# USC – Aff

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### Plan

#### Plan: The United States Federal Judiciary should substantially increase National Environmental Policy Act restrictions on the introduction of Armed Forces into hostilities.

### Warming

#### Contention 1 is Warming

#### Warming suits rest on shaky ground – standing and political questions key

Guarino 11

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I. THE JUSTICIABILITY AND STANDING BARRIERS Since their inception, global warming suits have faced challenging legal barriers. n26 The most significant barriers have been justiciability of a global warming claim and standing to sue for a crisis affecting millions. n27 A. The Political Question Doctrine One of the most challenging obstacles facing global warming plaintiffs is justiciability, or the political question doctrine. n28 Under Article III of the Constitution, the federal courts only have jurisdiction over questions, issues, cases, and controversies that are "justiciable." n29 A matter is "'justiciable' when it is constitutionally capable of being decided by a federal court." n30 Conversely, "nonjusticiability" or a "political question" exists when a matter has been committed exclusively to the political branches by the Constitution or by federal law. n31 In that case, a federal court would not have jurisdiction over the matter. n32 When a matter is justiciable, however, a federal court has an obligation to exercise [\*129] jurisdiction over it. n33 The policy behind this duty is to prevent a court from dismissing an action because it has political implications. n34 In practice, dismissal for nonjusticiability has been rare; since Baker v. Carr in 1962, discussed below, the Supreme Court has only dismissed two cases as political questions. n35 The Court has yet to rule explicitly on the justiciability of a global warming claim. n36 1. The Baker Factors Until the 1960s, determining which matters were better left to other branches of the government was a confusing and disorderly task. n37 Baker v. Carr rescued the doctrine of justiciability from irregular application by proposing a list of six "formulations" that describe a political question: n38 [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and manageable standards for resolving it; or [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question. n39 [\*130] The Baker Court ensured that these factors would not be used to block legitimate cases from federal court by setting a high standard for non-justiciability. n40 The effect has been rare assertion of the political question doctrine in most cases, n41 including common law tort claims. n42 However, the political question doctrine has presented a challenge for plaintiffs in the nascent area of global warming. n43 The Supreme Court later added a threshold requirement to the Baker analysis: "whether and to what extent the issue is textually committed" to a political branch. n44 In Nixon v. United States, the Court set out a two-pronged test for determining whether this threshold was met: (1) identification of the issues that the plaintiff's claims pose and (2) interpreting the constitutional text in question to determine the extent to which the issues are "textually committed" to a political branch. n45 2. Global Warming Claims are Held Justiciable The first global warming case to apply the Baker factors was Connecticut v. American Electric Power Co. (AEP). n46 When AEP was brought before the District Court for the Southern District of New York, the court conservatively chose to view the global warming issue as too complex and too entwined with politics to be justiciable. n47 However, by the time the case reached the Second Circuit on appeal, the first global warming case, Massachusetts v. EPA, had been handed down by the Supreme [\*131] Court. n48 Although that case did not explicitly address the justiciability issue, it stands for the principle that federal courts have jurisdiction to hear cases alleging global warming as an injury. n49 By upholding a state's standing to sue for injury deriving from the EPA's failure to regulate greenhouse gas emissions, the Supreme Court had endorsed, for the first time, global warming suits in general. n50 In the wake of Massachusetts v. EPA's recognition of global warming as an adequate injury for standing--and in effect, nonjusticiability n51 --the Second Circuit reversed. n52 Applying the Baker factors, the Second Circuit in AEP rejected the power companies' argument that the plaintiffs' use of a federal common law nuisance cause of action to reduce domestic carbon dioxide emissions would "impermissibly interfere with the President's authority to manage foreign relations." n53 The court countered that the plaintiffs were not asking the court "to fashion a comprehensive and far-reaching solution to global climate change." n54 Instead, they were seeking to limit the emissions of only the six defendant plants based upon their contention that these defendants are causing them injury. n55 Assessing the second Baker factor, the court reasoned that complex federal public nuisance cases have been commonplace during the past century of legal history, n56 and that "well-settled principles of tort and public nuisance law" have frequently been used to analyze a variety of new and complex problems. n57 [\*132] As to the third Baker factor, defendants argued that the complexities surrounding global warming give way to "unmanageable policy questions a court would then have to confront" in deciding the case. n58 The court disagreed, holding that a federal court deciding a common law nuisance cause of action, "brought by domestic plaintiffs against domestic companies for domestic conduct, does not establish a national or international emissions policy." n59 The court added that the plaintiffs "need not await an 'initial policy determination' in order to proceed on this . . . claim," n60 and that Congress's hesitancy to pass a law regulating greenhouse gas emissions does not equal an intent "to supplant the existing common law in that area." n61 In assessing the final three Baker factors, the court recognized that the United States does not have a "unified" global warming policy. n62 Thus, by deciding this case, it is impossible for the court to "demonstrate any lack of respect for the political branches, contravene a relevant political decision already made, or result in multifarious pronouncements that would embarrass the nation." n63 The defendants themselves cited legislation indicating that the United States intends to create legislation in the future, which will reduce the emission of greenhouse gases. n64 In sum, the court held that the district court erred in its dismissal of the plaintiffs' claim on justiciability grounds. n65 B. Standing Another hurdle for global warming plaintiffs is standing. n66 This prerequisite to suit limits the jurisdiction of federal courts to certain delineated "Cases" and "Controversies" under Article III, Section 2 of the U.S. Constitution. n67 There are two basic forms of standing: state--or [\*133] parens patriae--standing n68 and individual standing. n69 As parens patriae, or "parent of the country," a state asserts a "quasi-sovereign interest" in protecting the health and well-being of its citizens, as well as its own "interest independent of and behind the titles of its citizens, in all the earth and air within its domain." n70 The Supreme Court has allowed states a lowered bar, or special solicitude, for standing given their unique status. n71 An individual, in contrast, sues for his or her own personal injury without the benefit of a lowered bar to standing. n72 In the case of global warming plaintiffs, standing is problematic in three ways: (1) the uncertainty of the injury; (2) the sufficiency of scientific evidence linking global warming with its effects; and (3) the redressability of a world-wide problem. n73 1. Modern Standing: The Lujan Cases In the 1980s, the Reagan Administration's policies to stem the flow of citizen suits and limit the EPA's enforcement capabilities narrowed the standing doctrine. n74 These policies resulted in two landmark standing decisions, both written by Justice Scalia: n75 Lujan v. National Wildlife Federation (Lujan I) and Lujan v. Defenders of Wildlife (Lujan II). n76 The Lujan cases turned the modern standing doctrine into a strict test. a. The Modern Standing Test In Lujan I, decided in 1990, the Supreme Court identified two requirements that an individual must establish in order to bring suit: (1) [\*134] some specific harm caused by the defendant; and (2) either a "legal wrong" caused by the challenged action, or that the plaintiff is "adversely affected or aggrieved . . . within the meaning of a relevant statute." n77 In that case, the plaintiffs' claim failed to satisfy the standing test due to lack of specificity and certainty of injury. n78 If there was any question that Lujan I had altered the standing doctrine, Justice Scalia affirmed that the doctrine was indeed narrowed two years later in Lujan II. n79 In his plurality opinion, Justice Scalia synthesized a three-part "irreducible constitutional minimum of standing" from past cases: (1) injury in fact, which is (a) "concrete and particularized" and (b) "actual or imminent"; (2) "a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." n80 The Court held that a nebulous future intent to observe endangered species in a foreign country did not constitute actual or imminent injury. n81 Also, redressability could not be obtained because even if the Court granted the "injunction requiring the Secretary to publish [the plaintiffs'] desired regulation," it would not be binding on the agencies and thus ineffective in producing the desired result. n82 In his concurrence, Justice Kennedy foreshadowed the global warming cases of the new millennium with a broad proclamation: "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." n83 b. Burden of Proof for Standing and the Merits Another important part of the Lujan II decision is its discussion of the requisite burden of proof of standing for each stage in the litigation. n84 When a plaintiff seeks to assert standing at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to [\*135] support the claim.'" n85 Summary judgment, on the other hand, requires an assertion of specific facts. n86 Finally, when proving a claim on the merits, the facts must be adequately supported by the evidence. n87 At this point in the litigation, the burden of proof is a preponderance of the evidence. n88 Thus, proof of standing at the pleading stage requires a lower burden than proof on the merits. n89 2. Global Warming Suits a. The Broadening of the Standing Doctrine for Global Warming Plaintiffs The first global warming case to be decided by the Supreme Court, Massachusetts v. EPA, changed the course of the standing doctrine, broadening it to allow more plaintiffs standing to sue under a cause of action based on global warming. n90 The case is considered a landmark decision in environmental law because of its bold grant of standing for a seemingly untraceable and unparticularized injury. n91 Massachusetts sought review of the EPA's decision not to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act. n92 In its capacity as parens patriae, the Commonwealth claimed both present and future injuries, such as loss of coastline due to rising sea levels and more intense storm events, "severe and irreversible changes to natural ecosystems," and an increase in the spread of disease. n93 The Court could have [\*136] followed Lujan II and rejected the claim of injury for lack of particularity, imminence, or traceability. n94 Instead, the Court reached back to turn-of-the-century precedent, Georgia v. Tennessee Copper, Co., for the notion that states deserve "special solicitude" in the standing analysis when invoking a quasi-sovereign interest. n95 In a 5-4 decision, the Court held that Massachusetts had alleged: (1) particularized injury, because of its ownership of substantial property that had already been swallowed by rising seas; n96 (2) causation, because defendants had contributed significantly to the plaintiff's injuries by refusing to regulate greenhouse gas emissions; n97 and (3) redressability, because even an incremental improvement in the plaintiff's harm would help redress the injury. n98 Massachusetts v. EPA gave plaintiffs with pending global warming cases new hope by opening up the courts to their claims for the first time. n99 However, the decision on standing was surprising to the legal community, as evidenced by Chief Justice Roberts's vigorous dissent. n100 The dissent accused the majority of using "the dire nature of global warming . . . as a bootstrap for causation and redressability." n101 It further argued that the plaintiff's alleged injury was neither imminent nor actual, but "pure conjecture," going so far as to deny that global warming could ever constitute a particularized injury. n102 In spite of these concerns, the majority of the Supreme Court placed its imprimatur on global warming suits in general, n103 giving future global warming litigants positive authority to cite in their arguments. n104 [\*137] b. The Second Circuit Grants Non-State Entities Standing for Global Warming AEP, a public nuisance action for global warming injury brought by a group of states, land trusts, and a city, solidified the new broader standing analysis of Massachusetts v. EPA and extended it to non-state parties. n105 In that case, the plaintiffs sued electric power plants for injuries arising from defendants' contribution to global warming by burning fossil fuels. n106 The states and city asserted a litany of present and future injuries, including temperature increase leading to a decrease in mountain snowpack used for drinking water, earlier spring melting, flooding, and sea level rise, which had already begun to inundate their coastal property and would continue without abatement. n107 The trusts claimed the following "special" future injuries: a decrease in the ecological value of their properties, permanent inundation of some of their property, and destruction of wildlife habitat from smog and salinization. n108 At the district court level, the plaintiffs' claims were dismissed as nonjusticiable. n109 The district court judge refused to analyze the issue of standing because it "would involve an analysis of the merits of Plaintiffs' claims." n110 However, on appeal, the Second Circuit vacated the lower court's decision, holding that the state plaintiffs had asserted concrete, particularized, and redressable injury that was "fairly traceable" to the actions of defendants, thus meeting the standing test under Lujan II. n111 For the first time, non-state plaintiffs--New York City and the land trusts--were also granted standing for asserting similar injuries. n112 Since the court vacated and remanded back to the district court, it never addressed the merits of the case. n113 In December of 2010, the Supreme Court granted certiorari to American Electric Power Co. n114 This will be the first opportunity for the Supreme Court to rule on the legitimacy of public nuisance [\*138] claims against greenhouse-gas-emitting companies for global warming injuries. n115

#### Courts are too deferential now – that undermines environmental statutes and creates precedent of military before environment

Lightbody 9

(Lisa – J.D. Candidate, Harvard Law School, “Case Comment: WINTER V. NATURAL RESOURCES DEFENSE COUNCIL, INC.”, 2009, 33 Harv. Envtl. L. Rev. 593, lexis)

