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### 1 – Court Politics DA

#### SCOTUS’s decision on *Roe v. Wade* hinges on Roberts’ political capital.

Robinson ’21 (Kimberly; reporter for Bloomberg Law; 6-18-2021; “Barrett Channels Roberts’ ‘Go-Slow’ Approach in Landmark Cases”; Bloomberg Law; https://news.bloomberglaw.com/us-law-week/barrett-channels-roberts-go-slow-approach-in-landmark-cases; Accessed: 10-1-2021; AU)

The U.S. Supreme **Court’s** newest justice is showing signs that she’s more **aligned with** John **Roberts** and Brett Kavanaugh **in the center** than she is with her other conservative colleagues, **refusing to support** broad **rulings that** could **shake** the **court’s credibility**. Amy Coney Barrett is “starting to show her stripes” as a moderate who prefers small movements in the law, not huge shifts, South Texas College of Law Houston professor Josh Blackman said. The justices handed down victories to both liberals and conservatives on Thursday saving the Affordable Care Act again but siding with a religious group in the latest battle over LGBT protections. **Roberts**, the chief justice, is viewed as an **institutionalist** **who wants to conserve** the public’s **confidence** in the court. So far, he **favors incremental shifts** in the law. “That’s been one of the Chief’s primary goals all along,” said Case Western Reserve law professor Jonathan Adler. He recently gained an **ally in Kavanaugh** in this pursuit, **and** it appears **Barrett** may join their ranks. The court as a whole has has largely agreed in cases this year. The unanimous decision in the LGBT case was the 25th time the justices were unanimous in 41 rulings so far this term. There are 15 to go in coming days. But the **big test** for Barrett **will be** next term starting in October when the justices will tackle hot-button issues like guns, **abortion**, and possibly affirmative action. “It is a very conservative Court, even if we will only get glimpses of it this year,” said UC Berkeley law school Dean Erwin Chemerinsky. Kicking the Can Both the **A**ffordable **C**are **A**ct **and LGBT** rulings **were** “very, very **narrow**,” Georgia State law professor EricSegall said. In the Obamacare case, California v. Texas, the 7-2 majority handed down a procedural ruling to avoid undoing the landmark 2010 law. The justices said red states led by Texas didn’t have a legal basis—or standing—to challenge it. Only Justices Samuel Alito and Neil Gorsuch would have voted to gut the act, long a priority of Republicans. The LGBT ruling, while unanimous in its outcome, was splintered in its reasoning. Hiding under the 9-0 breakdown was a dispute about whether to overturn the court’s divisive ruling in Employment Division v. Smith, which sparked the passage of the bipartisan Religious Freedom Protection Act and mini state versions across the country. The court in Smith refused to require an exception from Oregon’s prohibition on peyote, saying religious objectors don’t get a free pass on “generally applicable” laws. On opposite ends in the court’s LGBT ruling were the liberal justices—Stephen Breyer, Sonia Sotomayor, and Elena Kagan—along with Roberts, who wanted to uphold the court’s precedent in Smith, and the court’s most conservative members—Clarence Thomas, Alito, and Gorsuch—who wanted it overruled once and for all. In **the middle** was Barrett, joined by Kavanaugh, who acknowledged Smith‘s shortcomings but was **concerned with** the **fallout** should the court overrule it. “Yet what should replace Smith?” Barrett asked in a short concurrence. Both cases were a punt, Blackman said, with the issues likely to return to the court at some point in the future. End of the World But the ACA and LGBT cases, along with the extraordinary agreement all term, suggests a **majority** of the justices **don’t think** **it’s** the right **time to make major changes** in the law. “In the throes of everything"—the pandemic, Barrett’s first term, Kavanaugh’s biting confirmation, calls for Breyer to retire, and the caustic 2020 presidential election—"they didn’t want to shock the world this year,” Segall said. “**Preserving** the **court’s** own political **capital** **is** incredibly **important** to the justices because they know their only capital is the confidence of the American people,” he added. **Adler said the court has developed a sort of 3-3-3 split**—that is, three liberals, three conservative justices willing to chuck precedents they don’t agree with, and three conservative justices hesitant to overturn cases they may disagree with. **Roberts, Kavanaugh, and now, apparently, Barrett make up that last group.** Adler said that split will create some interesting pressures for the three justices in the middle next term, when—as Segall said—"the world will end.” **The end of the world was a reference—in part—to the court’s abortion case, which could call into question the landmark ruling in Roe v. Wade and later cases**.

#### **The court’s center is skeptical of overturning precedent in Roe, but the path’s narrow.**

Feldman ‘9/2 (Noah; Bloomberg Opinion columnist and host of the podcast “Deep Background.” He is a professor of law at Harvard University and was a clerk to U.S. Supreme Court Justice David Souter.; “Is the Supreme Court Ready to Overturn Roe? We Don’t Know”; 9/2/21; Bloomberg; https://www.bloomberg.com/opinion/articles/2021-09-02/supreme-court-ruling-on-texas-abortion-law-isn-t-death-knell-for-roe; Accessed 9/17/21]

Every nonlawyer on the planet — and no doubt a few lawyers, too — is likely to read this outcome as prefiguring a 5-to-4 vote to overturn Roe v. Wade, the 1973 precedent that made abortion a constitutional right. Later this year, **the court will address** a Mississippi anti-**abortion law** that lacks the cleverly diabolical enforcement mechanism of the Texas law but is equally unconstitutional. Indeed, the day after the law went into effect and before the Supreme Court ruled, many non-lawyers who were so unfamiliar with court procedures that they didn’t know it would eventually issue a ruling on the Texas law had already concluded that they knew how the upcoming Mississippi case would come out. That’s a possible interpretation of the latest opinion, to be sure. But the **opinion** for the five conservatives **explicitly denied** it. “We stress,” said the justices, “that we do not purport **to resolve** definitively any jurisdictional or **substantive claim** in the applicants’ lawsuit.” That’s lawyer-speak for **saying** both that the **law could** still **be unconstitutional** and that there might still be some procedural way to block its operation. For good measure, the opinion said the challengers “have raised serious questions regarding the constitutionality of the Texas law.” These **formulations indicate** that at least **some** of the five **conservatives** who joined it wanted to take pains **not to** **send** the **message** **that Roe** v. Wade **is sure to be overturned**. What is less clear is whether anyone on the political battlefield wants to hear that message. The pro-choice camp will doubtless spend the months until the court term ends in June whipping up public sentiment, either in the hopes of changing the outcome or turning any decision overturning Roe into the impetus for packing the court or producing a heavy Democratic turnout in the 2022 midterm elections. The pro-life camp has an equal interest in making the overturning of Roe seem inevitable. Consequently, neither side cares much for dispassionate analysis. But the fact remains that the majority in the Texas ruling did not address the underlying issues, so it would be premature to predict the outcome in the Mississippi case based on it. Taken strictly on its own terms, the **opinion** made a point that **is incorrect** in my view, **but** that is **legally plausible**. That is that there’s no clear precedent for courts to block in advance the operation of a law that creates a civil penalty — not a criminal violation — to be applied by the courts after private lawsuits by private parties. Ordinarily, when a criminal law is obviously unconstitutional, the courts issue an order to the state attorney general not to enforce it. Such an order would not have any effect in this case, since the Texas attorney general isn’t empowered to enforce the law.

