugh to the Court, who was confirmed by a 50-48-1 vote only after a controversial and widely televised hearing involving allegations of sexual assault.324 And, soon after, liberal icon Justice Ruth Bader Ginsburg died, giving Trump the opportunity to flip a liberal seat to a reliably conservative vote, which he took by appointing Amy Coney Barrett in a move widely viewed as portending the end of Roe v. Wade's constitutional protection of abortion.325 That view proved true in the 2022 overruling of Roe in Dobbs v. Jackson Women's Health.326 The dissenters in that case wrote: "Neither law nor facts nor attitudes have provided any new reasons to reach a different result than Roe and Casey did. All that has changed is this Court."327 The culmination of a string of high-profile appointments whose ideologies have shifted the political valence of the Supreme Court has firmly tied the appointments process to popular politics.328

D. POLITICAL POLARIZATION

These events have, since 2010, coincided with "a rapid rise in party polarization," with Republican voters and candidates becoming more conservative and Democratic voters and candidates becoming more liberal.329 As a result, the public is more likely to view the Court in partisan terms, and elected officials are more likely to characterize the Court in partisan terms. With a shrunken political center, the Court, whatever it decides, is likely to dismay around half the populace.

That dismay is increasingly felt by the left. President Trump and his appointees "supercharged liberal discontent with the Supreme Court"330 by dismantling cherished precedent like Roe,331 undermining core progressive values,332 elevating the primacy of religious rights and gun rights,333 expressing a "deep distrust of bureaucracy,"334 and handing Trump a win on presidential immunity from criminal prosecution.335 With now more than fifty-five years of conservative dominance on the Supreme Court, the shine of the Court has worn off for progressives.336 Waning liberal support for the Court, in an age of Court politization and party polarization, is contributing to the view of the Court as just another form of dirty politics.337

CONCLUSION

Throughout history, the Court has ably managed its relationship with the coordinate branches and the people, despite punctuated events of extraordinary controversy. Today's Court sits in a somewhat different position, beset by lowgrade but persistent political and public skepticism, fueled by charged partisanship and the Court's own conduct.

It is unclear what the Court can do, or is willing to do, to restore its reputation. The Court has committed itself to assuming the apex position not only of the judiciary but also in law itself, such that the other branches and the people routinely look to the Court to decide the major political and social questions of the day, cast in legal terms.338 As Susan Carle has argued, when "[c]onfronted with matters they see as profoundly important, [the Justices'] sense of responsibility, if nothing else, impels them to use the power they have to set matters straight in the way they see appropriate."339 This Court, in particular, seems inclined to do so, without regard to the reactions of the political branches or the people.340 Blunt force has overcome master strategy.

But even so, it's not clear the Court feels much threat. Although liberal anger at the Court in the wake of President Joe Biden's election generated calls for term limits and court-packing,341 Biden neutralized the fervor by forming a Presidential Commission on the Supreme Court to study reform proposals;342 the Commission did not recommend major reform, and no congressional reform measures resulted from its efforts.343 So perhaps the Court has calculated that it can continue along its path without paying a price.

But some costs are hidden. This Court, though weathering this stretch of low public opinion, has saved little political capital to cash in when needed. The real fear is whether the Court has exhausted the security and support to stand up when it really matters, perhaps in the face of serious threats to the constitutional order. Today, the Court is vulnerable. And thus so are we.

#### Court capital is real and finite.

HLR 11, Harvard Law Review, “ADVISORY OPINIONS AND THE INFLUENCE OF THE SUPREME COURT OVER AMERICAN POLICYMAKING”, June, 124 Harv. L. Rev. 2064, Lexis

In assessing the Court's power relative to the elected branches, it is first necessary to be clear about what motivates the Supreme Court. When exercising judicial review, the Court seeks to vindicate its constitutional vision by striking down legislation repugnant to that vision. This is true whether one believes that the Court seeks in good faith to divine the true meaning of the Constitution and impose it on the elected branches, attempts to interpret the Constitution faithfully but subconsciously imports its own policy views, or disingenuously strives to implement its policy preferences in the guise of neutral interpretation. For the purposes of the present argument it is irrelevant which view or combination of views is most accurate, and the phrase "constitutional vision" will stand for any and all of these. Yet as suggested above, the Court is not unconstrained when it seeks to effect its constitutional vision through judicial review: if it strays too far from the political mainstream, n55 it will face consequences that undermine its constitutional [\*2076] vision even more than would the upholding of a disfavored statute. n56 The upshot is that the Court operates under conditions of scarcity and must economize on its political capital to go as far in implementing its constitutional vision as political realities allow, which sometimes means upholding (or declining to review) government actions that contravene that vision. n57 And, as a distinct matter, most [\*2077] Justices have displayed a desire to conserve the Court's political capital and maintain its institutional prestige as much as possible even where the Court was not immediately threatened with any hard political constraints. n58 This conservatism is especially understandable given that the Justices are generally not political experts and lack the sophisticated public relations apparatuses of the elected branches, and that the elected branches have substantial capacity to shift public opinion about the Court if they so choose; these factors make it rational for the Court to be parsimonious with its political capital in order to avoid blind overreaching.

[FOOTNOTE]

n57. Thus, the Court's decisionmaking process in a judicial review case incorporates its internal preferences and its view of external constraints as follows: R = B / C, where B equals the benefits to the Court's constitutional vision of invalidating a given piece of legislation, C stands for the cost the Justices expect to incur in terms of political capital, and R gives the trade-off rate between costs and benefits in any given case, such that the Court will expend its political capital in those cases where R is highest, so long as R > 1.

A reasonable objection to the model elaborated in this Part is that although the Court is politically constrained, this "bank account" model in which the Court has finite political capital to "spend" by striking down popular government actions is unrealistic: the Court can also increase its prestige - its institutional capital - by exercising judicial review, which has been the effect of Marbury and Brown, two decisions without which the Court would be much weaker now. Nonetheless, most countermajoritarian decisions do seem to cost the Court rather than increase its capital (Marbury was a refusal to make the countermajoritarian decision, see Friedman, supra note 53, at 60-62, and Brown jeopardized rather than solidified the Court's power over the years immediately following the decision, see Klarman, supra note 53, at 312-43). This is especially true in the short run, while the decision remains countermajoritarian, and it is the short run that counts for the current Justices: the fact that Brown is today sacrosanct did not help the Court when Southern resistance threatened that decision's efficacy in the years immediately after its announcement. Cf. Daryl J. Levinson, Parchment and Politics: The Positive Puzzle of Constitutional Commitment, 124 Harv. L. Rev. 657, 743 (2011) ("Evidently, the Court can build up a savings account of approval that it can then spend down by issuing unpopular decisions without losing public support."). The necessary implication of Levinson's statement is that the "savings account" - and thus the Court's countermajoritarian capacity - is finite. At any rate, the Court's position is no different from that of any other political actor: though the presidency as an institution, for instance, would certainly lose influence as a result of a string of weak, unassertive presidents, and might gain it through the acts of a strong leader, any given President at any given time is undoubtedly limited by political constraints.

#### The ‘Court seeks out controversy’ warrant is wrong:

#### The Court---and Roberts especially---are political and strategic actors. They know how significant the tariffs case is and will switch votes and compromise in other areas to balance and preserve overall neutral public perception of the judiciary.