B. Policy-Driven Balance of Harms Despite chastising the lower courts for summarily choosing environmental over military interests, n78 the Supreme Court applied no better metric to reach the opposite result. In its decision, the majority laid out no alternative measuring stick for determining the public interest or the balance of hardships. Instead, the majority summarily concluded that, "the public interest in conducting training exercises with active sonar under realistic conditions plainly outweighs the interests advanced by the plaintiffs." n79 The Court did not engage with considerations of actual need for sonar use in current military action or the responsibility of the military in failing to comply with NEPA. The Court's conclusion that military harm "plainly outweighs" environmental damage suggests that the Court applied the same "we'll know it when we see it" test as the lower courts, just to the opposite effect. Although balancing tests are always case-by-case determinations and are particularly difficult when compelling interests are present on both sides, the Court could have increased consistency through greater specificity. In Natural Resources Defense Council v. U.S. Department of the Navy n80 the district court meticulously outlined its reasons for finding that the balancing test favored imposing a narrowly tailored preliminary injunction prohibiting [\*603] the use of low-frequency sonar. Although recognizing that the potential harm to both sides was serious, the court held that the likelihood of the NRDC's success on the merits combined with the Navy's fault in failing to comply with NEPA despite notice marginally favored the environment. n81 Direct engagement with the issues would have given lower courts more guidance on how to amend the detailed tests they had developed. Guidance was particularly needed because the Supreme Court reached the opposite outcome from the majority of lower courts that have addressed this issue. The absence of nuanced justification is particularly surprising in light of the majority overturning the reasoning of the district court on an abuse of discretion standard, normally a high bar to cross. n82 In Geertson Seed Farms v. Johanns, n83 the Ninth Circuit dismissed a genetically modified alfalfa company's appeal of a NEPA-based injunction entered against the company. Although recognizing that other reasonable conclusions about likelihood of harm existed, the Ninth Circuit affirmed the district court's conclusion because it "was not clearly erroneous." n84 The Ninth Circuit mentioned how the district court had relied on the testimony of the plaintiff alfalfa company's president in reaching its conclusion, the type of credibility assessment that justifies deference to lower courts. n85 Similarly, given the strong arguments on both sides, the first-hand evaluation of military testimony, and the difficulty in quantifying the weight of the factors, the lower courts in Winter II could have reasonably held for either side. By reversing without stronger justifications, the majority inappropriately conflated disagreement with abuse of discretion. As a result, higher courts may become more willing to overturn decisions based on differences over policy priorities. C. Heightened Standard for Injunctions for Procedural Harm The Supreme Court raised the bar for plaintiffs seeking injunctions on the basis of procedural harm. The majority in Winter II suggested that even if the NRDC proved all the normal elements required for a preliminary injunction, an injunction would not be appropriate because of the procedural nature of the underlying claim, set against the possible substantive harm to national security. "Given that the ultimate legal claim is that the Navy must prepare an EIS, not that it must cease sonar training, there is no basis for enjoining such training in a manner credibly alleged to pose a serious threat [\*604] to national security." n86 The majority concluded that because an injunction is a matter of equitable discretion, courts should use other remedies to address NEPA violations when an injunction could implicate national security. n87 NEPA is ineffectual absent meaningful injunctive relief for procedural violations. NEPA imposes an affirmative obligation on agencies to consider environmental impacts before acting. The only means of enforcing the self-policing statute against an agency is through citizen suits under the Administrative Procedure Act. n88 In order for the congressional purpose behind NEPA to be served, timing is crucial. EIS documents issued after the fact will be purely administrative make-work requirements that agencies must complete at some point but need not take into consideration before taking potentially damaging action. The Navy's actions in Winter II underscore this conclusion. In Winter II the Navy was on notice of its NEPA obligations from Winter I but chose to avoid responsibility by submitting inadequate NEPA documents, completing the majority of training exercises before a legal ruling, and appealing to the Executive for a waiver. In light of such blatant disregard, only injunctive relief provides a remedy sufficient to induce future compliance with NEPA. n89 The Supreme Court has recognized the availability of injunctive relief for procedural violations. n90 In Amoco Production Co. v. Village of Gambell, AK, n91 the Court recognized an action for injunctive relief based on a violation of a federal statute requiring consideration of the effect of federal land use on subsistence resources. n92 Even though it ultimately found that an injunction was inappropriate because the injury "was not at all probable," n93 the Court emphasized that when environmental injury is likely "the balance of harms will usually favor the issuance of an injunction," even when the underlying statute is procedural. n94 Lower courts have uniformly recognized the availability of injunctive relief for NEPA violations in the military context. n95 [\*605] In other areas, the Supreme Court recognizes the need for flexibility when applying traditional tests to procedural rights. For example, in the context of standing, the Court has held that a procedural right can be asserted, "without meeting all the normal standards for redressability and immediacy." n96 Absent the loosening of requirements, standing would be denied for procedural violations because forced compliance with a mandated process would not necessarily lead to a change in outcome and redress for the injury. n97 Instead of flexibility, however, the Winter II court placed procedural injunctions at a disadvantage. Overturning the sliding-scale test developed by lower courts, the majority required a difficult "likelihood of irreparable harm in the absence of preliminary relief" as a prerequisite for injunctive relief. n98 Procedural violations will rarely meet this standard because procedural statutes do not necessarily change substantive outcomes. Yet, as the Court recognized in Amoco, injunctions for procedural harm might be particularly appropriate in the environmental context because "environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration." n99 By emphasizing the need to prove a "likelihood of irreparable harm," however, the majority in Winter II raised the bar for environmental injunctions. Because environmental harm is often difficult to document and quantify, this standard will frequently be prohibitively difficult to meet. Dissenting, Justice Ginsburg recognized that, "because an EIS is the tool for uncovering environmental harm, environmental plaintiffs may often rely more heavily on their probability of success than the likelihood of harm." n100 Absent a temporary injunction for EIS reporting violations, plaintiffs alleging environmental injury may never have sufficient data to continue their cases. Thus, Winter II has already been cited as establishing a higher standard for injunctions, proving a bar to injunctive relief in recent cases with inadequate documentation of environmental harm. n101 D. Deference to Military Necessity Finally, after Winter II it is unclear when, if ever, a court reviewing an environmental claim can disagree with the military's assessment of danger to national security. The majority limited review of military testimony on the [\*606] potential for military exigencies. The majority "accepted these officers' assertions that the use of MFA sonar under realistic conditions during training exercises is of the utmost importance to the Navy and the Nation" without requiring specific documentation or quantification of the threat. n102 Not only did the Supreme Court disagree with the lower court's logic, overturning the holding that infrequency of occurrence made the training conditions dispensable, but the majority seemed to take issue with the fact that the lower courts questioned the military's statements at all. n103 Although courts rarely second-guess military conclusions, n104 they police the outer limits of claims of military necessity. In a habeas corpus petition by a Guantanamo Bay detainee, the Supreme Court refused to accept the military's determination of enemy combatant status absent judicial review of its factual basis. n105 The Court rejected the argument that separation of powers prevented all meaningful judicial oversight or second-guessing, even under exigent circumstances. In Winter II, however, the Court blithely accepted the Navy's representations without pushing for any similar proof. After Winter II it is unclear when, if ever, a court reviewing an environmental claim can disagree with the military's assessment of danger. As a result, the Court may have created a de facto national security exception to NEPA and similar statutes. Although the courts have consistently held that NEPA does not include a military exception, n106 allowing the CEQ to define "emergency" exceptions broadly does just that. Regardless of how the Supreme Court rules on Executive meddling in the future, the decision by the majority in Winter II only increases incentives for the military not to comply with NEPA. If the military can call on courts or the CEQ to invoke the NEPA emergency exception to routine readiness training, NEPA's requirements for the military will lose their teeth. [\*607] IV. Conclusion Whether or not the Supreme Court reached the right outcome in Winter II, the case sets a dangerous precedent for future environmental litigation. Behind the deferential treatment of military expertise, discouragement of procedural injunctions, paucity of structural reasons for overturning the injunction, and divergent framing of military over environmental interests must lie the belief that military concerns are ultimately more important than environmental ones. As the war on terror drags on, agencies' ability to claim a military emergency to avoid procedural obligations under environmental statutes will grow.

#### NEPA exemption collapses environmental litigation across the board

Narodick 9

J.D. Candidate, Boston University School of Law, 2010 (Benjamin I., 2009, "LEGAL UPDATE: WINTER V. NATIONAL RESOURCES DEFENSE COUNCIL: GOING INTO THE BELLY OF THE WHALE OF PRELIMINARY INJUNCTIONS AND ENVIRONMENTAL LAW," 15 B.U. J. SCI. & TECH. L. 332, L/N)

The assessment of the public interest in Winter is also **very troublesome for future environmental litigants**. This balancing test is important because injunctions are a matter of judicial discretion once the requirements for equitable relief have been established. n118 The majority in Winter determined that the district court abused its discretion in issuing the injunction due to the national interest of having a well trained navy. n119 In assessing the public value of the sonar exercises, the majority gave "great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest" even when those military authorities were clearly an interested party. n120 The Supreme Court is quick to point out that "military interests do not always trump other considerations, and we have not held that they do." n121 However, the Court has consistently ruled in the military's favor in NEPA cases, stating in one case that "whether or not the Navy has complied with NEPA "to the fullest extent possible' is beyond judicial scrutiny in this case ... the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated." n122 This level of deference, paired with the executive authority allowed by NEPA, may constitute a **de facto military exception to the NEPA standards**. n123 Winter also appears to join a trend of growing judicial deference to the [\*346] executive branch in the aftermath of the September 11 attacks. n124 The majority asserts that it must defer to the Navy because "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." n125 The logic is similar to that found in other historic cases where public pressure dictates stronger executive power to address national threats. n126 Judicial deference affects environmental litigation more acutely than other legal fields because Congress has, in the name of national security, written greater exemptions and waiver powers into environmental regulations. n127 Claimants have found information vital to the discovery and adjudication processes very difficult to acquire. n128 Additionally, the War on Terror's tangible effects on the discretion of the public and judges has made it harder to defend against an executive assertion of the public interest. n129 These trends can lead to a general dilution of the value of environmental protection in judicial forums. One example is Greater Yellowstone Coalition, where the judge determined that a combination of local economic interests, including decreased property values and shortfalls in tax revenues, could pre-empt the irreparable harm to the environment caused by the byproducts of phosphate mining. n130 This creates a unique role for economic damages, which now can be the primary ground for asserting a competing equitable interest against a preliminary injunction, but not the sole basis for asserting likely irreparable injury. n131 The combination of increasing judicial deference to the executive branch, a diminished judicial value of environmental protection, and [\*347] greater procedural barriers to obtain injunctions may make environmental litigation not only more difficult, but also create an atmosphere where such litigation is in an objectively adverse legal position by default. V. Conclusion In Winter, a majority of the Supreme Court vacated an injunction and upheld the rights of the U.S. Navy to test mid-frequency sonar despite the Navy's prediction that multiple marine mammals would sustain injuries. n132 The struggle to balance national defense measures and environmental interests continues, with all branches of the armed forces addressing what the Department of Defense has termed "encroachments." n133 More specifically, the NRDC and the Navy look poised to go to court again on similar issues, this time regarding naval sonar testing in the Atlantic Ocean. n134 The actions of the executive and judicial branches do not indicate any intent to recognize the whale's growing influence on popular culture. n135 While Winter seems more than likely to be influential in the resolution of the Atlantic Ocean dispute, its effects **will not be limited to that or any other whale-sonar case.** With the shift towards a "likely" standard of irreparable harm as a requirement of equitable relief, the burden of a party seeking a preliminary injunction has demonstratably increased. This may have a particularly detrimental effect for copyright cases, where the ability to acquire equitable relief against infringing parties is a key remedy for copyright holders. Environmental advocates, in addition to this standard, must also face more challenging tasks of proving a compelling equity in the face of both opposing interests and a broadly conceived public interest. Future courts may **choose to act differently** as attitudes change and regulations are amended but, for the time being, Winter has proven not to be a fluke in the course of American jurisprudence.