#### Expanding Rights Protection is perceived as judicial activism – it strays from the Constitution and forces Roberts to expend court capital.

Tribe et al. ‘10 [Laurence; January 2010; Carl M. Loeb University Professor at Harvard Law School, et al.; "TOO HOT FOR COURTS TO HANDLE: FUEL TEMPERATURES, GLOBAL WARMING, AND THE POLITICAL QUESTION DOCTRINE," https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/workingpaper/012910Tribe\_WP.pdf/]

We can stipulate that the **Constitution’s** framers were **not driven by** the **relationships** among chemistry, temperature, combustion engines, and global climate when they **assigned** **to** the **judicial process** the task of **interpreting** and applying **rules of law**, and to the political process the mission of making the basic policy choices underlying those rules. Yet the framework established by the Constitution they promulgated, refined over time but admirably constant in this fundamental respect, wisely embodied the recognition that enacting the ground rules for the conduct of commerce in all of its manifestations—including designing incentives for innovation and creative production (through regimes of intellectual property), establishing the metrics and units for commercial transactions (through regimes of weights and measures), and coping with the cross-boundary effects of economic activity (through the regulation of interstate and foreign commerce)—was a task quintessentially political rather than judicial in character. Yet the litigious **character of** American **society**, observed early in the republic’s history by deTocqueville, has ineluctably **drawn** American **courts**, federal as well as state, into problems within these spheres more properly and productively addressed by the legislative and executive branches. This has occurred in part because **political solutions** to complex problems of policy choice inevitably **leave some** citizens and consumers **dissatisfied** and inclined to seek judicial redress for their woes, real or imagined. And it has occurred in part because the toughest **political problems** appear on the horizon long before solutions can be identified, much less agreed upon, **leaving courts** to **fill the vacuum** that social forces abhor no less than nature itself. One can believe strongly in access to courts for the protection of judicially enforceable rights and the preservation of legal boundaries—as the authors of this WORKING PAPER do— while still deploring the perversion of the judicial process to meddle in matters of policy formation far removed from those judicially manageable realms. Indeed, the two concerns are mutually reinforcing rather than contradictory, for **courts squander** the **social and cultural capital** they need **in order to do** what may be **politically unpopular in preserving rights and protecting boundaries** when they yield to the temptation to treat lawsuits as ubiquitously useful devices for making the world a better place.

#### RTS is treated as an issue of corporate free speech - Robert’s legacy is built on its rejection - ensures sustained backlash.

Thomson-DeVeaux 18 (, A., 2018. Chief Justice Roberts Is Reshaping The First Amendment. [online] FiveThirtyEight. Available at: <https://fivethirtyeight.com/features/chief-justice-roberts-is-reshaping-the-first-amendment/> [Accessed 5 November 2021] Amelia Thomson-DeVeaux is a senior writer at FiveThirtyEight. Before joining FiveThirtyEight’s staff, she was a regular contributor to the site and a freelance writer and editor with a wide portfolio of work. Her writing has been published in a variety of outlets, including CNN, Cosmopolitan, National Journal, and New York Magazine. She is a graduate of Princeton University and holds a master's degree in religious studies from The University of Chicago. Between degrees, she was on the staff of The American Prospect and worked as a writer and editor for PRRI, a public opinion research organization in Washington, DC.)-rahulpenu

It’s been a big year for free speech at the Supreme Court. Two of the most high-profile cases argued before the court so far have revolved around free speech rights, four other cases on the docket this term involve free speech questions, and yet another case where the issue is paramount greets the court on Tuesday.

The court today is hearing arguments on whether the state of California is trampling on the free speech rights of crisis pregnancy centers — nonprofit organizations that do not perform abortions and encourage women to seek alternatives to the procedure — by requiring them to post notices explaining patients’ ability to access abortion and other medical services. In December, attorneys for a baker at Masterpiece Cakeshop in Colorado argued that a state anti-discrimination law violates his free speech rights as a self-described cake artist by requiring him to make a wedding cake for a gay couple. Last month, the justices heard oral arguments in a case about whether state laws allowing unions to require nonmembers to pay fees violate those employees’ right to free speech.

Whichever way the rulings come down this spring and summer, it’s almost certain that the winning side will include Chief Justice John Roberts, who has spent his 12-plus years at the helm of the high court quietly carving out a space as a prolific and decisive arbiter of free speech law. Supporters and critics both agree that during his tenure, the court has dramatically expanded the reach of the First Amendment by striking down a wide range of statutes for encroaching on free speech rights. And **Roberts** has **authored** more **majority** **opinions** **on** **free** **speech** than any other justice during his tenure, signaling that this is an area where he **wants** **to** **create** a **legacy**.

But just what that legacy will be is **highly** **contested**. Roberts’s admirers argue that his commitment to the First Amendment transcends ideological boundaries. But others contend that his decisions don’t protect speech across the board. Instead, they say that **Roberts** is more than willing to **allow** the government to restrict speech when it’s speech he disagrees with — meaning **free** **speech** is becoming **a** legal **tool** **that** **favors** **corporations** **over** **individuals**.

The chief justice gets to decide who writes the majority opinion in any case where he’s on the winning side, which means that Roberts is able to stake a claim over a particular area of law if he so chooses. And that seems to be what’s happening with free speech: As of the end of the 2016 term, Roberts had written 34 percent of the free speech decisions the court has handed down since he joined its ranks, and 14 percent of his majority opinions were devoted to the topic.1 Even when he’s not writing for the majority, Roberts is rarely on the losing side: Out of the 38 free speech cases we counted,2 he voted with the minority only once.

The First Amendment appears to be a topic of deep personal interest for Roberts, and he’s not commanding the majority opinion in these cases simply to reinforce earlier decisions. Roberts has presided over — and participated in — a deliberate and systematic expansion of free speech rights in the realm of campaign finance and commercial speech. The court’s determination that campaign spending limits on corporations violated free speech in the 2010 case Citizens United v. FEC was just one in a series that struck down a range of campaign finance laws on First Amendment grounds and expanded corporations’ right to speech in other venues, like drug advertising and trademark regulations.

According to legal experts, these rulings represent a clear and unprecedented reversal of previous Supreme Court interpretations of the First Amendment, particularly with regard to corporations. Those interpretations began taking shape early in the last century, as the court only began to strike down federal statutes for abridging free speech after World War I. As it did so, it at first explicitly rejected the idea that commercial speech was constitutionally protected. In the 1970s and ’80s, the justices walked this decision back somewhat as it related to certain types of ads, but they continued to maintain that advertising remained categorically different from other kinds of speech, especially when it was presenting inaccurate information.