Joan Biskupic 11/11/25, J.D. from the Georgetown University Law Center, CNN’s Chief Supreme Court Analyst, interviewed by Zachary Wolf, “Are tariffs a tax? The court’s view may decide the fate of Trump’s tariff battle”, https://www.cnn.com/2025/11/11/politics/tariffs-trump-supreme-court-roberts-tax-analysis

Will the Court be thinking about its own image?

WOLF: These tariffs are a major part of Trump’s agenda that he promised during the campaign. The scale of them means they touch much of the US economy. To what extent are the justices likely to be talking about the scale of it, and whether deference should be given to the president because of the election? Are they going to be mindful of the external context?

BISKUPIC: In some cases, the external becomes the internal. Issues related to executive power weigh especially on this conservative majority. And the court has ruled over time, not just in today’s conservative era, that a president has broad authority when it comes to foreign affairs. So that’s in the atmosphere, as well as the fact that this is a signature initiative of the president. Just as was the situation with Obamacare. So whatever the court does will be viewed as either a major stamp of approval or a major rejection.

And I don’t think you can discount that the justices are concerned about whether people have confidence in the court, that it is not simply a tool of the administration. All these factors make this a very close case.

I think many of the justices, especially the chief, are mindful that there’s this public narrative that the court is always siding with Donald Trump. Now, they don’t like that narrative. They don’t believe that narrative. But it’s there. I’m not saying these factors would be decisive, but I don’t think we can discount them.

Are the justices intimidated?

WOLF: Justices have talked about their concerns over safety. Do you think that they are afraid or intimidated at the thought of crossing Trump in a big way?

BISKUPIC: No. I don’t think so. Just to break down the nine: I think we’ve got three justices who are going to be with him on this tariff dispute: Clarence Thomas, Samuel Alito and Brett Kavanaugh. Solidly against him on this issue seem to be Sonia Sotomayor, Elena Kagan and Ketanji Brown Jackson. In the middle would be the chief and Justices Neil Gorsuch and Amy Coney Barrett. I don’t think any of the three worry about crossing Trump, as you put it. And you mentioned safety. I’d say that is a general concern across the judiciary, but these justices have full-time security. Frankly, it’s the lower-court judges who have more real fears about safety. They’re on the front lines and unaccustomed to being so much in the public eye.

And I do not think any of the justices feel like they can’t vote a certain way because they’re going to draw out President Trump’s wrath. In many cases, they’re with him anyway. That’s the bottom line for this conservative supermajority court. They are very much aligned with Donald Trump on the law.

Roberts will likely try to build a coalition

WOLF: What are you expecting from the decision?

BISKUPIC: I think the chief, with a case of this magnitude, will want to write the court’s opinion. Going into the case, the momentum was with the challengers because of how lower courts ruled. And maybe the justices are going that way, too. But remember we saw only a glimpse of their views in oral arguments. They’ve taken a private vote by now and are beginning negotiations that will take months. As I said, there are cross-currents here. I don’t necessarily think votes will shift. But with Obamacare, the chief made multiple vote switches. So it ain’t over till it’s over.

Roberts changed his mind on Obamacare

WOLF: Why did he change at the last minute?

BISKUPIC: In the beginning, he was with fellow conservatives to strike Obamacare down under the Commerce Clause. But then he decided he could uphold it under Congress’ taxing power. This is why you made a connection between this case and that one on the word “tax.”

A bigger majority is better

WOLF: That’s interesting that they have to negotiate with each other to get to something they can all agree on or a majority will agree on.

BISKUPIC: Exactly. Five votes are needed for a majority, but the chief might want to try for more, with more compromises — because it is such a big case and so much at stake for President Trump and his agenda.

#### The Court’s being careful this term to maintain the perception that they’re politically balanced---justices will self-police their decisions to maintain anti-partisanship.

Richard M. Re 25, Professor of Law at Harvard Law School, November 2025, “Foreword: To a Conservative Warren Court,” Harvard Law Review, 139 Harv. L. Rev. 2

This basic picture can be formalized by way of the following two principles:

Nonpartisanship Principle. In general, judges act permissibly when they adhere to institutional precedent, personal precedent, or consensus views.

Antipartisanship Principle. But judges should generally eschew the wishes of their co-partisans, absent strong support in institutional precedent, personal precedent, or consensus views.

Each of the two principles has objective and subjective aspects. That is, a judge should subjectively aspire to obey the principles; and critics of the courts can apply the principles as objective standards, based on observable behavior.292

Notably, the antipartisanship principle does not just render partisanship an invalid reason but also treats the avoidance of partisanship as a potential reason for decision. Imagine a judge who is unsure how to rule in a controversial case where both sides find some support in [\*48] institutional or personal precedent. Under the nonpartisanship principle, the judge might permissibly favor either side. But, if the issue has a partisan valence and the judge is associated with a relevant political party, then the judge should err in favor of disappointing partisan expectations. Some respected federal court of appeals judges appear to have done just that.293 The lead opinion in Planned Parenthood of Southeastern Pennsylvania v. Casey could be understood as such an effort.294 And some otherwise surprising votes by Chief Justice Roberts, as well as Justices Breyer and Kagan, might be viewed similarly.295 This antipartisan orientation also resonates with broader themes in legal culture. For instance, Justices have publicly praised their predecessors for ruling against the presidents who appointed them,296 with the Nixon Tapes Case from the long Warren Court being perhaps the most salient example.297

The antipartisanship principle does reflect a certain irony, in that it recommends awareness of politics precisely to check its influence.298 Judges who nearly always vote for members of their own party (or race, or religion) are probably doing something very wrong. To similar effect, Justice Barrett (among others) has recently recalled Justice Scalia's adage that judges whose votes always match their politics are bad at their [\*49] jobs.299 This Term, the Court itself came close to making that idea explicit, adducing a string cite of recent rulings as proof that it has been applying standing doctrine "evenhandedly."300 These examples show that Justices are mindful of their decisions' ideological valence, the better to ensure that their legal compasses are reliably pointing north.

So the antipartisanship principle is susceptible to subtle application, as judges assess patterns in their own decisions over a period of time, rather than case by case. The goal, in other words, is to construct a principled overall jurisprudence, rather than handing out wins and losses to various groups according to a quota or schedule. And that approach appears to track the thought processes of many members of the public: According to a leading political science theory, lay observers assess the Justices' legitimacy by keeping "a running tally" of how often the Court rules either well or poorly.301 Those lay assessments arise in a political context, so that conservative decisions score well with conservatives, and liberal ones score well with liberals.302 In this way, judges' desires for esteem, both in their own eyes and in the public's, may point in the same antipartisan direction.

#### The ‘overruling past precedent’ warrant is wrong too. Roberts only did it because he thought he needed to balance.

John Yoo 20, Non-Resident Senior Fellow at AEI, J.D. from Yale Law, the Emanuel S. Heller Professor of Law at the University of California, Berkeley, and a Senior Research Fellow, Civitas Institute, University of Texas at Austin, “Supreme Court Swing Vote: What’s Behind John Roberts’ Legal Gymnastics?”, https://www.aei.org/op-eds/supreme-court-swing-vote-whats-behind-john-roberts-legal-gymnastics/

By a 5-4 vote, a fractured Supreme Court Monday struck down Louisiana’s effort to regulate abortion by requiring abortion doctors to have admitting privileges at local hospitals. Chief Justice John Roberts agreed with four liberal justices that the state law imposed a “substantial burden” on a woman’s right to an abortion.