#### The status quo shift to renewable energy will fail – self imposed standards results in “greenwashing” which prevents a global shift to renewables

Horton 11

[Laura, Doctor of Jurisprudence Candidate 2012, Golden Gate University School of Law, FUTURE FORCE SUSTAINABILITY: DEPARTMENT OF DEFENSE AND ENERGY EFFICIENCY IN A CHANGING CLIMATE, 2011 Golden Gate University Golden Gate University Environmental Law Journal Spring, 2011, L/N]

Immediately following the events of September 11, the political climate was not conducive to preserving environmental health when it would interfere with readiness training for troops during wartime. n130 During this time, the DOD made multiple attempts to escape from the purview of federal environmental regulations. n131 These attempts were explained in 2003 by former Defense Secretary Donald Rumsfeld as simply a way to "clarify environmental statutes which restrict access to, and sustainment of, training and test ranges essential for the readiness of our troops and the effectiveness of our weapons systems in the global war on terror." n132 Many, even the Supreme Court, shared the position that national security trumps environmental protection. n133 However, as the high-profile wars in Iraq and Afghanistan began to fade from mainstream attention, the DOD began contributing more to a public discussion on energy efficiency and various environmental problems such as climate change. Journalists, politicians, and people within the military structure itself, such as the Military Advisory Board in the CNA report, started discussing major changes in the DOD's current energy policies. n134 Mainstream media have started to pick up on the transition, [\*319] particularly in light of insurgent attacks on fuel-supply convoys in Afghanistan, where fuel is the number one DOD import. n135 Companies in the United States are being contracted to supply the troops with solar power equipment, including portable solar panels, solar chargers for electronic equipment, and other renewable technology. n136 Members of the military are hopeful that less dependence on fossil fuels will provide a safer atmosphere for soldiers by reducing the number of truck convoys that haul fuel to bases, thus reducing the number of attacks. n137 Besides providing assistance with alternative-energy projects for troops, the DOD's newfound interest in better funding for energy research and development is evident through solar installations, electric-vehicle purchases, and development of renewable fuel. n138 For example, the Army recently announced plans to develop smart microgrid technology, n139 which "can draw energy interchangeably from solar arrays and other sources to cut costs, improve logistics, and reduce troop safety risks involved in fossil fuel convoys." n140 These microgrids could potentially cut fuel consumption at an Army base by up to sixty percent. n141 The Air Force is also pursuing energy efficiency through the development of jet biofuel and has plans to certify its entire fleet to run on biofuels by 2011. n142 It is already running test flights with 50% biofuel [\*320] mixtures. n143 Since a majority of the fuel used by the DOD goes to military aircraft, n144 this could have an enormous impact on fossil-fuel use and total carbon dioxide emissions. Although there is conflicting evidence on whether biofuel production results in higher or lower total emissions, there are other studies that show the use of biofuels could reduce GHG emissions overall, since they burn cleaner and the amount of energy needed in production is decreasing. n145 Similarly, the Navy, which set a goal to have 50% of its power come from renewable sources by 2020, has been exploring the use of natural biocides to keep the hulls of ships clean. n146 Barnacles, algae and other marine biofilm, which cling to the hulls, can reduce a ship's fuel efficiency by up to 40%; therefore, keeping the hulls clean cuts down on the amount of operational fuel used in the military. n147 Not only does this particular project benefit the Navy in fuel and economic efficiency since other biocides are expensive, but it also protects sensitive marine life from the harmful chemical biocides that are normally used. n148 Small, individualized projects have also proven extremely effective. According to Dan Nolan, author of the DOD Energy Blog, the single most effective program for reducing energy consumption has been spray foam insulation of temporary structures in Iraq and Afghanistan. n149 The spray foam project has proven to be not only energy efficient but financially beneficial as well, saving the military over 100 million dollars per year. n150 In addition to seeking reduction in fossil-fuel use generally, the military is also actively reducing GHG emissions through "contracted landfill disposal, increased teleworking and less air travel." n151 Government contractors have also developed web-based GHG [\*321] inventories for Army installations that can be used to identify, quantify, and report emissions including carbon dioxide, nitrous oxide, methane, sulfur hexafluoride, hydro fluorocarbons, and per fluorocarbons. n152 C. An Ultimate Paradox As the world's largest consumer of energy, the military has a long way to go if it intends to achieve energy efficiency goals set by the government and the DOD itself. However, not everyone is convinced that the military will follow through, considering its past environmental record. n153 This skepticism is valid in light of the growing impact climate change has had on the planet and the extent to which the military has contributed to GHG emissions. n154 In addition, mistrust of the DOD's environmental record is warranted, since environmental damage from military activities still exists all over the United States n155 The suspect attitude toward military greening is akin to an attitude held by many concerning corporate "environmentalism" in the form of "greenwashing." n156 The military is claiming to go "green," and is indeed making strides in energy efficiency, while simultaneously increasing oil use by 1.5% annually through 2017. n157 Also, efficiency programs are limited to base installations and are not applied to tactical fleets, where much of the DOD's fuel consumption occurs. n158 Furthermore, little is said in any of the aforementioned reports about the many exemptions the DOD sought from numerous environmental laws over the past eight years. n159 The military is accustomed to approaching environmental protection on its own terms and is giving mixed signals about how [\*322] important energy efficiency will be in the near future. Consequently, there is a question as to how self-imposed standards such as voluntary compliance with federal energy efficiency standards, from which the DOD is otherwise exempt, will play out. n160 One example of the uncertainty of these programs can be found in a recent article in ClimateWire. n161 According to the article, the aforementioned spray foam insulation program has now been halted in the absence of advocacy for such programs. n162 The difficulty of relocating the foam tents and high disposal costs have led to the demise of spray foam use, and supporters are calling for a mandate to move forward with the project. n163 It is unclear whether the DOD will resume the program at all. The need for advocacy is especially important for the public to understand, because of the potential for new energy technology to transform the civilian marketplace as military technology finds its way into the public domain. n164 The military has begun to take the lead in energy efficiency, drive the civilian sector toward sustainable energy use, and push for "policy change to help make the necessary cultural shifts in how its people think about energy use and the decisions they make in all settings." n165 The more seriously the military takes energy efficiency, **the faster sustainable technology will reach the public**. For that reason, progress on these efforts should be monitored and documented for the public to review. A history of military brush-offs of the importance of environmental protection does not lend itself to a campaign of global stewardship. In order to win the confidence of the public, the military must demonstrate a willingness to follow through with the programs it has set in place to lead alternative-energy development in the United States and the world.

#### U.S. leadership on the broader green tech transition is critical to solve warming and solves great power competition

Klarevas 9

Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by (hu)mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent.

#### Great power competition causes war

**Khalilzad** **11**

[Zalmay Khalilzad, United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. 2/8/11, <http://www.nationalreview.com/articles/259024/economy-and-national-security-zalmay-khalilzad>]

We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation. The stakes are high. In modern history, the longest period of peace among the great powers has been the era of U.S. leadership. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars. American retrenchment could have devastating consequences. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions. As rival powers rise, Asia in particular is likely to emerge as a zone of great-power competition. Beijing’s economic rise has enabled a dramatic military buildup focused on acquisitions of naval, cruise, and ballistic missiles, long-range stealth aircraft, and anti-satellite capabilities. China’s strategic modernization is aimed, ultimately, at denying the United States access to the seas around China. Even as cooperative economic ties in the region have grown, China’s expansive territorial claims — and provocative statements and actions following crises in Korea and incidents at sea — have roiled its relations with South Korea, Japan, India, and Southeast Asian states. Still, the United States is the most significant barrier facing Chinese hegemony and aggression.

#### **Courts model the plan and rule in favor of environmental citizen’s suits – forces US emissions reductions**

Guarino 11

Exec Editor @ Boston College Enviro Affairs Law Review, Edwards Wildman Palmer LLP Associate (Katherine A., 2011, "NOTE: THE POWER OF ONE: CITIZEN SUITS IN THE FIGHT AGAINST GLOBAL WARMING," 38 B.C. Envtl. Aff. L. Rev. 125, L/N)