At the same time, the justices issued groundbreaking rulings that protected the speech of unpopular individuals and groups against government censorship. It was these cases, which involved government attempts to quash union picketing, student protests of the Vietnam war, flag-burning and Nazi protests, that established free speech as an essential protection for people with minority opinions who were in danger of being silenced by the majority.

This is decidedly not the principle that the Roberts court has embraced with its rulings on campaign finance and commercial speech. Starting in the 1970s, campaign finance laws restricting the flow of money into politicians’ coffers aimed to make space for more voices in the political sphere by preventing the wealthy from buying influence. But in the Citizens United case, the court ruled that the government couldn’t restrict the free speech rights of corporations simply because they were corporations — even if citizens with fewer financial resources were less able to command the attention of their elected officials as a result.

Although the Roberts court seems to be interpreting free speech in a new way with these decisions, some historians say that free speech has always been ideologically flexible. According to Laura Weinrib, a historian and professor of law at the University of Chicago, corporate titans like the Ford Motor Company were part of the early push for broader **free** **speech** **protections** precisely because they recognized the power of the First Amendment for **advancing** **their** **own** **causes**, while organizations like the ACLU strategically accepted a “neutral” vision of free speech that **protected** the strong (**companies** like Ford) as well as the weak (union **workers** **seeking** the **right to strike**) in order to secure early victories for **labor** **rights**. Those twin forces helped **pave** the **way** **for** **today’s** understanding of **free** **speech** **under** the **Roberts** court.

It’s that question of what free speech protections should do — and whether it’s acceptable to muzzle stronger voices if they’re drowning out weak or unpopular opponents — that may help explain the Roberts court’s **rightward** **turn** **on** **corporate** **speech**.

Burt Neuborne, a law professor at New York University and a former legal director of the ACLU, said that the liberal justices are willing to tolerate some restrictions on speech because they see them as necessary to build a fair society. “In this view, you can, for example, limit free speech when it threatens our democracy,” Neuborne said. The **conservative** **justices**, on the other hand, tend to **view** **free** **speech** **itself** **as** the **goal**. “They don’t care what happens afterward or who they’re affecting — they just **want** **to** **get** the **gov**ernment **out** **of** the business of **meddling** with speech,” he said.

This explanation is complicated, though, by the fact the Roberts court — and Roberts himself — has painted a muddier picture of other speech limits. Roberts authored opinions striking down a civil judgment holding the Westboro Baptist Church liable for damages resulting from church members picketing outside a soldier’s funeral, and a law prohibiting the distribution of videos showing animal cruelty. Those rulings are clearly in line with previous ones permitting flag-burning and Nazi protests. But Roberts also issued decisions or signed onto rulings that allowed the government to restrict the speech of students, even when they’re off school property, and limit the expression of public employees in a variety of contexts.

There’s disagreement about whether the Roberts court, by upholding these government restrictions on speech, is undermining its reputation as a court dedicated to a broad view of free speech. “It’s very much to Roberts’s credit that his Supreme Court has a genuinely expansive view of free speech that can’t be explained by political favoritism,” said Michael McConnell, a professor at Stanford Law School. He acknowledged that there are a few exceptions but said they aren’t significant or frequent enough to undermine his broader characterization of Roberts’s record.

But Genevieve Lakier, another University of Chicago law professor, disagreed. “The court does make judgments about when the government needs to restrict speech,” she said. “And in contexts like schools, or when the government says there are national security needs, it’s shockingly willing to allow those restrictions.”

Whether or not it’s fair to say that the Roberts court has been broadly protective of free speech, there’s little question that the court is reshaping it in ways that will resonate for years to come. And the cases this term could play a pivotal role in defining and clarifying that legacy — especially Masterpiece Cakeshop.

Neuborne predicted that the wedding cake case would be challenging for Roberts, but that either way, it would further illuminate his stance on free speech. “This case could have serious ramifications for nondiscrimination law,” Neuborne said. “But there is a free speech claim involved, so we’ll see how much of an absolutist Roberts is willing to be.”

#### Legal Abortion key to Fetal Tissue research that creates treatments and vaccines for disease

LRM 19 Medicine, The Lancet Respiratory. "Fetal tissue research: focus on the science and not the politics." (2019): 639. (ranked as the number one journal in the fields of critical care and respiratory medicine)//Found by JM + BUBU//Re-cut by Elmer

**Stem cell** therapy **research** in lung disease is still at early stages, but the research output is **increasing** and the area is a **promising** one. However, there are **limits** to the use of MSC and other adult multipotent stem cells, because **substantial numbers** are **required for therapeutic effects**. The cells also have a shorter replicative lifespan and can only make a restricted number of specialised cell types that are specific for their organ of origin. **Fetal tissue**, by contrast, provides cell lines that grow rapidly, are able to **easily differentiate** into multiple cell types, and are **less likely to be rejected** by the body. In the future, fetal tissue might be replaced in certain areas of research with the use of induced pluripotent stem cells and organoids, which are human-cell cultures that can be crafted to replicate an organ. However, in areas such as fetal development, a suitable replacement to fetal tissue is unlikely to be found. Although research into fetal tissue alternatives is worthwhile, it will take time and until then, the use of fetal tissue is **essential** so that **research efforts**, which are crucial for the development of new therapeutic treatments in often difficult-to-treat lung diseases, are not severely hampered. And those in the field need to ensure their voices are heard. Indeed, the American Thoracic Society released a statement the day after the Trump administration announcement saying that “Scientific research with fetal tissue is **vital for** the **development of new treatments for** many **deadly** **diseases** and conditions, such as cystic fibrosis and acute lung injury. **There are no alternative research models that can replace all fetal tissue research”.** Fetal tissue has been a **key** **part of** the development of multiple **vaccines**, **treatments** for cystic fibrosis, and ongoing research into cancer immunotherapy. The major objection to fetal tissue research is that the **source of** the **fetal tissue is** **mainly from** **elective abortions**. However, there is no suggestion that the number of abortions will decrease as a result of removing funding for fetal tissue research. **Abortion is still legal** in all 50 states in the USA and fetal tissue would otherwise be discarded. **Fetal tissue research**, in fact, holds the **potential to save lives** through the development of new treatments and vaccines. Politicising scientific research in this way means denying hope to millions of patients with life-limiting diseases.