While the decision guarantees that abortion will continue to roil our politics, it may prove an even more important signal of Roberts’ determination to foil President Trump’s agenda to remake the federal courts.

June Medical Services v. Russo displays Roberts in fine form as a legal gymnast. Four years ago, in Whole Women’s Health v. Hellerstedt, the chief justice had voted to uphold an identical law from Texas. He lost that case, however, because Justice Anthony Kennedy joined with the court’s liberal wing – Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan – to find that the burdens on abortion access outweighed the purported benefits of the regulation.

With President Trump’s 2018 appointment of Brett Kavanaugh to replace the retiring Kennedy, conservatives could have justifiably expected the court to finally discard the substantial burden test, first introduced in 1992 in Planned Parenthood v. Casey.

Trump’s appointment of Justice Neil Gorsuch in 2017 would not have had that effect, because he replaced Justice Antonin Scalia, a fierce foe of Roe. But Trump’s supporters, many of whom voted for him in order to shift the court in a more conservative direction, would have believed that Kavanaugh’s appointment would lead to Roe’s end.

Those hopes came to a crashing halt Monday. While he refused to join the liberal justices’ opinion in Russo, Roberts voted to strike down the Louisiana law anyway in the interests of adhering to past precedent.

“The legal doctrine of stare decisis requires us, absent special circumstances, to treat like cases alike,” Roberts wrote in his concurrence. “The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana’s law cannot stand under our precedents.”

Roberts still claimed that he remained true to his legal principle. He continues to “believe that the [Texas] case was wrongly decided.” But he said the question was whether to “adhere to it in the present case.”

Conservatives on the court legitimately questioned Roberts’ commitment to the Constitution. In a powerful dissent, Justice Clarence Thomas declared that the court’s claim of *stare decisis* “does not comport with our judicial duty under Article III, which requires us to faithfully interpret the Constitution.”

Instead, he wrote, “when our prior decisions clearly conflict with the text of the Constitution, we are required to privilege the text over our own precedents.” Because  Roe and Casey are based on a “demonstrably erroneous interpretation of the Constitution,” Thomas concluded, “we should not apply them here.”

It is the court’s job to uphold the Constitution, not its old cases. If its precedents conflict with the Constitution, it must reverse them, just as it refuses to enforce executive orders or statutes that violate the Constitution.

Why would Roberts vote to strike down a law that he believed, only four years ago, was constitutional? His claim to stare decisis proves unconvincing. If Roberts were right, the court should never have decided Brown v. Board of Education, which declared segregation unconstitutional, since it overruled Plessy v. Ferguson. Roberts himself voted just last year to overrule precedents related to the Takings Clause and two years ago against mandatory union dues.

Politics may well explain Roberts’ rush to the pro-abortion side of the court. He has now frustrated President Trump’s efforts to remake the federal courts.

Consider his votes just this term. Roberts has stopped the effort to overrule Roe and Casey Monday. Last week, in Regents of California, he provided the fifth vote to block Trump’s order ending the Obama administration’s Deferred Action for Children and Deferred Action for Parents programs – even though the courts had held the orders unconstitutional. Two weeks ago, in Bostock v. Clayton County, he voted to extend federal anti-discrimination protections in the 1964 Civil Rights Act to gay and transgender employees.

Trump has set records in the speed and number of his appointments to the lower courts, and has chosen conservative nominees unmatched by any previous president in their sterling qualifications and intellect. He has appointed two Supreme Court justices who have generally voted with stalwart conservatives Thomas and Samuel Alito. But it has come to naught with Roberts shifting into the middle, swing position once occupied by Justice Kennedy.

Roberts’ supporters will argue that the chief justice is keeping the court out of politics during an election year. In today’s decision on abortion, he has planted the court in a very popular decision; polls suggest that Americans support a right to abortion but with reasonable limits. He has achieved the same moderation with this month’s immigration and gay rights cases, whose outcomes match the preferences of many.

Roberts may tell himself that by restraining the conservatives on the court and moderating its course, he has removed the Supreme Court as a target for a possible Biden presidency.

But Roberts’ mistake is to play politics at all. If he seeks moderation, he will respond to the political environment, which will only encourage more political efforts to pressure him and the court.

The chief justice tried something like this back in 2012, when states challenged ObamaCare as exceeding the powers of the federal government. After the oral argument, Democratic elected politicians launched unprecedented political attacks on Roberts and the court. According to reports, Roberts flipped his vote to uphold ObamaCare, and in so doing upheld a popular program, but at the price of diluting the Constitution’s careful limits on the balance between Washington, D.C., and the states.

Today’s legal gymnastics may have a similar purpose behind them. But they are a loser’s game.

By trying to keep the court in a low-profile, moderate position, Roberts forgets that advancing popular programs remains the job of the president and Congress, whom the people elect for that purpose. The court’s role should remain that of enforcing the Constitution against popular wishes – otherwise, we could dispense with a Constitution and just let elections decide all.

### Link---2NC

#### The house is irrelevant. Different body.

#### The AFF destroys the Court’s agenda:

#### 1---Judicial capital---Roberts is currently constraining the Court’s action on labor law now because it takes finite time, energy, and PC to wrangle justices together, and there’s an opportunity cost tradeoff with other priorities. That’s 1nc Pope.

#### Fiat means a majority of justices vote for the AFF. That requires huge reserves of PC---they are openly anti-worker.

Jamelle Bouie 23, New York Times Opinion columnist, former chief political correspondent for Slate magazine, “There Is One Group the Roberts Court Really Doesn’t Like”, https://www.nytimes.com/2023/06/06/opinion/roberts-court-glacier-labor-workers.html

It is difficult to overstate the hostility of the Roberts court to organized labor and the rights of American workers.

Under John Roberts, who became chief justice in 2005, the court has made it harder for workers to bring suit against employers collectively, limited the power of workers to hold employers responsible for discrimination on the job, ended the ability of public sector unions to require dues from nonmembers who benefit from collective bargaining and struck down a California law that allowed unions to recruit workers on the property of agricultural employers.

In pretty much any given conflict between an employer and a group of workers, you can count on Roberts and his Republican allies on the court to side with the employer.

#### 2---Balancing---Roberts is deeply committed to maintaining the Court’s image as non-partisan and avoiding direct confrontation with Trump---it’s a tightrope-walk and requires him to correct for the *liberal* and *confrontational* bias of the AFF---that’s 1nc Marimow.

#### That means they’ll pair the AFF’s liberal ruling with a conservative ruling on tariffs.

Emily Bazelon 15, J.D. from Yale Law School, “Marriage of Convenience”, https://www.nytimes.com/2015/02/01/magazine/marriage-of-convenience.html#selection-283.0-328.0

When Roberts was nominated to be chief justice 10 years ago by President George W. Bush, he exuded calm neutrality at his confirmation hearing, comparing judges to umpires who call balls and strikes. At the end of his first term, he emphasized the importance of the court's ''credibility and legitimacy as an institution,'' in an interview with the George Washington University law professor Jeffrey Rosen.

But in 2010, Roberts supplied the fifth vote for the court's remarkably unpopular ruling in Citizens United. By striking limits that Congress set on campaign spending by corporations, the court was perceived as favoring the interests of the wealthy. The court's approval rating fell 10 percentage points, to barely break even, from 61 percent.