IV. COMER V. MURPHY OIL USA: A TEST CASE FOR FUTURE GLOBAL WARMING PLAINTIFFS In the words of T.S. Eliot, the end of Comer v. Murphy Oil USA came, "[n]ot with a bang, but with a whimper." n211 In the wake of the startling dismissal of Comer based on a procedural technicality and the subsequent denial of the unorthodox writ of mandamus, the Supreme Court has granted its sister case, American Electric Power Co. (AEP), certiorari. n212 Because the Comer plaintiffs opted for a procedural resolution to their case instead of the usual certiorari, they essentially relegated the merits to the earlier-filed American Electric Power, Co. n213 That case will answer the same questions posed by Comer, namely whether parties injured by the effects of global warming have standing and whether global warming issues are justiciable. n214 As the Supreme Court examines, for the first time, the merits of a public nuisance suit against greenhouse-gas-emitting companies, it will likely be influenced by the developing trend in lower courts toward acceptance of public nuisance as a vessel for litigating global warming tort suits. n215 The fate of cases like AEP may be read through the lens of Comer. n216 [\*149] Global warming plaintiffs should turn to the "lost" Fifth Circuit panel decision in Comer in forming their arguments. However, a complete victory on the merits for such global warming plaintiffs is dubious. Part IV.A, below, predicts that the Supreme Court, in AEP, will probably follow the Fifth Circuit panel's original holding in Comer on the issues of standing, justiciability, and use of tort causes of action. As support for this decision, the Court will look to public nuisance pollution precedent and Massachusetts v. EPA. n217 Part IV.B foresees difficulty on the issue of causation when the merits are finally decided. n218 The chain of causation from injury to greenhouse gas emissions by individual defendants is simply too attenuated to satisfy proximate cause. n219 A. In Future Global Warming Tort Suits, the Supreme Court Will Likely Resurrect the Lost Fifth Circuit Panel Decision on the Issues of Standing, Justiciability, and Tort Causes of Action The only global warming case the Supreme Court has litigated is Massachusetts v. EPA. n220 Although in that case the Supreme Court addressed a different claim--the ability of a state to challenge a rulemaking decision by the EPA--that case is pivotal in predicting how the Court will rule in AEP. n221 The Court also has an interest in deciding this issue before it results in a flood of climate change suits. n222 Even though no plaintiff has actually recovered for global warming injury, recent appellate decisions allowing such plaintiffs to have their day in court has opened a door that was once closed. Private citizens can now choose an energy plant at random to blame for storm damage or flooding in their coastal home. n223 In light of this new judicial tolerance of global warming suits, it is likely that many plaintiffs will initiate such suits until the Supreme Court rules on the issue. n224 [\*150] 1. Justiciability Based on its own interpretations of the political question doctrine, the Supreme Court will likely uphold the justiciability of a state tort claim like the one in AEP. n225 Since Massachusetts v. EPA did not deal directly with justiciability, global warming plaintiffs will have to rely on the political question standard as set out in Baker v. Carr and Nixon v. United States. n226 The Fifth Circuit failed to apply the Baker factors at all because it found that the defendants had not proven that the plaintiffs' state tort claim was textually committed to a political branch of government. n227 The Court may find that the Fifth Circuit misread its political question doctrine precedent. n228 Since Baker states that finding any one of its factors "inextricable from the case at bar" would implicate the political question doctrine, the Supreme Court may have implied that the factors should be analyzed as a whole. n229 However, the stronger argument seems to be that the 1993 case, Nixon, clarified the Supreme Court's intent as to the 1962 Baker factors. In Nixon, the Supreme Court recognized that before the Baker factors could be applied, a preliminary assessment of whether the issue was textually committed to a political branch was necessary. n230 This is a logical interpretation of Baker because the policy behind the Baker factors is in favor of upholding justiciability. n231 This purpose is strengthened by the fact that, since Baker, the Supreme Court has only dismissed two cases for nonjusticiability, one of which was Nixon. n232 The Fifth Circuit panel in Comer cited extensive precedent for the notion that federal courts may not abstain from deciding a case once they have jurisdiction, and that the political question doctrine is a limited exception to that rule. n233 The Supreme Court has held that a federal court cannot avoid its responsibility to decide a case merely because [\*151] it has political implications, n234 lies outside the scope of a federal judge's expertise, or because it is difficult, complex, novel, or esoteric. n235 Global warming certainly has political implications because the government is currently deciding whether to pass legislation regarding greenhouse gas emissions. n236 Tort recovery for injury from global warming is novel and possibly complex, but both of those qualities do not make it nonjusticiable. n237 Therefore, in evaluating the justicability of the AEP claims, the Supreme Court will likely agree with the Fifth Circuit's panel opinion in Comer that the state tort claim for injury from global warming is justiciable because there is no constitutional or statutory provision committing the issue to a political branch. n238 2. Standing In a global warming case like AEP, the Supreme Court will likely hold that the plaintiffs have standing to sue for tort injury from global warming because of its similar holding for global warming plaintiffs in Massachusetts v. EPA. n239 Although Massachusetts v. EPA dealt with a statutory claim under the Clean Air Act, the Court still went through the same Article III standing analysis. n240 This is because standing is a prerequisite for all suits. n241 The main difference between Massachusetts v. EPA and AEP is that in the former case, the plaintiff was a state. n242 However, the plaintiffs in AEP include both states and private land trusts, and thus may cite Massachusetts v. EPA as a case in which the Court granted state global warming plaintiffs special solicitude in the standing analysis. n243 Justices Scalia, Thomas, and Alito, and Chief Justice Roberts will almost certainly vote to deny standing based on their dissenting opinion in Massachusetts v. EPA. n244 There, Chief Justice Roberts recognized [\*152] the catastrophic implications of global warming, but, in the interest of efficiency, would have denied standing because it is a crisis that may ultimately affect "nearly everyone on the planet." n245 Private individuals may also achieve standing based on Massachusetts v. EPA. The majority opinion contains no holding that says citizen plaintiffs cannot assert injury from global warming for standing purposes. n246 On the contrary, it treats the Commonwealth as an injured property owner. n247 The best argument for individual plaintiffs will be that the Massachusetts v. EPA decision granted parens patriae standing and proprietary standing concurrently, thus implying that Massachusetts would have achieved standing even if it were not a state. n248 It is true that in making the subsidiary determination of proprietary standing, the Court exceeded its narrow duty of only ruling on the necessary issues. n249 This type of analysis also made Massachusetts v. EPA a confusing decision to interpret n250 --it was thoroughly criticized by Chief Justice Roberts's dissent. n251 [\*153] However, the message of Massachusetts v. EPA is clear: injury from global warming is a cognizable claim for standing purposes. n252 Based on the Supreme Court's acceptance of standing based on global warming injury, global warming plaintiffs will likely satisfy the injury prong of standing. n253 Since the Court already decided in Massachusetts v. EPA that loss of coastline from rising tides brought on by global warming is a "concrete" and "particular" injury under the Lujan test, n254 it would likely agree with the Fifth Circuit that damage from increased storm severity, another effect of global warming, is a sufficiently particularized injury. n255 In fact, the Massachusetts Court specifically recognized the connection between rising ocean temperatures from global warming and an increase in the "ferocity of hurricanes." n256 Proving redressability by money damages in a future case may be more difficult. n257 The AEP plaintiffs will not encounter this problem, as they seek an injunction, n258 but money damages were requested in Comer [\*154] and could be a part of future climate change cases. Since Massachusetts v. EPA granted the Commonwealth merely a procedural remedy--the ability to challenge the EPA's denial of their rulemaking petition--if future climate change plaintiffs request money damages, the Court may hold that the injury of global warming plaintiffs cannot be redressed by money damages. n259 However, for standing purposes, the Court does not need to actually give the plaintiffs money; it simply must decide whether money would alleviate their injury in some way. n260 Although, arguably, money will not lessen the effects of global warming, it will allow the plaintiffs the ability to rebuild and restore the property they lost. n261 No court has ever granted money damages for injury from global warming. However, the Supreme Court need only look to the whole of tort law for the principle that an award of money damages can and does redress injuries from a myriad of sources. n262 Massachusetts v. EPA also stands for the principle that any contribution to global warming through greenhouse gas emissions is sufficient to prove causation in the standing analysis. n263 The Fifth Circuit panel in Comer relied directly on the Supreme Court's words in Massachusetts v. EPA that the EPA's "meaningful contribution" to global warming by refusing to regulate greenhouse gases sufficiently proved traceability. n264 The defendants' alternative argument that "the causal link between emissions, sea level rise, and Hurricane Katrina is too attenuated," was also dismissed because of its similarity to a failed argument in Massachusetts v. EPA. n265 The Fifth Circuit relied also on the Supreme Court's acceptance of the link between greenhouse gas emissions and global warming. n266 It recognized that not only had the Court accepted "a causal chain virtually identical" to that of the plaintiffs, but it had gone one step further and recognized injury stemming from the EPA, an [\*155] agency that did not directly emit the greenhouse gases. n267 It is clear from this comparison that the Fifth Circuit agreed with the Supreme Court's treatment of the standing issue for global warming cases. n268 Because of the stark similarity between the injury and causation alleged in AEP, Comer, and Massachusetts v. EPA, it is likely that the Supreme Court would agree with the Fifth Circuit panel's 2009 ruling when it hears AEP. n269 B. The Final Barrier: Proof of Causation Despite the recent successes of global warming plaintiffs on the preliminary issues of justiciability and standing, they have yet to encounter the most formidable barrier of all: proof on the merits. n270 The difference between the burden of proof for standing at the pleading stage and the burden for proof on the merits is significant. n271 At the pleading stage, the plaintiffs only need to make general allegations of harm, as yet unsupported by specific facts. n272 The plaintiffs in Comer succeeded before the Fifth Circuit panel based on this lowered bar to standing. n273 However, the court stopped short of addressing the merits of the claims, and thus, of awarding damages at this stage. n274 On the merits, global warming plaintiffs would be forced to support their claims by a preponderance of the evidence. n275 Proximate cause would have presented the greatest obstacle to the Comer plaintiffs because the chain of causation from defendants' emission of greenhouse gases, to global warming, to increased storm intensity, to Hurricane Katrina, to damaged property, was extremely attenuated. n276 [\*156] In fact, the Fifth Circuit judge in Comer intimated that he would have affirmed a dismissal on proximate cause grounds. n277 Similarly, District Court Judge Senter foresaw "daunting evidentiary problems" for the plaintiffs if they sought to prove causation by a preponderance of the evidence. n278 The Supreme Court, in addressing proximate cause in the AEP case, will likely recognize that the early pollution cases analogized by global warming plaintiffs are in fact quite different when it comes to causation. n279 In Georgia v. Tennessee Copper Co., for example, the chain of causation extended directly from the defendants' isolated emission of "noxious gas" to the effect the gas had on the neighboring state. n280 In contrast, global warming stems from an incalculable number of sources and affects the entire planet in ways that are still not fully understood by scientists. For global warming plaintiffs, the defendants' emission of greenhouse gases is not the "but-for" cause of the injury-causing effect of global warming. n281 For example, in Comer that was Hurricane Katrina. n282 Hurricanes are natural processes that would occur even without global warming. n283 The Comer plaintiffs' contribution argument, while sufficient for standing, would likely be insufficient to prove tort proximate cause. n284 Since no global warming claim brought under a tort cause of action has yet been litigated on the merits, global warming plaintiffs will be left without a means of supporting their tenuous claims. CONCLUSION Within the span of nine months, the Fifth Circuit flung open and then slammed shut the doors of the court on plaintiffs seeking money damages from contributors to global warming. n285 But all is not yet lost. As one of the Comer plaintiffs mused, [\*157] Although the victory was taken away from these citizens in the most unusual and unfortunate of ways, the refusal of the United States Supreme Court to take action in no way erases the words so eloquently written by Judge James Dennis, nor does it diminish this first effort as a guide and an inspiration for the future. n286 Should the Supreme Court accept the challenge that thirteen Fifth Circuit judges shirked, and choose to resurrect the lost panel decision for American Electric Power, Co. (AEP) and its progeny, it could mean a flood of citizen litigation for climate change. n287 In the past two decades, the effects of global warming have grown increasingly more bothersome, swallowing coastlines with rising tides, raising temperatures in already arid regions, and creating some of the most ferocious storms in history. n288 These effects have caused injury to millions of people and their property, and will only continue to wreak further havoc. n289 Once upon a time, the standing analysis was strict. n290 Plaintiffs could not gain access to the courts with an attenuated claim of causation. n291 However, the Supreme Court's landmark decision in Massachusetts v. EPA turned the tables in favor of global warming plaintiffs. n292 In recognizing a seemingly endless chain of causation as sufficient to confer standing, the Supreme Court gave its imprimatur to future global warming suits. n293 The problem is, standing does not end the inquiry. Once global warming plaintiffs drag their long chains of causation into a merits battle, their arguments may not have the same force. Under a higher proximate cause standard, "fair traceability" is no longer a viable connection between the defendants' actions and the [\*158] plaintiffs' harm. n294 The chain will break under the strain of tort causation. n295 For the meantime, the Supreme Court has not ruled on any tort global warming cases. AEP still stands as a triumphant beacon of judicial activism, lighting the way for cases like Comer that came closer than ever to victory against global warming contributors. n296 The Second Circuit in AEP marked a departure from the strict standing test of Lujan, as would Comer, had the 2009 panel decision been left intact. n297 Ultimate resolution of global warming tort suits in favor of the plaintiffs would likely encourage more victims of hurricanes and coastal inundation to bring suit against local greenhouse-gas-emitting villains. n298 The time has come for the courts to choose the role they will play in defending the Earth from global warming.

#### US judiciary causes international modeling of effective climate policies – causes global adaptation – independently solves soft power

Long 8

Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

1. Enhancing U.S. International Leadership In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States **closer to the international community** by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit **judicial internalization of climate change norms would "build**[ ] **U.S. 'soft power,**' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system. U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital. With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil. Accordingly, the recognition of international norms in **domestic climate change litigation may play a strengthening role in the perception of U.S. leadership**, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can **enhance U.S. ability to regain** a **global leadership** position on the issue and, thereby, more significantly shape the future of the international climate regime. 2. Promoting the Effectiveness of the International Response Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9 Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally. By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard. 3. Encouraging Consistency in Domestic Law and Policy In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States. Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States. Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes. 4. Enabling a Check at the Domestic-International Interface Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy. First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

#### **Soft power and institutions solve global crises**

Ikenberry 11 (G. John Ikenberry – Professor of Politics and International Affairs at Princeton University , Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order, 2011)

Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics— these and other dangers loom on the horizon. **Any of these** threats **could** endanger Americans' lives and way of life either directly or indirectly by **destabiliz**ing **the global system** upon which American security and prosperity depends. Pandemics and global warming are not threats wielded by human hands, but their consequences could be equally devastating. Highly infectious disease has the potential to kill millions of people. Global warming threatens to trigger waves of environmental migration and food shortages and may further destabilize weak and poor states around the world. The world is also on the cusp of a new round of nuclear proliferation, putting mankinds deadliest weapons in the hands of unstable and hostile states. Terrorist networks offer a new specter of nonstate transnational violence. Yet none of these threats is, in itself, so singularly preeminent that it deserves to be the centerpiece of American grand strategy in the way that antifascism and anticommunism did in an earlier era.15 What is more, these various threats are interconnected—and it is their interactive effects that represent the most acute danger. This point is stressed by Thomas Homer-Dixon: "Its the convergence of stresses that's especially treacherous and makes synchronous failure a possibility as never before. In coming years, our societies won't face one or two major challenges at once, as usually happened in the past. Instead, they will face an alarming variety of problems—likely including oil shortages**, climate change,** economic instability**, and** mega-terrorism—all at the same time." The danger is that several of these threats will materialize at the same time and interact to generate greater violence and instability "What happens, for example, if together or in quick succession the world has to deal with a sudden shift in climate that sharply cuts food production in Europe and Asia, a severe oil price increase that sends economies tumbling around the world, and a string of major terrorist attacks on several Western capital cities?"16 The global order itself would be put at risk, as well as the foundations of American national security. What unites these threats and challenges, as I noted in chapter 7, is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence— stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action. If the world of the twenty-first century were a town, the security threats faced by its leading citizens would not be organized crime or a violent assault by a radical mob on city hall. It would be a breakdown of law enforcement and social services in the face of constantly changing and ultimately uncertain vagaries of criminality, nature, and circumstance. The neighborhoods where the leading citizens live can only be made safe if the security and well-being of the beaten-down and troubled neighborhoods were also improved. No neighborhood can be left: behind. At the same time, the town will need to build new capacities for social and economic protection. People and groups will need to cooperate in new and far-reaching ways. But the larger point is that today the United States confronts an unusually diverse and diffuse array of threats and challenges. When we try to imagine what the premier threat to the United States will be in 2020 or 2025, it is impossible to say with any confidence that it will be X, Y, or Z. Moreover, even if we could identify X, Y, or Z as the premier threat around which all others turn, it is likely to be complex and interlinked with lots of other international moving parts. Global pandemics are connected to failed states, homeland security, international public health capacities, et cetera. Terrorism is related to the Middle East peace process, economic and political development, nonproliferation, intelligence cooperation, European social and immigration policy, et cetera. The rise of China is related to alliance cooperation, energy security, democracy promotion, the WTO, management of the world economy, et cetera. So again, we are back to renewing and rebuilding the architecture of global governance and frameworks of cooperation to allow the United States to marshal resources and tackle problems along a wide and shifting spectrum of possibilities. Pg. 350-353

#### Newest and BEST studies show that warming is real and anthropogenic

Muller 12 (Richard A., professor of physics at the University of California, Berkeley, and a former MacArthur Foundation fellow, “The Conversion of a Climate-Change Skeptic,” 7-28-12, <http://www.nytimes.com/2012/07/30/opinion/the-conversion-of-a-climate-change-skeptic.html?_r=2&pagewanted=all>)