#### Diseases cause Extinction

Bar-Yam 16 Yaneer Bar-Yam 7-3-2016 “Transition to extinction: Pandemics in a connected world” <http://necsi.edu/research/social/pandemics/transition> (Professor and President, New England Complex System Institute; PhD in Physics, MIT)//Elmer

Watch as one of the more aggressive—brighter red — strains rapidly expands. After a time it goes extinct leaving a black region. Why does it go extinct? The answer is that it spreads so rapidly that it kills the hosts around it. Without new hosts to infect it then dies out itself. That the rapidly spreading pathogens die out has important implications for evolutionary research which we have talked about elsewhere [1–7]. In the research I want to discuss here, what we were interested in is the effect of adding long range transportation [8]. This includes natural means of dispersal as well as unintentional dispersal by humans, like adding airplane routes, which is being done by real world airlines (Figure 2). When we introduce long range transportation into the model, the success of more aggressive strains changes. They can use the long range transportation to find new hosts and escape local extinction. Figure 3 shows that the more transportation routes introduced into the model, the more higher aggressive pathogens are able to survive and spread. As we add more long range transportation, there is a critical point at which pathogens become so aggressive that the entire host population dies. The pathogens die at the same time, but that is not exactly a consolation to the hosts. We call this the phase transition to extinction (Figure 4). With increasing levels of global transportation, human civilization may be approaching such a critical threshold. In the paper we wrote in 2006 about the dangers of global transportation for pathogen evolution and pandemics [8], we mentioned the risk from Ebola. Ebola is a horrendous disease that was present only in isolated villages in Africa. It was far away from the rest of the world only because of that isolation. Since Africa was developing, it was only a matter of time before it reached population centers and airports. While the model is about evolution, it is really about which pathogens will be found in a system that is highly connected, and Ebola can spread in a highly connected world. The traditional approach to public health uses historical evidence analyzed statistically to assess the potential impacts of a disease. As a result, many were surprised by the spread of Ebola through West Africa in 2014. As the connectivity of the world increases, past experience is not a good guide to future events. A key point about the phase transition to extinction is its suddenness. Even a system that seems stable, can be destabilized by a few more long-range connections, and connectivity is continuing to increase. So how close are we to the tipping point? We don’t know but it would be good to find out before it happens. While Ebola ravaged three countries in West Africa, it only resulted in a handful of cases outside that region. One possible reason is that many of the airlines that fly to west Africa stopped or reduced flights during the epidemic [9]. In the absence of a clear connection, public health authorities who downplayed the dangers of the epidemic spreading to the West might seem to be vindicated. As with the choice of airlines to stop flying to west Africa, our analysis didn’t take into consideration how people respond to epidemics. It does tell us what the outcome will be unless we respond fast enough and well enough to stop the spread of future diseases, which may not be the same as the ones we saw in the past. As the world becomes more connected, the dangers increase. Are people in western countries safe because of higher quality health systems? Countries like the U.S. have highly skewed networks of social interactions with some very highly connected individuals that can be “superspreaders.” The chances of such an individual becoming infected may be low but events like a mass outbreak pose a much greater risk if they do happen. If a sick food service worker in an airport infects 100 passengers, or a contagion event happens in mass transportation, an outbreak could very well prove unstoppable.

### 2 – Sua Sponte DA

#### The aff is sua sponte – it makes a decision in absence of arguments presented before the court – that crushes court legitimacy

Milani & Smith 02 (Adam and Michael, both are Assistant Professors, Mercer University School of Law, “Playing God: A Critical Look at Sua Sponte Decisions by Appellate Courts,” 69 Tenn. L. Rev. 245, Winter, lexis)

The heart of the American legal system is the adversary process in which trained advocates present the parties’ facts and arguments to neutral decision makers. The fundamental premise of the adversary process is that these advocates will uncover and present more useful information and arguments to the decision maker than would be developed by a judicial officer acting on his own in an inquisitorial system.3 The adversary process is also said to “promote[] litigant and societal acceptance of decisions rendered by the courts”4 because a party who “is intimately involved in the adjudicatory process and feels that he has [they have] been given a fair opportunity to present his case . . . is likely to accept the results whether favorable or not.”5 Indeed, the Joint Conference on Responsibility of the American Bar Association and the Association of American Law Schools stated that “[i]n a very real sense it may be said that the integrity of the adjudicative process itself depends upon the participation of the advocate.”6 Accordingly, most lawyers probably never think about the possibility that a court will decide a case on an issue that the court itself raises and which was neither briefed nor argued by the parties. But we all know it happens. We even have a name for such a decision: [is] sua sponte. Translated from its original Latin, “sua sponte” means “on his or its own motion.”7 In the legal setting, sua sponte describes a decision or action undertaken by a court on its own motion8 as opposed to an action or decision done in response to a party’s request or argument. As such, the concept of “sua sponte” is an important exception to two basic [the] principles of our adversary system of adjudication: (1) that the parties will control the litigation, and (2) that the decision maker will be neutral and passive.9 One of the clearest manifestations of these principles is that the parties themselves, not the decision maker, determine what issues will be adjudicated. In the context of judicial decision making, a court deviates from its traditional “passive” role in the adjudicatory process when it raises an issue not identified by the parties but which it deems relevant to the legal controversy before it. Nonetheless, raising issues sua sponte is not an uncommon practice.10 In fact, legal scholars have identified several kinds of issues that are commonly raised by courts on their own. First, both trial and appellate courts often raise jurisdictional issues such as standing, subject matter jurisdiction, and mootness sua sponte.1

#### Court legitimacy is key to effectively combat terrorism

Shapiro 3 (Jeremy, Nonresident Senior Fellow at the Brookings institute - Foreign Policy, Center on the United States and Europe, Project on International Order and Strategy, 3-1-2003, “French Lessons: The Importance of the Judicial System in Fighting Terrorism”, The Brookings Institute, https://www.brookings.edu/articles/french-lessons-the-importance-of-the-judicial-system-in-fighting-terrorism/)

The unique nature of terrorism means that maintaining the appearance of justice and democratic legitimacy will be much more important than in past wars. The terrorist threat is in a perpetual state of mutation and adaptation in response to government efforts to oppose it. The war on terrorism more closely resembles the war on drugs than World War II; it is unlikely to have any discernable endpoint, only irregular periods of calm. The French experience shows that ad-hoc anti-terrorist measures that have little basis in societal values and shallow support in public opinion may wither away during the periods of calm. In the U.S., there is an enormous reservoir of legitimacy, established by over 200 years of history and tradition, in the judiciary. That reservoir represents an important asset that the U.S. government can profit from to maintain long-term vigilance in this type of war.

#### Nuclear terrorism causes extinction

Hellman 8 (Martin, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engineering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

### 3 – Reverse Court Packing DA

#### The Court is stimulating massive backlash over partisanship BUT sweeping Liberal reforms pacify opposition.

Dr. Bruce Peabody 20, Professor of American Politics, Fairleigh Dickinson University, PhD in Government from the University of Texas at Austin, “How the Supreme Court can maintain its legitimacy amid intensifying partisanship”, The Conversation, https://theconversation.com/how-the-supreme-court-can-maintain-its-legitimacy-amid-intensifying-partisanship-148126