Since then, the court has fared better with the public when it pairs conservative decisions with progressive ones. And same-sex marriage is part of that equation. In 2013, the term ended with a splashy ruling in which five justices -- Roberts not among them -- struck down part of the Defense of Marriage Act, which restricted federal benefits for spouses to male-female couples. This decision came one day after the court gutted a central component of the Voting Rights Act, in a 5-to-4 decision written by Roberts.

#### Empirically, that’s involved labor cases.

Alex Swoyer 20, legal affairs reporter for The Washington Times, J.D. from Ave Maria School of Law, member of the Supreme Court bar, “Strategic considerations’: John Roberts’ swing votes all about politics, court watchers say”, https://afj.org/article/strategic-considerations-john-roberts-swing-votes-all-about-politics-court-watchers-say/

Chief Justice John G. Roberts Jr. has been labeled the Supreme Court’s swing vote after siding several times with the liberal wing, but both conservative and liberal court watchers say his judicial moves are all about politics.

Conservatives say Chief Justice Roberts is trying to strike a balance so the high court doesn’t appear too political. Critics say that balancing act is falling short and is resulting in an inconsistent record that appears to be more political than rooted in a particular jurisprudence.

“Roberts seems to be swinging based much more on strategic considerations, and a lot of it really has to do with how much blowback he thinks he and the court will get,” said Curt Levey, president of the conservative Committee for Justice. “He is protecting the reputation of the Roberts Court. He is protecting his own reputation.”

“Roberts is only the swing vote because of how extreme the other four Republican-appointed justices are,” said Dan Goldberg, legal director for the liberal Alliance for Justice.

Mr. Goldberg said he was shocked that the ruling last week that struck down a Louisiana law that threatened to shutter abortion clinics wasn’t 9-0. He said the court shouldn’t hang on 5-4 decisions in major cases over constitutional rights.

“What the Supreme Court just over the last week has demonstrated is how critical the court’s decisions are and how many of our rights and privileges are in many cases hanging by a thread,” he said.

Liberal activists say Chief Justice Roberts‘ concurring opinion with Democratic-appointed justices on the abortion case last week, in which he wrote separately from the liberal wing, only invited more cases restricting abortion rather than signaling that he would strike down any challenge to Roe v. Wade.

“He walks a tightrope in every single case. That is where he wants to court to be,” said Josh Blackman, a professor at South Texas College of Law.

As he tries to toe the line, Justice Roberts tends to author narrow opinions that apply only to the parties before the court, making his middle-of-the-road rulings difficult to use as precedent and uniformity.

Chief Justice Roberts gave the latest example of his stunning reversals last week in the case of June Medical Services v Russo. The court issued a 5-4 ruling saying a requirement for doctors performing abortions to have admitting privileges at nearby hospitals placed an undue burden on abortion access.

The law at issue mirrored one struck down in Texas four years ago that said abortion providers must have credentials and access to a hospital within 30 miles of the site where the abortion procedure is taking place.

The chief justice joined the liberal wing of the court to strike down the Louisiana law but four years earlier voted to uphold the Texas law. In the 2016 case, he joined a dissent authored by Justice Samuel A. Alito Jr. that argued states have an interest in protecting the health of women in cases of medical emergencies.

Writing his separate opinion in the Louisiana case, Chief Justice Roberts said his decision was based on stare decisis, a legal doctrine requiring judges to issue the same ruling on a case if it is identical to a previous case.

“The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore, Louisiana’s law cannot stand under our precedents,” Chief Justice Roberts wrote.

Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the libertarian Cato Institute, said what was odd was that Chief Justice Roberts voted to overturn precedent in other terms, including cases with 30- to 40-year-old precedents.

Mr. Shapiro pointed to Janus v. American Federation of State, County, and Municipal Employees, which struck down mandatory union dues as a violation of the First Amendment. The ruling overturned a case from 1977 that held the opposite view.

“It’s Roberts being strategic,” said Mr. Shapiro, noting that the chief justice doesn’t want the court to move too much, too quickly to the right.

#### Especially true for liberal surprises like the AFF---they’ll be leveraged strategically by Roberts.

David Leonhardt 21, editorial director for New York Times Opinion, holds a degree from Yale, “A Supreme Court, Transformed”, https://www.nytimes.com/2021/07/06/briefing/supreme-court-donald-trump.html#selection-315.0-318.0

The latest version of the Supreme Court — with Donald Trump’s three appointees — is starting to come into focus. It is both ideologically predictable and unpredictable, depending on the issue.

On many matters, including health care, immigration, crime and several social issues, the court is conservative but not uniformly so. Majorities often transcend ideological lines, with decisions sometimes disappointing conservative activists and pleasantly surprising liberals. “It’s nowhere near as bad as people thought,” David Cole of the American Civil Liberties Union said last week.

These surprises accomplish a top priority of Chief Justice John Roberts: bolstering the court’s image as a nonpartisan institution. A central question about Trump’s three choices — Amy Coney Barrett, Brett Kavanaugh and Neil Gorsuch — was whether they would take a similar approach to Roberts. He is deeply conservative but cares about forming cross-ideological coalitions. By contrast, Clarence Thomas and especially Samuel Alito are more reliably conservative.

### U---AT: Trump Wins

#### Reklaitis evidence---more slop---unqualified nobody at a *day-trader rag*---who just says chances increased ‘moderately’. Bottom of the article says prediction markets are still strongly NEG. We’re yellow.

Victor 2ac Reklaitis 1/14. Washington Correspondent for MarketWatch. “The wait for a tariff ruling could signal a Trump win — or a refund headache.” https://www.marketwatch.com/story/the-wait-for-a-tariff-ruling-could-signal-a-trump-win-or-a-refund-headache-e1d55605?gaa\_at=eafs&gaa\_n=AWEtsqe3HtGGl2fqEZw\_T-T5T2NPYkKKyDsKH41XO-NLuqpx8VPK2UVZtbJjua-SnvQ%3D&gaa\_ts=696bcaff&gaa\_sig=dIwOtXjy9LBscU8F5Cp6j5nEHbAoZi0Z9f4Cvs4yBXC0SSzfGGBT\_-tfJuReRpCP71-iuh8k8xxL6wxn\_5k2kg%3D%3D.

The likelihood of the Supreme Court ruling in favor of President Donald Trump in a closely watched tariff case increased moderately Wednesday after the court again held off on releasing its decision.

The high court has indicated it is acting in an expedited manner in this case, which has massive economic stakes, but the justices don’t typically give hints about exactly when a particular opinion will be issued.

Investors, importers and others who had braced for a ruling on Wednesday morning were left disappointed, just as they were last Friday.

Some analysts have said it’s a good omen for Trump if the Supreme Court keeps holding off on releasing its decision. It’s possible that there is significant debate among the justices, rather than a widespread view that lower courts were right to rule in favor of the importers challenging a wide swath of Trump’s tariffs.

**[emory card ends here]**

“We agree that a long wait for the tariff decision is probably a better sign for the Trump administration than it is for importers, but it is no guarantee of the outcome,” said Kelsey Christensen, a trade attorney at law firm Clark Hill, in an email to MarketWatch on Wednesday. She added that court watchers are “not in long-wait territory yet,” given the court’s track record and the fact that it heard [oral arguments in the case](https://www.marketwatch.com/story/trumps-chances-of-winning-his-tariff-case-drop-as-supreme-court-hears-arguments-0262b16d?mod=article_inline) just two months ago.