CALL me a converted skeptic. Three years ago I identified problems in previous climate studies that, in my mind, threw doubt on the very existence of global warming. Last year, following an intensive research effort involving a dozen scientists, I concluded that global warming was real and that the prior estimates of the rate of warming were correct. I’m now going a step further: Humans are almost entirely the cause. My total turnaround, in such a short time, is the result of careful and objective analysis by the Berkeley Earth Surface Temperature project, which I founded with my daughter Elizabeth. Our results show that the average temperature of the earth’s land has risen by two and a half degrees Fahrenheit over the past 250 years, including an increase of one and a half degrees over the most recent 50 years. Moreover, it appears likely that essentially all of this increase results from the human emission of greenhouse gases. These findings are stronger than those of the Intergovernmental Panel on Climate Change, the United Nations group that defines the scientific and diplomatic consensus on global warming. In its 2007 report, the I.P.C.C. concluded only that most of the warming of the prior 50 years could be attributed to humans. It was possible, according to the I.P.C.C. consensus statement, that the warming before 1956 could be because of changes in solar activity, and that even a substantial part of the more recent warming could be natural. Our Berkeley Earth approach used sophisticated statistical methods developed largely by our lead scientist, Robert Rohde, which allowed us to determine earth land temperature much further back in time. We carefully studied issues raised by skeptics: biases from urban heating (we duplicated our results using rural data alone), from data selection (prior groups selected fewer than 20 percent of the available temperature stations; we used virtually 100 percent), from poor station quality (we separately analyzed good stations and poor ones) and from human intervention and data adjustment (our work is completely automated and hands-off). In our papers we demonstrate that none of these potentially troublesome effects unduly biased our conclusions. The historic temperature pattern we observed has abrupt dips that match the emissions of known explosive volcanic eruptions; the particulates from such events reflect sunlight, make for beautiful sunsets and cool the earth’s surface for a few years. There are small, rapid variations attributable to El Niño and other ocean currents such as the Gulf Stream; because of such oscillations, the “flattening” of the recent temperature rise that some people claim is not, in our view, statistically significant. What has caused the gradual but systematic rise of two and a half degrees? We tried fitting the shape to simple math functions (exponentials, polynomials), to solar activity and even to rising functions like world population. By far the best match was to the record of atmospheric carbon dioxide, measured from atmospheric samples and air trapped in polar ice. Just as important, our record is long enough that we could search for the fingerprint of solar variability, based on the historical record of sunspots. That fingerprint is absent. Although the I.P.C.C. allowed for the possibility that variations in sunlight could have ended the “Little Ice Age,” a period of cooling from the 14th century to about 1850, our data argues strongly that the temperature rise of the past 250 years cannot be attributed to solar changes. This conclusion is, in retrospect, not too surprising; we’ve learned from satellite measurements that solar activity changes the brightness of the sun very little.

#### Warming is an existential threat

Mazo 10

(Jeffrey Mazo – PhD in Paleoclimatology from UCLA, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, “Climate Conflict: How global warming threatens security and what to do about it,” pg. 122)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be catastrophic for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilisation." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes.

#### Risks human extinction

Flournoy 12

Citing Feng Hsu, PhdD NASA Scientist @ the Goddard Space Flight Center, Don Flournoy, PhD and MA from UT, former Dean of the University College @ Ohio University, former Associate Dean at SUNY and Case Institute of Technology, Former Manager for Unviersity/Industry Experiments for the NASA ACTS Satellite, currently Professor of Telecommunications @ Scripps College of Communications, Ohio University, “Solar Power Satellites,” January 2012, Springer Briefs in Space Development, p. 10-11

In the Online Journal of Space Communication , Dr. Feng Hsu, a  NASA scientist at Goddard Space Flight Center, a research center in the forefront of science of space and Earth, writes, “The evidence of global warming is alarming,” noting the potential for a catastrophic planetary climate change is real and troubling (Hsu 2010 ) . Hsu and his NASA colleagues were engaged in monitoring and analyzing climate changes on a global scale, through which they received first-hand scientific information and data relating to global warming issues, including the dynamics of polar ice cap melting. After discussing this research with colleaxgues who were world experts on the subject, he wrote: I now have no doubt global temperatures are rising, and that global warming is a serious problem confronting all of humanity. No matter whether these trends are due to human interference or to the cosmic cycling of our solar system, there are two basic facts that are crystal clear: (a) there is overwhelming scientific evidence showing positive correlations between the level of CO2 concentrations in Earth’s atmosphere with respect to the historical fluctuations of global temperature changes; and (b) the overwhelming majority of the world’s scientific community is in agreement about the risks of a potential catastrophic global climate change. That is, if we humans continue to ignore this problem and do nothing, if we continue dumping huge quantities of greenhouse gases into Earth’s biosphere, humanity will be at dire risk (Hsu 2010 ) . As a technology risk assessment expert, Hsu says he can show with some confidence that the planet will face more risk doing nothing to curb its fossil-based energy addictions than it will in making a fundamental shift in its energy supply. “This,” he writes, “is because the risks of a catastrophic anthropogenic climate change can be potentially the extinction of human species, a risk that is simply too high for us to take any chances” (Hsu 2010 )

#### Adaptation of legal regimes to deal with climate is critical to adaptation – prevents worst impacts of warming

Craig 10

Professor of Law & Associate Dean for Environmental Programs @ Florida State University [Robin Kundis Craig, “'Stationarity is Dead' - Long Live Transformation: Five Principles for Climate Change Adaptation,” Harvard Environmental Law Review, Vol. 34, No. 1, 2010, pp. 9-75

Climate change is creating positive feedback loops that may irreversibly push ecosystems over ecological thresholds, destroying coupled socio-ecological systems. In January 2009, the U.S. Climate Change Science Program ("USCCSP") reported that the Arctic tundra represents a "clear example" of climate change pushing an ecosystem beyond an ecological threshold. 21 Warmer temperatures in the Arctic reduces the duration of snow cover, which in turn reduces the tundra's ability to reflect the sun's energy, leading to an "amplified, positive feedback effect. '22 The result has been "a relatively sudden, domino-like chain of events that result in conversion of the arctic tundra to shrubland, triggered by a relatively slight increase in temperature," 23 and the consequences for people living in these areas have been severe. For example, the Inupiat Eskimo village of Kivalina, Alaska, is suing for the costs of moving elsewhere, in response to the steady erosion of the village itself.24 Similarly, most Canadian Inuit live near the coast, on lands that exist only because of permafrost. Warming Arctic conditions threaten to deprive them of their homelands.25 Thus, a variety of natural systems and the humans who depend on them - what are termed socio-ecological systems26 - are vulnerable to climate change impacts. While developing and implementing successful **mitigation strategies** clearly **remains critical** in the quest to avoid worst-case climate change scenarios, we have passed the point where mitigation efforts alone can deal with the problems that climate change is creating.27 Because of "committed" warming - climate change that will occur regardless of the world's success in implementing mitigation measures, a result of the already accumulated greenhouse gases ("GHGs") in the atmosphere 28 - what happens to socio ecological systems over the next decades, and most likely over the next few centuries, will largely be beyond human control. The time to start preparing for these changes is now, by making adaptation part of a national climate change policy. Nevertheless, American environmental law and policy are not keeping up with climate change impacts and the need for adaptation.29 To be sure, adjustments to existing analysis requirements are relatively easy, as when the Eastern District of California ordered the FWS to consider the impacts of climate change in its Biological Opinion under the ESA.30 Agencies and courts have also already incorporated similar climate change analyses into the National Environmental Policy Act's ("NEPA") Environmental Impact Statement ("EIS") requirement3 ' and similar requirements in other statutes. 32 Even so, adapting law to a world of continuing climate change impacts will be a far more complicated task than addressing mitigation. When the law moves beyond analysis requirements to actual environmental regulation and natural resource management,33 it will find itself in the increasingly uncomfortable world of changing complex systems and complex adaptive management - a world of unpredictability, poorly understood and changing feedback mechanisms, nonlinear changes, and ecological thresholds. As noted, climate change alters baseline ecosystem conditions in ways that are currently beyond immediate human control,34 regardless of mitigation efforts. These baseline conditions include air, water, and land temperatures; hydrological conditions, including the form, timing, quality, and amount of precipitation, runoff, and groundwater flow; soil conditions; and air quality. Alterations in these basic ecological elements, in turn, are prompting shifts and rearrangements of species, food webs, ecosystem functions, and ecosystem services.35 Climate change thus complicates and even **obliterates familiar ecologies**, with regulatory and management consequences. Nor are these regulatory and management consequences an as-yet-still hypothetical problem. In February 2008, a group of researchers noted in Science that current water resource management in the developed world is grounded in the concept of stationarity - "the idea that natural systems fluctuate within an unchanging envelope of variability."36 However, because of climate change, "stationarity is dead."37 These researchers emphasized that impacts to water supplies from climate change are now projected to occur "during the multidecade lifetime of major water infrastructure projects" and are likely to be wide-ranging and pervasive, affecting every aspect of water supply.38 As a result, the researchers concluded that stationarity "should no longer serve as a central, default assumption in water-resource risk assessment and planning. Finding a suitable successor is crucial for human adaptation to changing climate."39 Further, these authors realized the critical question is what a successor regime to stationarity should look like. 40 With the onset of climate change impacts, humans have decisively lost the capability - to the extent that we ever had it - to dictate the status of ecosystems and their services. As a result, and perhaps heretically, this Article argues that, for adaptation purposes, we are better off treating climate change impacts as a rather than as anthropogenic disturbances, 41 with a consequent shift in regulatory focus: we cannot prevent all of climate change's impacts,42 but we can certainly improve the efficiency and effectiveness of our responses to them. As this slow-moving tsunami 43 bears down on us, some loss is inevitable - but loss of everything is not. Climate change is creating a world of triage, best guesses, and shifting sands, and the sooner we start adapting legal regimes to these new regulatory and management realities, the sooner we can marshal energy and resources into actions that will help humans, species, and ecosystems cope with the changes that are coming. Pg. 13-16

#### Not inevitable – it’s immediately reversible and there is no time lag

Desjardins 13

member of Concordia university Media Relations Department, academic writer, citing Damon Matthews; associate professor of the Department of Geography, Planning and Environment at Concordia University, PhD, Member of the Global Environmental and Climate Change Center

(Cléa, “Global Warming: Irreversible but Not Inevitable,” http://www.concordia.ca/now/what-we-do/research/20130402/global-warming-irreversible-but-not-inevitable.php)

Carbon dioxide emission cuts will immediately affect the rate of future global warming Concordia and MIT researchers show Montreal, April 2, 2013 – There is a persistent misconception among both scientists and the public that there is a delay between emissions of carbon dioxide (CO2) and the climate’s response to those emissions. This misconception has led policy makers to argue that CO2 emission cuts implemented now will not affect the climate system for many decades. This erroneous line of argument makes the climate problem seem more intractable than it actually is, say Concordia University’s Damon Matthews and MIT’s Susan Solomon in a recent Science article. The researchers show that immediate decreases in CO2 emissions would in fact result in an immediate decrease in the rate of climate warming. Explains Matthews, professor in the Department of Geography, Planning and Environment, “If we can successfully decrease CO2 emissions in the near future, this change will be felt by the climate system when the emissions reductions are implemented – not in several decades." “The potential for a quick climate response to prompt cuts in CO2 emissions opens up the possibility that the climate benefits of emissions reductions would occur on the same timescale as the political decisions themselves.” In their paper, Matthews and Solomon, Ellen Swallow Richards professor of Atmospheric Chemistry and Climate Science, show that the onus for slowing the rate of global warming falls squarely on current efforts at reducing CO2 emissions, and the resulting future emissions that we produce. This means that there are critical implications for the equity of carbon emission choices currently being discussed internationally. Total emissions from developing countries may soon exceed those from developed nations. But developed countries are expected to maintain a far higher per-capita contribution to present and possible future warming. “This disparity clarifies the urgency for low-carbon technology investment and diffusion to enable developing countries to continue to develop,” says Matthews. “Emission cuts made now will have an immediate effect on the rate of global warming,” he asserts. “I see more hope for averting difficult-to-avoid negative impacts by accelerating advances in technology development and diffusion, than for averting climate system changes that are already inevitable. Given the enormous scope and complexity of the climate mitigation challenge, clarifying these points of hope is critical to motivate change.”