How courts can reinforce their standing While recent polling finds an uptick in the percentage of Americans who approve of “the way the Supreme Court is handling its job,” the general trend line shows a public that has, according to the FiveThirtyEight news site, “slowly become more disillusioned” with the high court over the past three decades. But should anyone care? Isn’t the very purpose of an independent judiciary to make its decisions with little regard for public opinion and what Alexander Hamilton called the “ill humors in the society”? The truth is, the courts need public support. Judges depend upon national and local officials to uphold their opinions, such as clerks issuing marriage licenses to same-sex couples. Law enforcement officials are required by the Supreme Court to provide certain suspects with Miranda warnings. And if the people on the losing end of court decisions believe judges are unfairly appointed and partisan, they may dismiss their judgments as illegitimate. That threatens the sense of unity and stability that Chief Justice John Roberts has said the judiciary must provide in our polarized age. Fortunately, research points to several ways courts can bolster their standing, so that when they inevitably issue controversial decisions they can withstand the ensuing storm. People, for example, are more likely to accept unfavorable judgments if they experience procedural justice – the fairness and transparency through which decisions are made. They may not like a case outcome, but they’ll go along with it if they approve of how the dispute was handled. Courts can protect procedural justice and their legitimacy by making sure each party in a case has a chance to present its story and by emphasizing respect from not only judges but clerks and other court personnel. Of course, these strategies aren’t as relevant for the millions of people who don’t have direct experience with our legal system. But judges can still reach these Americans by conveying the degree to which many decisions seem to uphold principles of law rather than giving vent to ideological beliefs. Closely divided Supreme Court decisions like the 2012 ruling upholding the Affordable Care Act, or the more recent June Medical Services v. Russo case – which struck down a Louisiana law requiring abortion providers to have admitting privileges at nearby hospitals – draw lots of attention. But it turns out that unanimous decisions on the Supreme Court are far more common. Since 2000, approximately 36% of all cases were decided 9-0. During that same span, 19% were decided 5-4. More bluntly, courts can continue to get support from ideological and partisan skeptics if these individuals can recognize victories along with their losses. Recent decisions upholding the civil rights of LGBTQ employees, for example, may blunt liberal frustration over the court’s voting rights cases, such as Shelby County v. Holder, which significantly limited the reach of the Voting Rights Act of 1965. In our closely divided and polarized era, the Supreme Court can maintain some of its legitimacy by continuing to issue what law professor Tara Leigh Grove calls “a mix of conservative and progressive decisions in high-profile cases.”

#### That prevents Democratic court packing.

D. Benjamin Barros 20, Dean and Professor of Law at the University of Toledo School of Law, “How the Democrats can pack the court and de-escalate at the same time”, The Hill, https://thehill.com/opinion/judiciary/520190-how-the-democrats-can-pack-the-court-and-de-escalate-at-the-same-time

We may have reached a degree of disfunction that will force a fundamental change: Increasing the number of justices on the United States Supreme Court, or packing the court.

Democrats will be outraged if Republicans move forward with filling the vacancy caused by the death of Justice Ruth Bader Ginsburg so close to the election after refusing to bring President Obama’s nomination of Merrick Garland to a vote in 2016. In response to a potential election-year confirmation of President Trump’s anticipated nominee, Democrats are openly discussing packing the court if Joe Biden wins the presidency and Democrats win both houses of Congress in the November election.

Packing the court is remarkably easy to do legislatively. A bill increasing the number of seats on the court simply needs to pass both houses of Congress and be signed by the president. The Constitution does not proscribe the number of justices, and in our history we have had both fewer and more than nine members of the court at any given time.

The big impediment to court packing is political. Historically, packing the court would have been seen as a major violation of political norms that might in turn expose the party making the change to losses in the next election. In light of the Republican flip-flop on seating a justice in an election year, court packing by the Democrats would likely to be seen as par for the course, rather than particularly norm-breaking.

#### Court packing prevents extinction from environmental tipping points like warming---AND independently solves: CJR, democracy collapse and reproductive rights.

Jay Willis 20, J.D. from Harvard Law School, B.A. in Social Welfare from the University of California, Berkeley, Senior Contributor, The Appeal at The Justice Collaborative, “Expanding the Supreme Court is Not Radical”, The Appeal, https://theappeal.org/expand-the-supreme-court/

A 6-3 Republican Court whose life-tenured members are openly hostile to preserving reproductive rights, addressing climate change, protecting the environment, safeguarding the civil rights of minority groups, and holding free and fair elections is “radical” because it is wildly out of touch with the hundreds of millions of people whose lives their decisions will control. This Court is not a check or a balance. It is a hostage situation.

The Court’s faults, however, extend far beyond the particular group of justices who currently sit on it. This institution charges nine wealthy attorneys, trained at the same tiny circle of law schools, with the herculean task of privately negotiating uneasy resolutions to America’s most contentious disputes. (Barrett, who graduated from Notre Dame Law School in 1997, would be the first justice who did not attend Yale, Stanford, or Harvard law schools to be confirmed since the Ford administration.) Every sudden vacancy kicks off months of frenzied partisan warfare, replete with breathless, competing prognostications about how a nominee, who is careful to say nothing of substance, may or may not rule on some hypothetical high-stakes case. It is a patently ridiculous system of governance, and you would immediately recognize it as such if not for the fact that this is the way we’ve always done it.

Granted, the Founders likely never envisioned the justices becoming as powerful as they are today. The Constitution has surprisingly little to say about the Supreme Court beyond its existence and its members’ subjectively-defined terms of office (“during good Behaviour”). The Court’s power of judicial review, which allows it to strike down laws that conflict with the Constitution, appears nowhere in the text; it is the brainchild of Chief Justice and legendary power-grabber John Marshall, who basically created it out of whole cloth in 1803.

Since then, the judiciary has continued to siphon power from the politically accountable branches of government, whose members have been increasingly happy to foist seemingly intractable problems on judges who answer to no one. Rather than answer hard questions or take tough votes or commit to convincing people of the merits of their policy preferences, lawmakers can instead pour themselves into the task of empowering like-minded jurists who (they hope) will implement those preferences by judicial fiat, solemnly asserting that the law compels a particular result—one that just so happens to comport with their personal beliefs.

This feature of the federal judiciary, as New York Magazine’s Eric Levitz writes, is extremely valuable for Republicans, because it gives a party in decline the chance to nevertheless implement an unpopular policy agenda, all while flying largely under the political radar. (This feature of the federal judiciary also explains why conservatives have invested far more resources over the years to seize control of it.) Judges have slowly transformed into an entrenched cadre of robe-clad superlegislators, where the balance of power can hinge on something as arbitrary as which octogenarian lawyer decides to retire at the right moment or happens to die at the wrong one. Such a small, insular system is extremely vulnerable to exploitation and gamesmanship, especially if the side playing the game more strategically also gets a little lucky along the way. The precise timing of Ginsburg’s death may have been a fluke, but the crisis that ensued is not; it is a foreseeable result of the Court’s fundamental brokenness.

Life tenure also meant something very different 230 years ago than it does today, as savvy investments in young, loyal talent can pay off over the course of multiple generations. My daughter will be born this November. When Barrett is 87—the age at which Justice Ginsburg died—my daughter will be thinking about celebrating her 40th birthday. The modern Court is functionally a conservative oligarchy on the verge of swallowing whatever remains of representative democracy, hoping you won’t notice.