“November to January is lightning speed for the court to hear and publish a major opinion,” Christensen said. “As the wait continues, we suspect that the justices are navigating and fine-tuning a majority opinion in addition to one or more dissents or concurrences.”

One betting market, [Kalshi](https://kalshi.com/markets/kxdjtvostariffs/tariffs-case/kxdjtvostariffs), recently was putting the likelihood of a Trump win in the tariff case at 35%, up from as low as 22% just before the Supreme Court issued its opinions for the day without releasing one that addressed the president’s import taxes. [Polymarket](https://polymarket.com/event/will-the-supreme-court-rule-in-favor-of-trumps-tariffs?tid=1762353846986) was putting Trump’s chance for a victory at 33%, up from a low around 21% on Wednesday morning.

#### Those are the gold standard.

Amir Hajian 25, M.B.A. from Bayes Business School, Researcher at Keyrock, former team lead at Messari, also with Filippo Armani, M.S. from The London School of Economics and Political Science (LSE), “Prediction Markets: The Next Frontier of Financial Markets”, https://keyrock.com/prediction-markets-the-next-frontier-of-financial-markets/

Accuracy remains a defining feature. Prediction markets consistently deliver Brier scores near 0.09, outperforming traditional polls, expert forecasts, and even weather models. They are the most accurate forecasting systems we have. Both Kalshi and Polymarket demonstrate strong predictive performance, though their design choices differ. Kalshi’s standardized, regulated contracts tend to produce tighter error distributions, while Polymarket’s broader and more diverse market design introduces higher variance across outcomes.

#### The tariffs will be struck down---Roberts is assembling a majority coalition to finally put the brakes on Trump’s unilateral authority---but conservative justices aren’t united, he’s under immense pressure from both sides, and his ultimate goal is to make sure the Court looks impartial, stable, and legitimate---that’s 1nc Bravin.

#### Consensus of experts.

Tracy Moran 12/29/25, holds a master’s degree in international affairs from The George Washington University, editor covering international news & politics at the National Post, citing Clark Packard, a research fellow in the Cato Institute’s Herbert A. Stiefel Center for Trade Policy Studies, and Andrew Hale, a senior policy fellow at Heritage Foundation, “2025 was the year of the tariff. The U.S. Supreme Court will decide if 2026 is the year some tariffs die”, https://nationalpost.com/news/its-a-foregone-conclusion-2025-was-the-year-of-the-tariff-the-u-s-supreme-court-will-decide-if-2026-is-the-year-the-tariffs-die#selection-2109.0-2112.0

The high court fast-tracked litigation to hear oral arguments this autumn, and a verdict is now expected early next year. So will 2026 be the year the IEEPA tariffs die, and if so, what will it mean for Canada and Trump’s trade war?

Reading the signals

While the administration has said it expects the court to rule in the president’s favour, most trade experts do not.

Clark Packard, a research fellow in the Cato Institute’s Herbert A. Stiefel Center for Trade Policy Studies, believes there are indications the Supreme Court will rule against the president.

“I think there’s a skepticism on separation of powers grounds — that the president shouldn’t have this much (power),” Packard said, noting how the justices have referred to a tariff as a tax.

“If it’s a tax, then that power resides with Congress to set those rates.”

Packard noted that the betting markets see the decision going this way, but he acknowledged the court might rule in favour of Trump.

Andrew Hale, a senior policy fellow at Heritage Foundation in Washington, D.C., doesn’t see any chance of a win for the White House.

“It’s a foregone conclusion,” he said. “They’re going to vote down IEEPA.”

#### It’s not already decided---the Court’s still struggling with how to rule which proves it could flip in Trump’s favor, but that’s still less likely now

Ariel Zilber 1-16, general assignment reporter at the New York Post, 1/16/26, “Supreme Court delay may signal Trump win in high-stakes tariff fight, experts say,” https://nypost.com/2026/01/16/business/supreme-court-delay-may-bode-trump-win-in-high-stakes-tariff-fight-experts-say/

President Donald Trump’s chances of surviving a Supreme Court showdown over his sweeping tariff regime quietly appeared to tick higher Friday — not because the justices issued a ruling, but because they didn’t rule at all, according to legal observers.

The high court again declined to issue a decision in the closely watched case challenging Trump’s use of emergency powers to impose tariffs, leaving investors, importers and businesses in limbo after bracing for an opinion that is yet to come despite their expectations.

The delay marked the second time in less than a week that the court passed on releasing a ruling, fueling speculation that the justices are divided — and that the prolonged wait may ultimately favor the White House.

“We agree that a long wait for the tariff decision is probably a better sign for the Trump administration than it is for importers, but it is no guarantee of the outcome,” Kelsey Christensen, a trade attorney at law firm Clark Hill, told the financial news site MarketWatch.

Christensen said the case is still moving quickly by Supreme Court standards, noting that oral arguments were held just two months ago.

“November to January is lightning speed for the court to hear and publish a major opinion,” she observed, adding that the justices may be “fine-tuning a majority opinion” along with “dissents or concurrences.”

In legalese, a concurrence is a separate opinion written by a judge who agrees with the majority but wishes to state different reasoning or emphasize other arguments.

Terence Lau, dean of Syracuse University’s law school and a former trade attorney for Ford Motor Co., told MarketWatch that the justices may be struggling with how far to go if they rule against Trump.

“The longer wait suggests the justices are debating the scope of the remedy,” Lau said.

One possibility, he said, is a “middle ground” outcome in which the court invalidates the tariffs but limits refunds to future collections, sparing the Treasury from having to repay past duties already collected.

“The longer the tariffs remain in place, the more catastrophic a retroactive refund becomes for the US Treasury,” Lau warned.

Market watchers have been reading the tea leaves in real time.

On the prediction market Kalshi, the odds of a Trump victory in the tariff case rose to 34% on Friday, up from as low as 22% earlier in the week.

Polymarket showed similar movement, with Trump’s chances climbing to 33% after dipping near 21% just a few days prior.

#### They’ve saved up PC for this confrontation.

Charles Lane 11/6/25, nonresident senior fellow, American Enterprise Institute “The Most Important Supreme Court Case of the Year (So Far)”, https://www.persuasion.community/p/the-supreme-court-might-be-about

The tariffs case is the first time the justices themselves are taking responsibility for a final decision on one of Trump’s signature policies—probably the signature policy of his second term. And they don’t seem fazed by the possibility that he’ll resist and trigger a constitutional crisis.

If so, that can only enhance the Court’s legitimacy. Indeed, if the conservative justices consciously saved political capital by avoiding confrontation with Trump until the most opportune moment, they chose a good issue on which to make their stand. Tariffs are not popular. If the Court rules against him it would be hard for the president to resist: doing so would entail trying to collect tariffs from hundreds of U.S. companies whose general counsels would be advising them that they don’t have to pay.

#### Oral arguments prove---but the case hinges on Roberts, Gorsuch, and Barrett.

W. Blake Gray 11/6/25, U.S. Editor at WS, formerly an Editor for the San Francisco Chronicle and SF Weekly, winner of the Roederer Award, “Supreme Court Looks Like Rejecting Tariffs”, https://bit.ly/4paJiNA

The US Supreme Court appears willing to strike down most of President Donald Trump's tariffs on foreign goods.