#### Climate litigation helps spur action to solve warming

Cutting & Cahoon 8

Professor of Environmental Studies @ UNC Wilmington & Professor of Biology and Marine Biology @ UNC Wilmington [Robert H. Cutting & Lawrence B. Cahoon, “"The 'Gift' that Keeps on Giving: Global Warming Meets the Common Law," Vermont Journal of Environmental Law, 10 VJEL 109, 2008, Volume 10

B. Litigation Much of the litigation of the past few years focused on federal resistance both to the EPA’s regulation and to states’ efforts to regulate fuel composition, mileage, and GHG emissions. Results have been less than favorable to the states, and even Mass. v. EPA is back in court because of the refusal of the Bush Administration to act.121 Now, attorneys general and NGOs have launched a major offensive in federal court. Using both federal and state public nuisance theories, they are trying to obtain extensive relief, seeking to force electrical power generators and automakers to reduce GHG emissions or bear the costs global warming imposes on our society and ecosystems.122 These cases serve an important public information function. This, in turn puts pressure on a recalcitrant administration and legislature to enact more **comprehensive** but politically palatable **solutions**, such as cap-andtrade. Since consumer behavior, particularly energy use, can **radically influence GHG volume**, consumer awareness may spark consumer behavior modifications; though information for consumers and investors remains difficult to obtain.123 These cases also offer a chance for the responsibility of global warming related damages to shift from receptors onto generators through efficient, effective, and creative equitable relief.124 In addition, the generators’ tremendous exposure to liability in these public nuisance cases may be just enough incentive to spur generators to develop their own creative solutions to the problems associated with GHG emissions.

### Bioterror

#### Contention 2 is Bioterror

**The Court maintains environmental deference through a “national security” exemption to NEPA – court action key to reverse it**

**Donovan 11**

(Emily Donovan, J.D., 2010, Albany Law School, Albany, New York, “Deferring to the Assertion of National Security: The Creation of a National Security Exemption Under the National Environmental Policy Act of 1969,” Winter 2011, West Northwest Journal of Environmental Law and Policy, 17 Hastings W.-N.W. J. Env. L. & Pol'y 3)

Furthermore, it is the **Court's responsibility** to ensure that the Executive is abiding by such laws, rather than creating its own. To do so, the Court must review the actions of agencies when challenged rather than simply **defer** to the judgments of such agencies, even in times of war. If the Court fails to do so, there is no check on the Executive's power; the Executive is free to disregard the limits that Congress has placed on it. n137 In **Hamdan** v. Rumsfeld, the U.S. Supreme Court properly refused to allow the Executive to ignore the limits on its power. n138 The Court held that "whether or not the President has independent power, absent congressional authorization, ... he **may not disregard limitations** that Congress has, in proper exercise of its own war powers, placed on his powers." n139 The Executive cannot use war as a justification for any and all action it desires to take. The Executive has certain powers while Congress has certain others, with a strict separation between the powers of each, as ""the power to make the necessary laws is in Congress; the power to execute in the President... . But neither can the President, in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President.'" n140 Each branch of government must stay within the bounds of its power and must not usurp the powers of the other branches. If the Executive is allowed to do whatever it pleases in times of war, the notion of separation of powers, upon which this nation was founded, is destroyed. n141 In Hamdan, the Court would not allow this. At issue was the Executive's use of a military commission to try Hamdan, a Yemeni national captured by [\*25] militia forces in Afghanistan and then turned over to the U.S., for then-unspecified crimes, later designated as conspiracy "to commit ... offenses triable by military commission." n142 The Court found that no congressional act authorized the Executive to convene a military commission to try Hamdan, and "absent a more specific congressional authorization, the task of this Court is ... to decide whether Hamdan's military commission is so justified." n143 If the Executive's power to take action is not specifically authorized by Congress, the Court has a duty to examine the action to see if it is justified. **If the Court** instead simply **defers**, it allows the Executive **too much authority**, authority in excess of what was intended for it. In the absence of congressional authorization, the Executive must show that the act is necessary in order for the Court to permit it; the Executive failed to do so in Hamdan. n144 Because there was no congressional authorization for the Executive's action establishing a military commission and because the Executive failed to show necessity, the Court would not permit the action. The Court refused to simply defer to the Executive's judgment merely because it was during a **time of war**. Instead, the Court conducted the proper analysis and concluded that the Executive was overstepping its bounds; the fact that it was a time of war did not authorize the Executive to exceed its authority. n145 The U.S. Supreme Court also **refused to defer** to the Executive in Hamdi v. Rumsfeld, where it made clear its role in reviewing challenges. n146 The Court declared that it will give weight to the Executive's judgments during times of war, stating that "we accord the greatest respect and consideration to the judgments of military authorities in matters relating to the actual prosecution of a war ... ." n147 However, it explained that this does not mean that it will simply defer to the Executive. n148 Instead, it will review the Executive's actions. As the Court noted, "it does not infringe on the core role of the military for the courts to exercise their own time-honored and [\*26] constitutionally mandated roles of reviewing and resolving claims like those presented here." n149 The Court reviewed the Executive's decision to detain Hamdi, an American citizen classified as an "enemy combatant," indefinitely during the war with Afghanistan, without allowing him to challenge the basis for his detention. n150 The Court stated that "the threats to military operations posed by a basic system of independent review are not so weighty as to trump a **citizen's core rights to challenge** meaningfully the Government's case and to be heard by an impartial adjudicator." n151 In other words, the Court held that it would not refrain from reviewing the Executive's action merely because the Executive claimed that doing so would be a threat to its military operations; the threat to such operations does not trump a citizen's right to review. The Court stressed the importance of the doctrine of separation of powers and declared that "we have long since made clear that a state of war is **not a blank check** for the President when it comes to the rights of the Nation's citizens." n152 A state of war does not mean that the Executive can do whatever it pleases. And if it tries to do so, judicial review is the mechanism to stop it as "the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." n153 If the Court defers to the Executive's decisions rather than engaging in the appropriate review, it allows the Executive's power to go unchecked, permitting the Executive to take actions that are not authorized by the Legislature. It is up to the Court to ensure that the Executive Branch is not creating its own laws, but rather is abiding by the laws as created by the Legislative Branch. IV. Congress Did Not Intend to Add a National Security Exemption to NEPA The Legislative Branch did not include a national security exemption under NEPA. n154 It did, on the other hand, create exemptions for national security under other environmental laws, including the Clean Air Act, n155 the [\*27] Clean Water Act, n156 the Coastal Zone Management Act ("CZMA"), n157 the Endangered Species Act, n158 and the Marine Mammal Protection Act ("MMPA"). n159 Therefore, if Congress intended a national security exemption to NEPA, it would have included it in the statute as it did with all of the other environmental statutes. Because the scope of NEPA is broad, it may overlap with these other statutes at times, as it did in Winter, where the MMPA and the CZMA were also at issue. However, when an agency is granted a national security exemption under a different statute that explicitly allows for it, as was the Navy in Winter, its duties under NEPA should not be affected. An agency that is exempted, for example, from a rule that says it cannot take a marine mammal (MMPA), does not necessarily have to be exempted from a rule that says it must prepare an EIS before engaging in an activity that will result in the taking of a marine mammal (NEPA). It is one thing to be allowed to take a marine mammal and another to have to consider the environmental impacts of taking the mammal before doing so. In fact, this is **the essence of NEPA**: agencies must consider the environmental impacts of their actions **before engaging in them**, allowing them to discover and take steps to lessen the impacts if they so choose, but will not be required to effect any substantive result. Therefore, the grant of an exemption to a substantive statute, like the MMPA, should not affect an agency's duty to comply with the procedural statute, NEPA. The goal is that, after considering the impacts of the proposed action under NEPA, the agency will either decide not to take the action or to implement mitigation measures to lessen the environmental impacts of the action, even though it is permitted to take the action under the national security exemption to the substantive statute. Because Congress did not include a national security exemption under NEPA, the agencies of the Executive Branch must abide by it, even in times of war, and the courts cannot take it upon themselves to except these agencies from doing so. n160 Instead, the courts must give effect to what Congress enacted. As the Maryland Court of Appeals stated, "we are obliged to ascertain and carry out the legislative intent; to consider the language of the enactment in its natural and ordinary signification; to not insert or omit words to make a statute express an intention not evidenced in [\*28] its original form." n161 Courts cannot substitute their own opinions of what the law should be for what the law says; they must apply the law as it is stated. And, as stated, NEPA does not include a national security exemption. If Congress does intend a national security exemption to exist in NEPA, it must write this into the statute, but until then it is not within the Court's authority to create such an exemption. n162 V. Conclusion By deferring to the agencies of the Executive Branch in determining whether to grant injunctive relief in NEPA noncompliance cases, the Court ignores its duty to act as a check on the Executive's power and instead grants the Executive an exemption from NEPA. When injunctive relief is requested, the **Court is required to give due weight** to each competing harm and grant relief to the party toward whom equity tips. This means that, in NEPA noncompliance cases where national security is asserted as a defense, courts must balance the harm to the environment against the harm to national security. When courts ignore their duty to conduct this balancing and instead defer to the assertion of national security, they create a national security exemption to NEPA, one which the legislature did not include or intend. The agencies of the Executive Branch serve an important role and the preservation of national security is of extreme importance, but environmental impacts from the actions of these agencies can be just as significant; the effects of agency action on our health and safety can be just as damning as the absence of action on the preservation of national security. **Courts must not**, without first examining the environmental effects, deny **injunctive relief** any time an agency claims that an injunction will prevent it from protecting **national security**. When an agency's proposed action is in the interest of national security and compliance with NEPA would truly cause a delay that would impede the agency's ability to protect and preserve national security, an exception to NEPA compliance may be justified. But a court cannot decide if this is true without first weighing the competing harms. Courts must explore the truth of the national security [\*29] assertion to ensure that it is not being used merely as a pretext to avoid complying with NEPA. NEPA serves as an important check on agency action. It forces agencies to consider the consequences of and alternatives to their actions, in turn leading to substantive changes in decision-making. NEPA's EIS requirements also serve to **inform the public** and to **create records** which courts can review in determining challenges for noncompliance. While the agencies of the Executive Branch may play a crucial role in the protection and preservation of our national security, this should not give them a free pass to escape NEPA compliance; it is important for them to consider the environmental impacts of their proposed actions. The Legislature did not intend to exempt agencies in the business of protecting national security from NEPA. If it did, it would have written a national security exemption into the statute, just as it wrote one into other major environmental statutes. If a national security exemption to NEPA is the Legislature's intent, the Legislature should write it into the statute. But unless and until Congress writes a national security exemption into NEPA, courts have a duty to conduct the **appropriate balancing** in determining whether to grant **injunctive relief** in NEPA **noncompliance cases** rather than merely giving it lip service in order to refrain from creating an exemption which Congress did not intend.

**National security** **exemptions gut enforcement and signals court apathy**

**Krueger 9**

(William, J.D., University of North Carolina School of Law, Legal Aid of North Carolina, Department of Environment & Natural Resources, North Carolina Journal Of Law &Technology Volume 10,Issue 2: Spring 2009 “In The Navy: The Future Strength Of Preliminary Injunctions Under NEPA In Light Of NRDC v. Winter”)