The Court-packing battle is just one of many debates in which reactionaries weaponize terms like “radical” to obfuscate the urgency of change. Which of these is more dangerous, more destabilizing, more harmful: reducing the legal system’s dependence on a failed mass incarceration system, or continuing to blow hundreds of billions of dollars to put people in cages instead? What strikes you as “illegitimate”: disbanding police departments, or investing even more money in an ineffective public safety regime that cannot stop killing Black and brown people? Relative to the status quo, enacting a Green New Deal might feel “radical.” Relative to the impending heat death of the planet hastened by decades of unchecked human greed, attempting to decarbonize the U.S. economy by 2050 is, I would argue, actually kind of modest.

Should Democrats capture the White House and the Senate this fall—and then have the courage to use the power Americans entrust to them—expanding the Court will be a lot of things. It will be significant. It will be groundbreaking. But it will not be “radical,” because confronting an existential crisis that threatens to hollow out democracy is exactly what people should expect their government to do.

### 4 – Congress CP

#### The United States Congress should recognize an unconditional worker’s Right to Strike by passing the Protecting the Right to Organize Act. The United States Congress should cite International Labor Accords as the justification for it’s decision.

#### CP citing International Law solves Opino Juris – all it needs to do is cite the Law as a justification.

#### **Solves the Aff – Congress has authority.**

Kreighbaum ’21 (Andrew; writer for Bloomberg Law; 3-9-2921; “Landmark Labor Law Overhaul Passes House but Senate Fate Unclear”; Bloomberg Law; https://news.bloomberglaw.com/daily-labor-report/landmark-labor-law-overhaul-passes-house-but-senate-fate-unclear; Accessed: 10-30-2021; AU)

Worker Protections The PRO Act would **amend** the National Labor Relations Act, a federal law that **guarantees private-sector employees** the **right to** unionize, engage in collective bargaining, and take collective action such as **strikes**. Among other changes, it would bar employers from retaliating against unionization efforts, **protect workers’ right to strike**, and override state “right to work” laws that allow employees to opt out of paying dues in unionized workplaces. Companies would be **banned** under the bill, for example, from holding “captive audience” meetings, in which workers are compelled to listen to anti-union messages from their employer. The legislation also would give the National Labor Relations Board power to levy fines against companies that engage in unfair labor practices, and require arbitration when unionized workers can’t reach agreement on a contract with employers. The bill would allow employees to hold union elections off of company premises and use mail or electronic ballots, a provision that supporters say is essential during the pandemic. Electronic ballots are currently banned. The PRO Act addresses the status of independent contractors—such as gig workers at ride-hailing and food delivery companies—by **lowering** the bar for contractors to prove they are employees under federal labor law. That would allow gig workers to organize unions and protest retaliation under the NLRA—rights currently guaranteed only to employees, not contractors. The legislation would adopt the same rigid test to determine workers’ employment status as a California law known as A.B. 5. Workers for app-based services were recently carved out of the state law by a ballot initiative, Proposition 22, bankrolled by gig companies. The California law also applies to employment rules governing overtime and minimum wage. The PRO Act, however, only addresses workers’ status under the National Labor Relations Act.

#### The issue with RTS isn’t legality – it’s legislative loopholes, which only Congress can amend – Circumvention turn to the Aff.

Reddy ’21 (Diana; contributor to The Yale Law Journal; 1-6-2021; “’There Is no Such Thing as an Illegal Strike’: Reconceptualizing the Strike in Law and Political Economy”; The Yale Law Journal; https://www.yalelawjournal.org/forum/there-is-no-such-thing-as-an-illegal-strike-reconceptualizing-the-strike-in-law-and-political-economy; Accessed: 10-30-2021; AU)

Under the NLRA, workers are generally understood to have **a “right” to strike**. Section 7 of the Act states that employees have the right to engage in “concerted activities for . . . mutual aid or protection,”79 which includes striking. To drive this point home, section 13 of the NLRA specifies, “Nothing in this [Act] . . . shall be construed so as either to **interfere with or impede or diminish** in any way the right to strike . . .”80 Note that it is a **testament** to deeply-held disagreements about the strike (is it a **fundamental right** which needs no statutory claim to protection, **or a privilege** to be granted by the legislature?) that the statute’s language is framed in this way: the law which first codified a right to strike does so by insisting that it does not “interfere with or impede or diminish” a right, which had never previously been held to exist.81 To say that a strike is ostensibly legal, though, is not to say whether **it is sufficiently protected** as to make it **practicable** for working people. Within the world of labor law, this distinction is often framed as the difference between whether an activity is legal and **whether it is protected**. So long as the state-as-regulator will not punish you for engaging in a strike, that strike is legal. But given that **striking is protest against an employer**, rather than against the state-as-regulator, **being legal is insufficient protection** from the repercussion most likely to deter it—**job loss**. Employees technically cannot be fired for protected concerted activity **under the NLRA**, including protected strikes. But in a distinction that Getman and Kohler note “only a lawyer could love—or even have imagined,”82, judicial construction of the NLRA permits employers to **permanently replace** them in many cases. Consequently, under the perverse incentives of this regime, strikes can facilitate deunionization. Strikes provide employers an opportunity, unavailable at any other point in the employment relationship, to replace those employees who most support the union—those who go out on strike—in one fell swoop. As employers have increasingly turned to permanent replacement of strikers in recent decades, **strikes have decreased**.83 A law with a stated policy of giving workers “full freedom of association [and] actual liberty of contract” offers a “right” which too many workers cannot afford to invoke.84 It is not just that the right is too “expensive,” however; it is that its scope is **too narrow**, particularly following the Taft-Hartley Amendments. Law cabins legitimate strike activity, based on employees’ motivation, their conduct, and their targets. The legitimate purposes are largely bifurcated, either “economic,” that is to provide workers with leverage in a bargain with their employer, or to punish an employer’s “unfair labor practice,” its violation of labor law (but not other laws). A host of reasons that workers might want to protest are unprotected—Minneapolis bus drivers not wanting their labor to be used to “shut down calls for justice,” for instance. Striking employees also lose their limited protection if they act in ways that are deemed “**disloyal**” to their employer,85 or if they engage in the broad swath of non-violent activity construed to involve “violence,” such as mass picketing.86 Tactically, intermittent strikes, slow-downs, secondary strikes, and sit-down strikes **are unprotected**.87 Strikes are also unprotected if unionized workers engage in them without their union’s approval,88 if they concern nonmandatory subjects of bargaining,89 or if they are inconsistent with a no-strike clause.90 Independent contractors who engage in strikes face antitrust actions.91 Labor unions who sanction unprotected strikes face potentially bankrupting liability.92 The National Labor Relations Board—the institution charged with enforcing the policies of the Act—summarizes these “qualifications and limitations” on the right to strike on its website in the following way: The lawfulness of a strike may depend on the object, or purpose, of the strike, on its timing, or on the conduct of the strikers. The object, or objects, of a strike and whether the objects are lawful are matters that are not always easy to determine. Such issues often have to be decided by the National Labor Relations Board. The consequences can be severe to striking employees and struck employers, involving as they do questions of reinstatement and backpay.93 The “**right” to strike**, it seems, is filled with **uncertainty and peril**. Collectively, these rules **prohibit** **many** of the strikes which helped build the labor movement in its current form. Ahmed White accordingly argues that law prohibits effective strikes, strikes which could actually change employer behavior: “Their inherent affronts to property and public order place them well beyond the purview of what could ever constitute a viable legal right in liberal society; and they have been treated accordingly by courts, Congress, and other elite authorities.”94