SCOTUS held a marathon hearing on Trump's tariffs on Wednesday that was scheduled to last 80 minutes, but went on for 165. As with all Supreme Court hearings, no ruling is imminent, but we can guess how the judges are leaning by the questions they asked of both sides.

Every other media outlet in the US is going to cover this as hard news, and you can read that anywhere, so I'm going to make this an analysis: I think the court is going to rule against Trump.

The three liberal justices (Elena Kagan, Sonia Sotomayor, Ketanji Brown Jackson) were clearly on the side of the plaintiffs. Justices Samuel Alito, Brett Kavanaugh and Clarence Thomas were clearly on Trump's side. That leaves Justices Amy Coney Barrett and Neil Gorsuch and Chief Justice John Roberts to decide the case.

### U---AT: Tariffs Inev

#### First---Trump loss doesn’t turn our internal link---it’s not about the economy, it’s about a trade war---their ev just says equity markets would be shaky, that’s irrelevant to our impact.

#### Second---tariffs aren’t inevitable:

#### Framing issue---our DA isn’t “all tariffs are bad”, it’s “*haphazard trade wars* are bad”. Even if Trump can still tariff after the ruling, he’ll be forced to make an explicit and thought-out case for them---and the overall result will be *net less tariffs*.

Aime Williams 12/30/25, US trade and climate correspondent for the Financial Times, holds a masters degree from UCL, “Donald Trump expected to impose new levies if Supreme Court strikes down tariffs”, https://www.ft.com/content/ead498af-2403-4cef-a515-055cb38dfbdb

But while the White House may be able to rebuild a tariff wall, the alternative legal avenues will curtail Trump’s ability to quickly raise and lower levies, depriving him of the most immediate route to hitting major trading partners with duties.

“If the Supreme Court rules against the administration, Trump’s power to use tariffs both as punishment and reward will be significantly diminished,” said Lori Wallach, director of the Rethink Trade group and a lawyer.

“With other laws, the administration would have to make a case for using tariffs,” she said. “It will be less like: ‘I have woken up and decided I am annoyed with this Canadian TV advert so I am going to increase the tariff rate.’”

#### Their authors are falling for Trump’s obvious posturing.

Ankush Khardori 12/16/25, J.D. from Columbia, senior writer for POLITICO Magazine and a former federal prosecutor at the Department of Justice, “Trump Is Raging at a Looming Supreme Court Loss on Tariffs. He’s Got a Point.”, https://www.politico.com/news/magazine/2025/12/16/trump-tariffs-supreme-court-defeat-messy-column-00691102

If Trump’s request for divine intervention falls flat, the administration will, in fairly short order, have to figure out a way to salvage the president’s signature economic policy initiative. For months, top administration officials like Treasury Secretary Scott Bessent and National Economic Council Director Kevin Hassett have brushed off the prospect of a loss at the Supreme Court by claiming that they will simply use other trade statutes to replace the tariffs that have been issued under the purported authority of the International Emergency Economic Powers Act.

Their outward nonchalance raises some obvious questions, not the least of which are why, if they are right, the president is asking God to step in, or why the administration spent all year using the wrong legal authority to support the president’s policy initiative. Their seeming indifference, however, also obscures the new legal and political obstacles that the Trump administration would confront. The fallback effort would not be as simple or straightforward a matter as they have claimed.

#### Other alternatives are way less escalatory.

Charles Lane 10/27/25, nonresident senior fellow at the American Enterprise Institute, “It’s Time for the Supreme Court to Confront Trump”, https://www.thefp.com/p/its-time-for-the-supreme-court-to-confront-trump-tariffs

To be sure, there might be a route to upholding the tariffs without either okaying Trump’s misuse of IEEPA or enraging him by rescinding the tariffs. In a friend of the court brief filed on behalf of the pro-Trump America First Policy Institute, law professors Jed Rubenfeld (who is a*Free Press* columnist) and Alan Dershowitz suggested a possible off-ramp.

They argue that even if Trump’s tariffs aren’t lawful under IEEPA, they are lawful under a different, admittedly obscure, statute: Section 338 of the Tariff Act of 1930. That provision allows the president to levy tariffs of up to 50 percent on countries that he determines “discriminate” against U.S. goods.

But there’s a catch: Trump’s own solicitor general, John D. Sauer, has not made this argument himself. Possibly this is because Section 338 gives the president less latitude than he is claiming now: Its 50 percent cap on retaliatory tariffs doesn’t allow him to threaten triple-digit tariffs as negotiating leverage, as he has repeatedly done. The most recent instance was on October 10, when Trump, retaliating for a Chinese near-embargo of rare-earth mineral exports, said he was about to hit China with a 100 percent levy.

#### Post-ruling tariffs will avoid the worst impacts---the process is qualitatively distinct.

W. Blake Gray 11/6/25, U.S. Editor at WS, formerly an Editor for the San Francisco Chronicle and SF Weekly, winner of the Roederer Award, “Supreme Court Looks Like Rejecting Tariffs”, https://bit.ly/4paJiNA

If the court rules against the administration, Trump still has other means to impose tariffs.

As he did in his first term, he can file a case with the US Trade Representative. But tariffs imposed in that manner require hearings and are not immediate. They also are imposed on specific products, not as a blanket tariff on everything imported from a country. They would be nothing like the country-by-country tariffs that Trump has been creating and modifying based on one-on-one conversations with other country's leaders.

### Internal---AT: Aff Solves

#### Dogshit highlighting.

#### Lochner judge can’t reverse doctrine, and our evidence thumps it---the current court is not lochnerist, future presidents won’t increase tariffs, and same as the arguments above.

#### The court isn’t going to be completely overhauled now. All of our cards above prove they have inherent ideologies that are either right or left, but no one is going rogue to allow tariffs because they care about public perception.

### Impact---AT: Tariffs Defense

#### Impact defense doesn’t assume fragility of the international order---it’s been roiled by Trump’s protectionism and escalatory actions, and previous checks on mercantilist resource grabs and open hostility don’t exist---means wars start quickly and go nuclear faster---that’s 1nc **Schifferes.**

#### Brink is now. First wave of tariffs are priced in.

#### Defense is wrong---global hotspots are on the brink---tariffs push them over the edge to Armageddon.

Joshua Keating 25, senior correspondent at Vox covering foreign policy and world news with a focus on the future of international conflict, former Associate Editor at Foreign Policy, “The hidden danger in Trump’s trade war”, https://www.vox.com/world-politics/410931/trump-tariff-war-cold-war

But are there downsides to decoupling? Economic interdependence has also created more points of dialogue between the US and China — at the government, business, and civil society levels — and quite literally raised the costs of increasing tension.

“If the tariff war continues in its current format, most likely we’re looking at the decoupling of the two economies, and that will give the two countries potentially less incentive to try to work out issues together,” said Yun Sun, director of the China program at the Stimson Center. That will lead to a situation, she said, where “the only thing to prevent the US and China from going to war is war itself.”

The horror of war itself, she noted, is still a pretty serious incentive to avoid war. After all, the US and Soviet Union avoided war for 40 years, not because they were concerned about the global economy but because it could have been literally apocalyptic, as they could be with a US-China war today. But given the stakes of a potential miscalculation, the dangers of losing some of the few remaining points of contact between the two sides should not be dismissed.

The end of the ‘capitalist peace’?