Since the 1970s, many laws have been passed with the overarching goal of protecting the environment.2 Without **proper enforcement** of environmental protection laws, the environment will likely suffer from increased **pollution** levels and less **biological diversity**. Therefore, it is critical to ensure that these laws are enforced. A person or agency with proper standing can bring a citizen suit to enforce environmental protection laws against alleged perpetrators.3 To ensure that the perpetrator does not continue to harm the environment while the action is pending in court, the plaintiff will often seek a preliminary injunction4 to force the perpetrator to stop or alter his environmentally detrimental practices.5 Without the **preliminary injunction**, enforcement of environmental statutes would be much more difficult. On November 12, 2008, the Supreme Court handed down its decision in Winter v. Natural Resources Defense Council. 6 The Court’s primary concern in this case was whether a preliminary injunction which forbade the Navy’s use of mid-frequency active (“MFA”) sonar7 during certain portions of its submarine training exercises off the coast of southern California was properly issued.8 The injunction was sought by the National Resources Defense Council (NRDC),9 a handful of other environmental interest groups, and several concerned citizens. The injunction was granted by the United States District Court for the Central District of California on January 3, 2008,10 and upheld by the Court of Appeals for the Ninth Circuit on February 29, 2008.11 The district court granted the injunction because the Navy failed to comply with the requirements of the National Environmental Policy Act (NEPA).12 Specifically, the Navy failed to prepare an adequate Environmental Assessment (EA)13 or a subsequent Environmental Impact Statement (EIS),14 both of which must be prepared for proposed “major Federal actions significantly affecting the human environment.”15 The injunction imposed several restrictions on the Navy’s ability to use its MFA sonar in training exercises.16 The Navy eventually appealed to the Supreme Court, which published three very divided opinions.17 The Roberts majority opined that the environmentalists’ interests were “plainly outweighed by the Navy’s need to conduct realistic training exercises.”18 The majority focused on two primary factors before holding that the district court had abused its discretion by granting a preliminary injunction.19 First, the Court challenged the level of probability that the district court assigned to the likelihood of the plaintiffs’ success at trial.20 Second, the Court felt that neither the district court nor the Ninth Circuit adequately considered the balance of equities between the plaintiffs and the Navy.21 For these two reasons, the Court held that the district court abused its discretion by imposing the injunctive measures challenged here by the Navy.22 Therefore, the Court vacated the portion of the district court’s injunction that the Navy challenged.23 There were two other opinions which differed from the majority. Justice Bryer, concurring in part and dissenting in part, believed that the proper solution was an injunction restricting the Navy’s use of MFA. However, the injunction should not be as stringent as the district court’s original injunction.24 On the other hand, Justice Ginsburg, who dissented, would have affirmed the lower courts’ decisions and upheld the district court’s injunction.25 Her dissent focused on the “central question” of “whether the Navy must prepare an [EIS].”26 Justice Ginsburg believed that by attempting to circumvent the NEPA process, the Navy’s actions in this case **“undermined NEPA”** by appealing to the Council on Environmental Quality (CEQ), a division of **the White House**.27 The outcome of this case is both unfortunate and improper. Its result is a signal that **the Court** is likely to continue to give **extraordinary deference** to the military in **environmental cases** which may involve matters of national security, without any attempt to look into the circumstances of the military’s assertions of national security interests. This case also shows how easy it has become for agencies, particularly military branches, to avoid adhering to laws like NEPA. Courts should be more willing to grant preliminary injunctions when it comes to NEPA enforcement actions, lest agencies be allowed to do as they will without any regard to the **rule of law.** Without more **stringent NEPA enforcement** by the courts, the Act’s purposes of “sensitiz[ing] … federal agencies to the environment” and “foster[ing] precious **resource preservation**” will be thwarted.28

#### It causes biodefense contractors to overlook safety – leads to accidental spread

Taylor 12

(David Chase Taylor, Degrees from San Diego State University, PhD Student at the University of Lugano, Switzerland, *The Bio-Terror Bible*, Part 3, p. 25)

Southern Research Institute, the military biodefense contractor recently in the news for sending live anthrax to the Children's Hospital of Oakland (CA), is also in charge of safety and security for a major new $30 million biodefense facility being built at the Department of Energy's Argonne National Laboratory near Chicago. The new Ricketts Regional Biocontainment Laboratory is funded by the National Institute of Allergy and Infectious Disease (NIAID) and is named after Howard T. Ricketts, a celebrated pathologist who acquired typhus in the course of research and died at age 39. It will begin biodefense work with studies of anthrax (Ames strain) and Yersinia pestis, the causative agent of plague. Southern Research Institute, with major labs of its own in Frederick, Maryland and Birmingham, Alabama, has a $75 million annual budget including biodefense contracts from an impressive roster of Pentagon agencies. Its Frederick, Maryland facility is located near the Army's biological weapons research headquarters at Fort Detrick, yet despite its biodefense prominence, Southern Research in Frederick does not maintain an institutional biosafety committee that complies with federal research rules. (And Southern Research in Birmingham has not honored requests for records of its institutional biosafety committee.) "Southern Research's incompetence is plain to see. Its own house is in dangerous disarray and does not comply with federal research rules," said Edward Hammond, Director of the Sunshine Project. "That threat is bad enough; but even after leaking anthrax, the institute is still developing biosafety and operating procedures for new high containment labs." According to a national coalition of biodefense watchdogs, formed in 2002 to monitor the US biodefense program, the Southern Research situation epitomizes their concern that biodefense laboratories are proliferating unsafely and with unsound planning, and that this could result in health, environment, and international security problems. The watchdogs also point to Southern Research's links to classified biodefense research. (Southern Research's facilities and personnel have "secret" clearance.) "Public interest groups seeking information about military biodefense programs are being stonewalled by the Army and other agencies." says Steve Erickson of Citizen's Education Project in Salt Lake City, which monitors the Army's Dugway Proving Ground. "That Southern Research and other secretive military contractors are also insinuating themselves into civilian biodefense programs is cause for concern that we are witnessing a steady erosion of openness and accountability, not only at Pentagon labs; but at academic institutions and in work funded by the National Institutes of Health." Two other Department of Energy (DOE) labs that design and develop the nation's nuclear weapons are also building new biosafety level three biodefense facilities. Both Lawrence Livermore and Los Alamos Labs have been sued by local community groups under the National Environmental Policy Act (NEPA). Inga Olson, Program Director at Tri-Valley CAREs, one of the groups that sued DOE, warns "Biodefense dollars are flowing like champagne at a wedding - into everywhere from nuclear weapons labs to children's hospitals - everyone wants a piece of the action. But a far more sober look is needed at whether the rapid spread of labs, pathogens, and bioweapons knowledge poses a greater threat than the problem we are trying to solve."

#### Regulated lab safety key to prevent accidental release of a super-bug – causes extinction

Wilson 13 (Grant Wilson, Deputy Director, Global Catastrophic Risk Institute. J.D. from Lewis & Clark Law School, “Minimizing Global Catastrophic and Existential Risks from Emerging Technologies through International Law,” Virginia Environmental Law Journal, 31 Va. Envtl. L.J. 307, 2013)

i. Risk of an accident The accidental release of a bioengineered microorganism during legitimate research poses a GCR/ER when such a microorganism has the potential to be highly deadly and has never been tested in an uncontrolled environment. n50 The threat of an accidental release of a harmful organism recently sparked an unprecedented scientific debate amongst policymakers, scientists, and the general public in reaction to the creation of an airborne strain of H5N1. n51 In September 2011, Ron Fouchier, a scientist from the Netherlands, announced that he had genetically engineered the H5N1 virus--his lab "mutated the hell out of H5N1," he professed--to become airborne, which was tested on ferrets; a laboratory at the University of Wisconsin-Madison similarly mutated the virus into a highly transmittable form. n52 The "natural" H5N1 killed approximately sixty percent of those with reported infections (although the large amount of unreported cases means that this is higher than the actual death rate), but the total number of fatalities--346 people--was relatively small because the virus is difficult to transmit from human to human. The larger risk comes from the possibility that a mutated virus would spread more easily amongst [\*318] humans, n53 which could result in a devastating flu pandemic amongst the worst in history, if not the very worst. n54 To put this in context, about one in every fifteen Americans--twenty million people--would die every year from a seasonal flu as virulent as a highly transmittable form of H5N1. n55 Lax regulations and a rapidly growing number of laboratories exacerbate the dangers posed by bioengineered organisms. While lab biosafety n56 guidelines in the United States and Europe recommended that projects like reengineering the H5N1 virus be conducted in a BSL-4 facility (the highest security level), neither laboratory that reengineered the H5N1 virus met this non-binding standard. n57 Meanwhile, a 2007 Government Accountability Office ("GAO") report indicated that BSL-3 and BSL-4 labs are rapidly expanding in the United States. While there is significant public information about laboratories that receive federal funding or are registered with the Centers for Disease Control and Prevention ("CDC") and the U.S. Department of Agriculture's ("USD") Select Agent Program, much less is known about the "location, activities, and ownership" of labs that are not federally funded and not registered with the CDC or the USD Select Agent Program. n58 The same report also concluded that no single U.S. agency is responsible for tracking and assessing the risks of labs engaging in bioengineering. n59 While some claim that critics are overreacting to the risk from this genetically engineered H5N1 virus, there have been a series of accidental releases of microbes from laboratories that demonstrate the risks of largely unregulated laboratory safety. In 1978, an employee died from an accidental smallpox release from a laboratory on the floor below her. n60 Many scientists believe that the global H1N1 ("swine flu") [\*319] outbreak in the late 2000s originated from an accidental release from a Chinese laboratory. n61 Reports concluded that the accidental releases of Severe Acute Respiratory Syndrome ("SARS") in Singapore, Taiwan, and China from BSL-3 and BSL-4 laboratories all resulted from a low standard of laboratory safety. n62 In the United States, a review by the Associated Press of more than one hundred laboratory accidents and lost shipments between 2003 and 2007 shows a pattern of poor oversight, reporting failures, and faulty procedures, specifically describing incidents at "44 labs in 24 states," including at high-security labs. n63 In 2007, an outbreak of Foot and Mouth Disease likely came from a laboratory that was the "only known location where the strain [was] held in the country" n64 because of a leaky pipe that had known problems. n65 This long history of faulty laboratory safety is why some experts, such as Rutgers University chemistry professor and bioweapons expert Richard H. Ebright, believe that the H5N1 virus will "inevitably escape, and within a decade," citing the hundreds of germs with potential use in bioweapons that have accidentally escaped from laboratories in the United States. n66 While the effects of such lapses in laboratory safety have not yet been felt aside from relatively small events such as the swine flu outbreak mentioned above, the increasing ability of less-sophisticated scientists to engineer more deadly organisms vastly increase the possibility that a lapse in biosafety will have detrimental effects. An accidental or purposeful release of a bioengineered organism has potentially grave consequences. For example, researchers in Australia recently accidentally developed a mousepox virus with a 100 percent [\*320] fatality rate when they had merely intended to sterilize the mice. n67 Scientists in the United States also created a "superbug" version of mousepox created to "evade vaccines," which they argue is important research to thwart terrorists, sparking a debate amongst scientists and policymakers about whether the benefits of such research is worth the associated risks. n68 If such a bioengineered organism escaped from a laboratory, the results would be unpredictable but potentially extremely deadly to humans and/or animals.

#### Addressing the court generated “National Security” exemption to NEPA is crucial to bio-weapons lab safety

Miles 8

(Loulena Miles, Associate at Adams Broadwell Joseph & Cardozo, Degrees from University of California at Santa Cruz, “Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico: Comment on the SWEIS,” <http://energy.gov/sites/prod/files/EIS-0380-FEIS-03-2-2008.pdf>)

NEPA has the twin aims of obligating a federal agency to consider environmental impacts before undertaking or approving a proposed action, and ensuring that the public is informed. The draft SWEIS is inadequate under the National Environmental Policy Act because it lacks a “hard look” at the impacts of a possible terrorist attack. There is no “national security” exemption from NEPA. Allowing a “security exemption” from NEPA would be inconsistent with one of NEPA’s purposes: to ensure that the public can contribute to the body of information being considered by the agency. The recent Mother’s for Peace decision in the 9th Circuit Court of Appeals held that if the risk of a terrorist attack is signiﬁ cant (which it is at Los Alamos) then NEPA requires taking a “hard look” at the environmental consequences of a terrorist attack. Please revise your draft SWEIS and re-release it so that that public will have an opportunity to comment on this important aspect of the required NEPA analysis. BSL-3 and/or BSL-4 Laboratory Space The Department of Energy is going full speed ahead in building more and more biodefense labs and facilities, including the one being reviewed at the Los Alamos National Lab. All of this work is going forward without a national plan that assesses where these labs should be, what their role is, how many are really needed, methods of oversight, transparency, and reporting requirements. A NEPA document is urgently needed to assess these issues in a forum where the public can comment. We believe Homeland Security should not be locating these advanced biodefense facilities inside nuclear weapons labs because it cloaks this work in a veil of secrecy and creates a “perception problem” whereas other countries could assume we’re conducting offensive research and / or may choose to collocate their advance biodefense research inside their nuclear weapons facilities.

#### Use is likely

Wheelis 13

(Dr. Mark Wheelis, Chair, Scientists Working Group on Biological and Chemical Weapons, “Biological and Chemical Weapons,” The Center for Arms Control and Non-Proliferation, Issues, 2013, <http://armscontrolcenter.org/issues/biochem/>)

At the same time, however, the dramatic growth in biodefense research has some significant downsides. For instance, the large expansion in the number of institutions and individuals working with dangerous biological weapons agents, many without previous experience, is increasing the risk of dangerous pathogens being released accidentally from the laboratory. It is also giving thousands of individuals access to materials, technologies, knowledge, and skills that could be used for biological weapons attacks. Increased biodefense research in the United States appears to be encouraging increased biodefense research around the world. Such research is precisely the type that raises the greatest dual-use concerns. Of most concern in this regard is the growing amount of research aimed at exploring potential offensive aspects and applications of biotechnology. Such activities could very easily generate the very dangers they are designed to protect against. Even worse, because of their dual-use nature, biodefense activities undertaken as a hedge against technological surprise and the unpredictability of potential adversaries can generate significant uncertainty among outside observers about their true intent. This problem is most severe for threat assessment research, which is usually conducted in secret. Secrecy in biodefense is increasing, both in the U.S. and around the world. Secretive biodefense activities threaten to provoke a very real biological arms race as countries react to the suspected capabilities and activities of others and seek to anticipate and counter potential offensive developments by potential adversaries. A new biological arms race would be a disaster. It would greatly increase the danger that both states and terrorists alike will acquire and use biological weapons. The history of weapons proliferation indicates a flow from the big powers to those with lesser resources. Rigorous state compliance with the ban on biological weapons is critical for preventing bioterrorism.