#### Interp: Neg gets 1 CP condo if the aff reads presumption/permissibility affirms – else the aff can just trigger presumption which flows aff if we read a CP because we can’t kick it –

### Heg

#### Reject 1AR theory – 7-6 rebuttal time skew means I’m inevitably behind. 2AR collapse means they get 3 minutes of uncontested offense that we can’t respond to – o/w it’s a question of when the theory debate starts. Putting the interp in the underview—solves their abuse. They’ll say they can’t predict the 1N, but they can just put something generic like “NIBs bad” in the 1A and then cross apply the abuse story

#### Reject CP theory – they’ve specified both the actor and the workers w infinite prep time to stake out all the reasons to vote aff

### UV

#### New 2nr responses to hidden tricks – key to accessibility and turns inclusion

#### Presumption and Permissibility negate under comparative worlds – their warrants are about presume truth not presume aff world.

#### Aff has a burden to prove that the plan is preferable to the squo – if they can’t prove that their aff is morally preferable then there isn’t a reason to vote aff.

### Case

#### Top-Level – you get zero access to this Case – Opino Juris which is the internal link to everything they’ve saive requires explicit citing of ILO as justification – the Plan doesn’t do that – it just “aligns” but doesn’t explicitly recognize an obligation – that distinction matters.

LII No Date "opinio juris (international law)" <https://www.law.cornell.edu/wex/opinio_juris_(international_law)> (Legal Information Institute)//Elmer

Definition **Opinio juris** is a **shortened form of** the Latin phrase opinio juris sive **necessitatis**, which **means "an opinion of law or necessity."** Overview In customary international law, opinio juris is the second element necessary to establish a legally binding custom. Opinio juris **denotes a subjective obligation**, **a sense on behalf of a state that it is bound to the law in question**. The International Court of Justice reflects this standard in ICJ Statute, Article 38(1)(b) by reflecting that the custom to be applied must be "accepted as law".

#### US violations of International Labor Standards are inevitable and multiple Alt Causes other than the Right to Strike.

Rosenberg 20 Eli Rosenberg 10-7-2020 "U.S. accused of violating international labor laws, forced-labor protections in new complaint" <https://www.washingtonpost.com/business/2020/10/08/international-complaint-worker-protections/> (University of California at Los Angeles, BA in American literature and Latin American studies)//Elmer

**Leaders** representing a large number of U.S. trade unions **filed** a **complaint** **with** the **U**nited **N**ations’ **labor** **agency** Wednesday, **arguing** that the country under President **Trump** has **violated** **international labor standards during the coronavirus pandemic.** The complaint was **filed by** the Service Employees International Union and the AFL-CIO at the Geneva headquarters of the International Labour Organization, a more than 100-year-old institution run by the U.N. that works to upholds human rights on work-related issues like safety and collective bargaining. The complaint details numerous ways U.S. labor law and enforcement are failing workers, and spotlights their further weakening under Trump. And it **charges** the **U**nited **S**tates **with** **violating workers’ rights** in terms not typically associated with well-off countries, at one point saying the bind many essential workers have been placed in during the pandemic — **forced to risk infection or lose their jobs** and potentially unemployment benefits **— amounts to a system of forced** **labor**. The complaint is another sign of the frustration over the treatment of workers under the Trump administration, and it places the United States in the realm of potential wrongdoing typically occupied by less-developed and less-democratic countries. “Covid has laid bare what we already knew,” Richard Trumka, the president of the AFL-CIO said in an interview. “It has demonstrated that not only is the U.S. violating workers’ rights, but those violations are resulting in people dying. It became so outrageous that we wanted to file a complaint.” The Labor Department and Occupational Safety and Health Administration did not respond to a request for comment. The National Labor Relations Board declined to comment. The complaint points to two main avenues of failure for U.S. labor law and policy: the country’s antiquated labor laws, such as the 1935 National Labor Relations Act, which leaves farmers, gig workers, contractors and other classes of workers without protection; and the softening of workers’ protections by the Trump administration that has continued into the pandemic. Some of the complaint’s harshest words were reserved for the Trump administration’s orders declaring industries such as meatpacking essential, compelling them to stay open even amid potential novel coronavirus outbreaks, while federal agencies, including OSHA, declined to issue enforceable safety regulations. “These executive orders gave a green light for employers to force workers to report for work and risk their lives or lose their jobs,” said the complaint, signed by Trumka and SEIU President Mary Kay Henry. “This is tantamount to forced labor.” The complaint highlighted the racial implications of these orders too, arguing one executive order was inherently discriminatory because the vast majority of meatpacking workers who contracted the coronavirus were Black or Hispanic. The complaint also took aim at other ways Trump’s labor agencies rolled back protections for workers. During the pandemic’s early weeks, the NLRB, which oversees union elections, suspended them, giving companies more time to maneuver against them, the complaint charged. The NLRB also issued a memo in March that the union presidents said signaled employers could avoid bargaining about proposed layoffs because of the pandemic. And in two cases in August, the NLRB said companies were in the clear for dismissing workers who expressed concern about safety issues during the pandemic, even though workers have protections from the National Labor Relations Act from being fired in many cases for raising safety concerns at work. “Each of these decisions disarms workers and their unions in the face of management actions to violate their collective bargaining rights in the Covid-19 crisis,” the complaint said. “Since these memoranda also serve as instructions to NLRB regional authorities on how to handle similar cases, they have a cascading effect that will undermine workers’ rights in weeks and months ahead as the pandemic continues to ravage American workplaces.”

#### 1AC Seifert is about CEACR having jurisdiction concerns – NOT what the Plan does – it doesn’t harmonize since the Plan recognizes it, it doesn’t reverse the disputes – here’s a re-cutting – it also isn’t about the US so they don’t get spill-over.