The idea that trade can prevent war, or at least make it less likely, is not a new one. “It is commerce which is rapidly rendering war obsolete, by strengthening and multiplying the personal interests which are in natural opposition to it,” philosopher John Stuart Mill wrote in 1848.

Obviously, this prediction was a bit premature, and the “capitalist peace” theory has always had a few exceptions. Contra Thomas Friedman’s famous “Golden Arches” theory, a number of countries with McDonald’s have, in fact, gone to war with one another, most recently in Ukraine.

But it’s also hard to believe it’s a coincidence that international wars — as opposed to internal civil conflicts — became exceedingly rare in the last few decades of the 20th century, just as economic globalization in tandem with the exponential growth of international trade.

Trump’s assault on the international trading system comes at a time when the number of conflicts, including international ones, are starting to creep up again, and tensions between the world’s superpowers are already at a worryingly high level.

#### Empirical evidence is overwhelming. Trade wars cause kinetic wars. They’ll escalate.

Matthew Tostevin 25, M.A. in Global Security from King's College London, senior editor at Newsweek, has reported from around the world for more than three decades on everything from conflict and politics to economics, business, the environment and more, “Why Trade Wars Lead to Real Wars—and This Time May Be No Different”, https://www.newsweek.com/trump-us-china-trade-war-tariffs-2061997

"Freedom of trade among the nations is an essential factor in securing and maintaining the peace of the world," the Free Trade League of America said in a passionate appeal.

"History gives evidence that wars have very largely been the result of the struggle for markets, of protests against tariff barriers and prohibitions."

The year was 1921 and the appeal went unheeded.

Tariffs and trade barriers, including those imposed by the United States in the years to follow, shaped a global environment that helped put the world on the road to World War II. Even more directly, the U.S. oil embargo on Japan in mid-1941 was a spur for the attack on Pearl Harbor that brought the United States into the war.

From at least the time of Ancient Greece, tariffs and trade restrictions have been a factor behind wars. As U.S. President Donald Trump imposes tariffs worldwide and particularly on America's greatest rival, China, the question is whether it will happen again.

Tariffs Raise Tensions

"Considering how quickly we've seen U.S.-Canadian relations sour since Trump's announcement of punitive tariffs just a few months back, it's easy to imagine how, historically, trade conflicts can heighten nationalist tensions, geopolitical rivalry, and enhance the possibility of military conflict," said Exeter University historian Dr. Marc-William Palen, author of Pax Economica: Left-Wing Visions of a Free Trade World.

"Of course, this gets into a gray area surrounding correlation versus causation, but most peace workers and anti-imperialists since the mid-19th century have argued that protective tariffs, embargoes, and sanctions lead to trade wars and quickly turn allies into enemies."

Among the earliest examples were the economic sanctions and trade restrictions imposed by Athens before 430 B.C. on the city-state of Megara, an ally of Sparta, under the so-called Megarian Decree: a factor in the ensuing Peloponnesian wars.

Other wars linked to tariffs, trade and taxes include those between the English and Dutch in the 17th century, the American Revolutionary War and the war of 1812—after the British stopped Americans accessing lucrative foreign markets. Palen also cited the tariff war between Austria-Hungary and Serbia as a factor in the lead-up to World War I.

"History is littered with examples of trade disputes escalating into armed conflict," says the website of the World Trade Organization, which was set up after World War II in part to avoid a repeat of the pre-war trade tensions. "It's a claim that should not be exaggerated, but there is truth in it."

#### No talking points.

Dr. Jake Werner 25, Ph.D. in History from the University of Chicago, Director of the East Asia Program at the Quincy Institute, “US-China trade war is on: Could it turn violent, and when?”, https://responsiblestatecraft.org/china-tariffs/

Today Trump suspended his global trade war with all countries except China. This confirms that, even as all eyes were on the chaos in the financial markets, the far bigger threat from Trump’s “liberation day” was a sharp escalation in the US–China conflict that could now plausibly turn violent within the next couple years.

Prior to Trump’s “liberation day” the two countries had an unhealthy relationship with steadily building pressures toward conflict. The Biden administration not only retained almost all of the first Trump administration’s antagonistic measures against China but expanded and intensified them. Though it eventually revived the diplomatic exchanges that the first Trump administration shut down, Biden declined to work with China to mitigate the zero-sum forces pushing the two countries against each other.

The new Trump administration quickly imposed a sharp increase on China’s already high tariffs. Yet both sides were initially willing to seek an agreement that could have at least reduced tensions. After the election, Beijing sent a series of delegations to Washington in hopes of understanding what kind of concessions Trump was seeking and how to get talks started. It informally suggested a range of issues on which it could give ground, ranging from currency valuations to guarantees on dollar centrality to industrial investment in the United States.

Trump, for his part, heaped praise on Xi Jinping — “he is an amazing guy” — and repeatedly teased an early meeting between the two. In February he suggested that the United States, Russia, and China enter nuclear arms control talks that could eventually lead to all three cutting their military spending by half. As I argued recently, far from deceit or misdirection, Trump’s whole worldview and mode of reasoning supported the potential for such dealmaking.

That potential is now gone. Instead the U.S. and China have embarked on an escalatory spiral that could lead to disaster for both.

On liberation day, Trump announced that China’s penalty for unfair trading would be an additional 34% increase in tariffs on top of the existing average 42%. At such high rates, few Chinese products would still be competitive in the U.S. market. More significantly, this latest attack convinced the Chinese leadership that the Trump administration is simply uninterested in negotiations and is instead seeking to humiliate China and wreck its economy.

In contrast to its limited response to earlier tariff increases, China has now decided to fight back. It imposed an across-the-board 34% increase on U.S. exports, hitting some $143.5 billion of revenue for American companies. It also placed new restrictions on exports of some strategically important minerals, added some U.S. companies to its list of unreliable businesses, and announced an anti-trust investigation into DuPont.

In its official response, the Chinese government positioned itself as defender of the globalization status quo. It characterized the U.S. aim as “using tariffs to overturn the existing international economic order, placing U.S. interests above the common good of the international community, and sacrificing the legitimate interests of other countries in service to American hegemonic interests.”

The government cast itself as calm and dignified but resolute in the face of an irrational and aggressive United States: “We do not start trouble, but we are not afraid of it either.” A statement placed in People’s Daily reassured the Chinese people on the economy’s resilience and promised significant fiscal support to expand domestic economic demand and government action to help businesses weather the turmoil.

Trump responded with equal resolve but with none of the calm or dignity, posting: “CHINA PLAYED IT WRONG, THEY PANICKED - THE ONE THING THEY CANNOT AFFORD TO DO!”

He then chose the nuclear option, raising tariffs on China an additional 50% starting today. China said it would match that further increase tomorrow. In his tirade postponing liberation day for other countries, Trump tacked on an additional 21% increase. In total, since the start of Trump’s term, the United States has now raised tariff rates by 125% and China by 84%.

In line with the president’s post, conventional wisdom in Washington is that China’s economy is so fragile it has no leverage in the economic conflict. Cut off from the U.S. market, they think, China will simply flood other exports markets and alienate Europe, Japan, and the Global South in the process.

Such overconfidence may lead to serious miscalculations as the fighting intensifies.

China has indeed been struggling since 2021 with a slow collapse of its huge real estate bubble and the uneven transition to a new structure of growth, leading to high youth unemployment and persistent deflationary pressures. It has a huge trade surplus that needs to find an outlet.