Seifert 21 [Achim; 2021; Full Professor of Private Law, German and European Labor Law and Comparative Law at the University of Jena (since 2011). He holds both German State Exams in Law and a PhD of the Johann-Wolfgang-Goethe-University of Frankfurt (1998). After his Habilitation [Post-Doc] in 2006 at the University of Frankfurt and several short-term Replacements at the Universities of Frankfurt and Trier (2006-2008), he became an Associate Professor of European and International Labor Law at the University of Luxembourg (2008). His main fields of interest are the Labor Law of the European Union and Comparative Labor Law, including the methodology of Comparative Law. Achim SEIFERT serves as co-editor of the Comparative Labor Law and Policy Journal (CLLPJ) and is a member of the editorial board of the European Labour Law Journal (ELLJ) as well as of the Revue de droit comparé du travail et de la sécurité sociale (RDCTSS). He is an associated member of the International Academy of Comparative Law (since 2013) and fellow of the European Law Institute (ELI) (since 2014); furthermore he has been member of the Jean-Monnet-Centre of Excellence at the University of Jena (2013-2016). He has been visiting Professor at the Universities of Bordeaux, Nantes, Paris 1 (Panthéon-Sorbonne), Luigi Bocconi/Milan and Leuven (Global Law Programme) and has taught as adjunct professor at the University of Luxembourg between 2011 and 2016; “Book Review,” European Labour Law Journal, [https://sci-hub.se/https://doi.org/10.1177/2031952521994412](https://sci-hub.se/https:/doi.org/10.1177/2031952521994412)] Justin

For several decades, the right to strike has been one of the most controversial parts of the law of the International Labour Organisation (ILO). Even though it has not been explicitly enshrined in the Conventions on the right to freedom of association (especially not in Convention 87 on Freedom of Association and Protection of the Right to Organise (1948) and in Convention 98 on the Application of the Principles of the Right to Organise and to Bargain Collectively (1949)), since the early 1950s, the ILO supervisory bodies have recognised the right to strike as an essential element of trade union rights enabling workers to collectively defend their economic and social interests. Since its seminal recommendation in the United Kingdom of Great Britain and Northern Ireland case of 1952,1 the Governing Body’s Committee on Freedom of Association (CFA) has considered that Article 3 of Convention 87 also guarantees the right to strike, and has developed, since then, detailed ‘case law’ which has been summarised by the International Labour Office in a ‘Digest’ and since 2018 in a ‘Compilation’.2 The Committee of Experts on the Application of Conventions and Recommendations (CEACR), another body established by the ILO Governing Body, has taken the same path since the late 1950s.3 Despite this long-standing interpretive practice of these two important supervisory bodies in respect of Convention No. 87, the right to strike has become controversial since the end of the Cold War. In the 81st session of the International Labour Conference (**ILC**) in 1994, it was already being **challenged by** the employers’ group.4 But the Rubicon was definitely crossed in 2012, when the employers’ representatives on the ILO Conference Committee on the Application of Standards (**CAS**) refused, for the first time, to deal—as it had done previously—with a list of Member States that had seriously violated Conventions of the ILO as long as the workers’ group would not accept a revision of the mandate of the CEACR.5 **At the heart** of this incident **was** the **recognition of the right to strike by the CEACR** **even though**, according to the view of the employers’ side, **the Committee was not empowered** to interpret ILO law with binding effect. This incident temporarily **resulted in an institutional crisis within the ILO supervisory system**, since the ILO’s tripartite structure which underlies the constitution of the ILO presupposes that the three constituents cooperate in good faith within the organisation’s bodies. An attitude of refusal on the part of only one of the constituents therefore necessarily brings into question the functioning of the ILO.

#### 1AC Brudney does not make an external spill-over claim that the right to strike would lead to broader US compliance to other CIL – don’t let the 1AR assert it when there’s no RTS or Convention 87 key warrant.

#### Two Thumpers to CIL Compliance:

#### 1] 1AC Brudney says “other fundamental ILO conventions” – Convention 87 isn’t uniquely key – causes friction and hurts US standing.

#### 2] Syria Thumps I-Law Compliance – one violation is enough to thump perception and legitimacy.

Roddel 21 Shannon Roddel 2-26-2021 "Syria airstrikes a grave violation of international law, expert says" <https://news.nd.edu/news/syria-airstrikes-a-grave-violation-of-international-law-expert-says/> (Assistant Director. Mendoza College of Business, Notre Dame Law School.)//Elmer

**The U**nited **S**tates **military** Thursday (Feb. 25) **carried out airstrikes** **targeting** **Iranian-backed militias in Syria** in retaliation for rocket attacks on U.S. targets in Iraq — the first military action undertaken by the Biden administration. Mary Ellen O'Connell Mary Ellen O'Connell The strikes reportedly resulted in multiple deaths — a **grave violation of international law**, according to Notre Dame Law School professor Mary Ellen O’Connell, a respected expert on international law and the use of force. “The **U**nited **N**ations **Charter** **makes** absolutely **clear** that the **use of military force on the territory of a foreign sovereign state is lawful only in response to an armed attack** on the defending state for which the target state is responsible,” O’Connell said. “**None** **of** those **elements is met in the Syria strike**. There is no right of reprisal, right to use military force for deterrence, right to attack Iran on the territory of Syria, or right to use major military force in response to the type of violence that occurred last week.

#### ILO Evidence has no US key warrant­ no spill-over form US harmonization to global Harmonization.

#### “Labor Standards” is much broader than just the Aff – guaranteeing a singular right doesn’t guarantee universal better working conditions or wages which is the necessary burden for cascading SDG’s.

#### SDGs of their affs are the ones of the ILO – their ILO

#### International Law fails and there’s no enforcement – this indicts their ILO key warrants

Hiken 12, Associate Director Institute for Public Accuracy (The Impotence of International Law, <http://www.fpif.org/blog/the_impotence_of_international_law>)

Whenever a lawyer or historian describes how a particular action “violates international law” many people stop listening or reading further. It is a bit alienating to hear the words “this action constitutes a violation of international law” time and time again – and especially at the end of a debate when a speaker has no other arguments available. The statement is inevitably followed by: “…and it is a war crime and it denies people their human rights.” A plethora of international law violations are perpetrated by every major power in the world each day, and thus, the empty invocation of international law does nothing but reinforce our own sense of impotence and helplessness in the face of international lawlessness. The United States, alone, and on a daily basis violates every principle of international law ever envisioned: unprovoked wars of aggression; unmanned drone attacks; tortures and renditions; assassinations of our alleged “enemies”; sales of nuclear weapons; destabilization of unfriendly governments; creating the largest prison population in the world – the list is virtually endless. Obviously one would wish that there existed a body of international law that could put an end to these abuses, but such laws exist in theory, not in practice. Each time a legal scholar points out the particular treaties being ignored by the superpowers (and everyone else) the only appropriate response is “so what!” or “they always say that.” If there is no enforcement mechanism to prevent the violations, and no military force with the power to intervene on behalf of those victimized by the violations, what possible good does it do to invoke principles of “truth and justice” that border on fantasy? The assumption is that by invoking human rights principles, legal scholars hope to reinforce the importance of, and need for, such a body of law. Yet, in reality, the invocation means nothing at the present time, and goes nowhere. In the real world, it would be nice to focus on suggestions that are enforceable, and have some potential to prevent the atrocities taking place around the globe.

#### 1AC Sean – contingent impacts are easier to predict since laundry list impacts are built from interconnecting structures that convolute specific solvency link chains – flips their probability arguments.

#### C/A all of our no spill-over and opino juris defense to answer 1AC Meissner to the Climate Internal Link.

#### I-Law fails to solve Warming – proven by Paris – they have no empirical solvency or predictive arguments for how broader I-Law compliance would effect the environment.