But Chinese economic policymakers have considerable space for fiscal stimulus to increase domestic demand if they choose to use it. Up to this point they have refrained because they were trying to maintain momentum on their agenda of structural economic reforms. Faced with the emergency of international conflict, they are likely to open the spigots.

Trump, in contrast, may have pulled back from his economic offensive on the whole world but he has not repudiated it. That means the U.S. economy and economic relations with other trading partners face a period of debilitating uncertainty that could cause considerable damage. China’s growth may surge even as the U.S. faces rising inflation and slowing growth.

The United States and China now find themselves locked in confrontation. The main force restraining economic warfare up to this point was simply the failure of American measures to undermine the Chinese economy. We have now blown past that condition.

Where might the conflict go from here? The most likely outcome of a hard decoupling between the U.S. and Chinese economies is terrible disruption to global supply chains. Many companies will simply shut down, but large smuggling networks will also emerge as Chinese producers seek access to the American market and American producers cast about for crucial inputs that are suddenly gone. Some Chinese production will move to the Latin American countries largely spared on liberation day.

That will set the stage for further escalation. The United States will seek to suppress smuggling. China will target strategically important goods to deny them to American producers. Both sides will start to lean on third countries to maintain their influence, giving rise to the possibility of proxy conflict. Most concerning, both sides increasingly will be tempted to impose pain on the other by striking more directly at their national security sensitivities.

China’s general practice is to meet each escalation from the United States with a proportionate response. It also has strong incentives to avoid unhinged reactions since it wants to use aggressive American measures against other countries to shore up diplomatic relations in the region and with Europe.

The same cannot be said of the Trump administration. Trump himself seems fixated on extracting a performance of submission to which Chinese leaders will never acquiesce. As his frustration mounts — and particularly if the Chinese economy does prove resilient to his assault — he will become more and more receptive to the national security team he built. In contrast to his own instincts, Trump’s top military and economic advisers are almost without exception committed to confrontation with China.

The reported contents of the Pentagon’s Interim National Defense Strategic Guidance suggest how easily economic warfare could slip toward military conflict. Defense Department leaders may seize on the collapse in U.S.–China relations to pursue the crash military buildup in Asia they have defined as “the cardinal objective of US grand strategy”.

Such a course was destabilizing even when the Biden administration pursued it alongside attempts to establish guardrails limiting conflict. In a context of mounting economic pain on both sides, with surging nationalism in both countries becoming a binding force on leaders, both governments are likely to choose more destructive responses to what they regard as provocations from the other side.

A single misstep around Taiwan or in the South China Sea could end in catastrophe.

#### Extinction.

Mark Lynas 25, science advisor with the Climate Vulnerable Forum and policy lead with WePlanet, a pro-science environmental advocacy network active in over 20 countries, interviewed by Yascha Mounk, “Mark Lynas on Nuclear War”, https://www.persuasion.community/p/mark-lynas-on-nuclear-war

So perhaps we can start to dig a little bit into that. What would it look like if we had a global nuclear war anytime soon? Say there’s a nuclear confrontation between the United States and China that somehow also draws in other nuclear powers—a worst-case scenario. Is that the end of humanity? Is that the end of our technological civilization? What would that mean for the planet and for humans?

Lynas: I’m a student of mass extinctions. I’ve covered them a lot in my book—the “big five” geological mass extinctions that have happened since the Cambrian, over the last half-billion years. There’s a 100% probability of climate change happening, because it’s already happening. Whereas nuclear war may never happen. So it’s a different thing altogether. The "kill mechanisms"—to use the mass extinction terminology—aren’t really there for climate change. There are many more ways to adapt to slow-onset events, which are the kinds of impacts most likely to result from climate change.

Whereas with nuclear war, the kill mechanisms are very obvious. It’s not just the explosions, the blasts, and the burning. It’s the nuclear winter. That’s really the central kill mechanism—one that could certainly destroy civilization, possibly destroy humans as a species, and almost certainly destroy the majority of life in the biosphere.

#### Distrust spiral inevitable.

Damien Cave 25, Leads The Times’s new bureau in Ho Chi Minh City, Vietnam, covering shifts in power across Asia and the wider world, 3-31-25, "How Trump Supercharged Distrust, Driving U.S. Allies Away," New York Times, https://www.nytimes.com/2025/03/31/world/trump-foreign-policy-trust.html

The F-35, a fifth-generation fighter, was developed in partnership with eight countries, making it a model of international cooperation. When President Trump introduced a sixth-generation aircraft, the F-47, he praised its strengths — and said the version sold to allies would be deliberately downgraded.

That made sense, Mr. Trump said last week, “because someday, maybe they’re not our allies.”

For many countries wedded to the United States, his remark confirmed a related conclusion: that America can no longer be trusted. Even nations not yet directly affected can see where things are heading, as Mr. Trump threatens allies’ economies, their defense partnerships and even their sovereignty.

For now, they are negotiating to minimize the pain from blow after blow, including a broad round of tariffs expected in April. But at the same time, they are pulling back. Preparing for intimidation to be a lasting feature of U.S. relations, they are trying to go their own way.

A few examples:

Canada made a $4.2 billion deal with Australia this month to develop cutting-edge radar and announced that it was in talks to take part in the European Union’s military buildup.

Portugal and other NATO nations are reconsidering plans to buy F-35s, fearing American control over parts and software.

Negotiations over a free trade and technology deal between the European Union and India have suddenly accelerated after years of delays.

Brazil is not only increasing trade with China, it’s doing it in China’s currency, sidelining the dollar.

In several countries, including Poland, South Korea and Australia, discussions about whether to build or secure access to nuclear weapons are now commonplace.

Some degree of distancing from the United States had already been in motion as other countries became wealthier, more capable and less convinced that American centrality would be permanent. But the past few months of Trump 2.0 have supercharged the process.

History and psychology help explain why. Few forces have such a powerful, long-lasting impact on geopolitics as distrust, according to social scientists who study international relations. It has repeatedly poisoned negotiations in the Palestinian-Israeli conflict. It kept Cold War tensions between the United States and the Soviet Union burning for decades.

So-called realists — who see international relations as an amoral contest between self-interested states — argue that trust should always be assessed with skepticism, because believing in good intentions is risky.

But Mr. Trump has sparked more than cautious suspicion. His own distrust of allies, evident in his zero-sum belief that gains for others are losses for America, has been reciprocated. What it’s created is familiar — a distrust spiral. If you think the other person (or country) is not trustworthy, you’re more likely to break rules and contracts without shame, studies show, reinforcing a partner’s own distrust, leading to more aggression or reduced interaction.

“Trust is fragile,” Paul Slovic, a psychologist at the University of Oregon, wrote in a seminal 1993 study on risk, trust and democracy. “It is typically created rather slowly, but it can be destroyed in an instant — by a single mishap or mistake.”

In Mr. Trump’s case, allies point to a sustained assault.

His tariffs on imports from Mexico and Canada, which ignored the North American free trade deal that he signed during his first term, stunned America’s neighbors.

His threats to make Canada an American state and send the U.S. military into Mexico to go after drug cartels were brash intrusions on sovereignty, not unlike his demands for Greenland and the Panama Canal. His blaming of Ukraine for the war that Russia started further alienated allies, forcing them to ask: Is the United States a defender of dictators or democracy?