#### Engineered pathogens cause extinction

**Sandberg et al 8**

Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

### Pre-Empts

#### Contention 3 is No Disads

#### DOD complies with NEPA

**Baldwin 12** (Charlotte Fay Baldwin, US Department of the Army Fort Hood, Texas, “The National Environmental Policy Act (NEPA) Process with Military Projects By October 2012,” <http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/6030/C.%20Baldwin_Capstone%20Paper%20Oct%20%209%202012_FINAL.pdf?sequence=1>)

The Department of Defense (DoD) follows the rigorous requirements outlined in NEPA, the National Historic Preservation Act of 1966 (NHPA), and all other statutes that involve protecting the environment and vital land resources under DoD stewardship. The DoD has a long and successful program to comply with NEPA. DoD’s policy is in DoD Instruction 4715.9, Environmental Planning and Analysis. Each of the military Departments and Defense Agencies are required to demonstrate how they will comply with NEPA prior to selection of each military construction project using Recovery Act funds. In addition, the Department is tracking compliance with NEPA for every project and reporting its status, as required, to the Council on Environmental Quality. The Department is using the full range of actions available under NEPA.8 To adhere and comply with NEPA, the Department of the Army engaged in three major efforts that benefited from the NEPA analysis process: Army Transformation, the Installation Sustainability Program and the Sustainable Range Program. All contributed to the long-term reduction of environmental impacts associated with Army programs and projects. The Army Transformation process is extensive, including the expansion and upgrading of installation training ranges, or the development of new ranges. As training requirements become more collaborative and sophisticated, training ranges may require different land areas, airspace, and support facilities. As this complex Army Transformation process proceeds, **NEPA planning** is **increasingly integrated into Army policies**. The planning process associated with the Army’s Installation Sustainability Program to address installation encroachment issues integrates the NEPA analysis process and is similar to CEQ’s cumulative effects analysis process. The installation and community jointly identify affected resources within the region in both processes. Once the resources have been identified and evaluated a **collaborative management plan** is developed that will provide solutions for all stakeholders. The Army’s Sustainable Range Program incorporates the same principles of these processes into its planning procedures. Site selection and range design for training facilities begin with a design “charrette” to insure stakeholder collaboration. This effort ensures a design that will satisfy training requirements and environmental issues.9 The Army NEPA implementation regulation provides the following **broad policy** statement**s**10: “NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; **comprehensively integrating** environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality. The Army will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.”

#### Court controversies now

Ziskind 13

[Jeremy, Master's Degree in Public Policy (MPP) from the UCLA School of Public Affairs, ProCon.Org, Controversial Issues Fill US Supreme Court Docket, 10/10/13, <http://www.procon.org/headline.php?headlineID=005182>]

The new US Supreme Court term, which began on Oct(ober). 7, 2013, is expected to decide many controversial issues including cases on abortion, gay marriage, Obamacare, affirmative action, public prayer, free speech, religious liberty, property rights, and campaign finance reform. Justices began hearing oral arguments on Oct. 8 with an examination of campaign finance laws in McCutcheon v. Federal Election Commission. The case will determine the constitutionality of aggregate caps on direct contributions from individuals to candidates and political parties in federal campaigns. The plaintiffs, an Alabama citizen and the Republican National Committee, argue that two-year contribution limits to candidates ($46,200) and groups ($70,800) violate freedom of speech protections. Two cases will touch on abortion. McCullen v. Coakley challenges a Massachusetts law that restricts protests near reproductive health care facilities. Another, Cline v. Oklahoma Coalition for Reproductive Justice, questions whether or not states may limit the use of abortion-inducing drugs. The case could potentially modify the Supreme Court's 1973 ruling in Roe v. Wade prohibiting laws that place an "undue burden" on access to abortion. Justices are also expected to decide whether to hear cases challenging an Obamacare requirement that employers provide insurance coverage for contraception. Some corporations have stated that the requirement violates their right to religious freedom, and cite the Supreme Court's decision in Citizens United v. Federal Election Commission as the basis for a corporation's right to free speech. On the topic of affirmative action, the court will hear Schuette v. Coalition to Defend Affirmative Action. The case asks whether voters in the state of Michigan were allowed to pass a law in 2006 banning the use of race as a criteria for college admissions. The court will potentially take up cases on cell phones and privacy rights. The cases, US v. Wurie and Riley v. California, question whether or not police must obtain a warrant to search data on the cell phone of a person under arrest.

#### Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### Pre-9/11 restrictions disprove the DA – no significant effect on readiness

Dycus 05

[Stephen, Professor, Vermont Law School, Osama's Submarine: National Security and

Environmental Protection After 9/11, William & Mary Environmental Law and Policy Review, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1112&context=wmelpr>]

The evidence that compliance with environmental laws has seriously impaired U.S. preparations for war is, however, far from conclusive. After all, the U.S. military's successes in Afghanistan and Iraq were achieved using troops trained and weapons tested under **pre-September 11th environmental statutes** and regulations. A Navy Admiral, testifying before Congress in support of RRPI in 2003, declared that "the readiness of the Navy is excellent. 32 According to a General Accounting Office report in 2002, "[d]espite the loss of some capabilities, service readiness data do not indicate the extent to which encroachment has significantly affected reported training readiness.” 33 In fact, the report concluded, "Training readiness, as reported in official readiness reports, remains high for most units.,34 Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman went further in early 2003, stating, "**I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation**."35 A more recent study by the Congressional Research Service noted that "[a]lthough DOD has cited some examples of training restrictions or delays at certain installations and has used these as the basis for seeking legislative remedies, the department does not have a system in place to comprehensively track these cases and determine their impact on readiness.' "36 Some have taken a dimmer view of DOD's protests. EPA complained that the definition of "military readiness activities" in the DOD proposal was "broad and unclear and could be read to encompass more than the Department intends."37 Congressman John Dingell, a Democrat from Michigan, was much more emphatic: "I have dealt with the military for years and they constantly seek to get out from under environmental laws. But using the threat of 9-11 and al Qaeda to get unprecedented environmental immunity is despicable. 38

#### Climate change leads to war – statistically rigorous analysis proves

Hsiang 13 – Professor of Public Policy @ UC-Berkeley

(Solomon, et al., “Quantifying the Influence of Climate on Human Conflict,” August, 10.1126/science.1235367)

Human behavior is complex, and despite the existence of institutions designed to promote peace, interactions between individuals and groups sometimes lead to conflict. When such conflict becomes violent, it can have dramatic consequences on human wellbeing. Mortality alone from war and interpersonal violence amounts to 0.5-1 million deaths annually (1, 2), with non-lethal impacts including injury and lost economic opportunities affecting millions more. Because the stakes are so high, understanding the causes of human conflict has been a major project in the social sciences. Researchers working across multiple disciplines including archeology, criminology, economics, geography, history, political science, and psychology have long debated the extent to which climatic changes are responsible for causing conflict, violence or political instability. Numerous pathways linking the climate to these outcomes have been proposed. For example, climatic changes may alter the supply of a resource and cause disagreement over its allocation, or climatic conditions may shape the relative appeal of using violence or cooperation to achieve some preconceived objective. Qualitative researchers have a well-developed history of studying these issues (3–7) dating back at least to the start of the twentieth century (8). Yet in recent years, growing recognition that the climate is changing, coupled with improvements in data quality and computing, have prompted an explosion of quantitative analyses seeking to test these theories and quantify the strength of these previously proposed linkages. Thus far, this work has remained scattered across multiple disciplines and has been difficult to synthesize given the disparate methodologies, data and interests of the various research teams. Here we assemble the first comprehensive synthesis of this rapidly growing quantitative literature. We adopt a broad definition of “conflict,” using the term to encompass a range of outcomes from individual-level violence and aggression to country-level political instability and civil war. We then collect all available candidate studies and - guided by previous criticisms that not all correlations imply causation (9–11) - focus only on those quantitative studies that can reliably infer causal associations (9, 12) between climate variables and conflict outcomes. The studies we examine exploit either experimental or natural-experimental variation in climate, where the latter term refers to variation in climate over time that is plausibly independent of other variables that also affect conflict. To meet this standard, studies must account for unobservable confounding factors across populations, as well as for unobservable time-trending factors that could be correlated with both climate and conflict (13). In many cases we obtained data from studies that did not meet this criteria and reanalyzed it using a common statistical model that met this criteria (see supplementary materials). The importance of this rigorous approach is highlighted by an example where our standardized analysis generated findings consistent with other studies but at odds with the original conclusions of the study in question (14). In total, we obtained 60 primary studies that either met this criteria or were reanalyzed with a method that met this criteria (Table 1). Collectively, these studies analyze 45 different conflict data sets published across 26 different journals and represent the work of over 190 researchers from around the world. Our evaluation summarizes the recent explosion of research on this topic, with 78% of studies released since 2009 and the median study released in 2011. We collect findings across a wide range of conflict outcomes, across time periods spanning 10,000 B.C.E. to the present day, and across all major regions of the world (Fig. 1). View this table: In this window In a new window Table 1 Unique quantitative studies testing for a relationship between climate and conflict, violence or political instability. Fig. 1 View larger version: In this page In a new window Download PowerPoint Slide for Teaching Fig. 1 Samples and spatiotemporal resolutions of 60 studies examining intertemporal associations between climatic variables and human conflict. (A) The location of each study region (y-axis) against the period of time included in the study (x-axis). The x-axis is scaled according to log years before present but labeled according to the year of the Common Era. (B) The level of aggregation in social outcomes (y-axis) against the timescale of climatic events (x-axis). The envelope of spatial and temporal scales where associations are documented is shaded, with studies at extreme vertices labeled for reference. Marker size denotes the number of studies at each location, with the smallest bubbles marking individual studies and the largest bubble marking 10 studies. While various conflict outcomes differ in important ways, we find that the behavior of these outcomes relative to the climate system is remarkably similar. Put most simply, we find that large deviations from normal precipitation and mild temperatures systematically increase the risk of many types of conflict, often substantially, and that this relationship appears to hold over a variety of temporal and spatial scales. Our meta-analysis of studies that examine populations in the post-1950 era suggest that these relationships continue to be highly significant in the modern world - although there are important differences in the magnitude of the relationship when different variables are considered: the standardized effect of temperature is generally larger than the standardized effect of rainfall and the effect on intergroup violence (e.g., civil war) is larger than the effect on interpersonal violence (e.g., assault). We conclude that there is substantially more agreement and generality in the findings of this burgeoning literature than has been previously recognized. Given the large potential changes in precipitation and temperature regimes projected in coming decades, our findings have important implications for the social impact of anthropogenic climate change in both low- and high-income countries. Estimation of Climate-Conflict Linkages Reliably measuring an effect of climatic conditions on human conflict is complicated by the inherent complexity of social systems. In particular, a central concern is whether statistical relationships can be interpreted causally or if they are confounded by omitted variables. To address this concern, we restrict our attention to studies with research designs that are a scientific experiment or that approximate one (i.e., “natural experiments”). After describing how studies meet this criteria, we discuss how we interpret the precision of results, how we assess the “importance” of climatic factors, and how we address choices over functional form. Research Design In an ideal experiment, we would observe two identical populations, change the climate of one, and observe whether this “treatment” lead to more or less conflict relative to the “control” conditions. Because the climate cannot be experimentally manipulated, researchers primarily rely on natural experiments where a given population is compared to itself at different moments in time when it is exposed to different climatic conditions - conditions which are exogenously determined by the climate system (9, 15). In this research design, a single population serves as both the “control” population - e.g., just before a change in climatic conditions- and the “treatment” population - e.g., just after a change in climatic conditions. Inferences are thus based only on how a fixed population responds to different climatic conditions which vary over time, and time-series or longitudinal analysis is used to construct a credible estimate for the causal effect of climate on conflict (12, 15, 16). To minimize statistical bias and to improve the comparability of studies, we focus on studies that use versions of the general model conflict\_variableit = β × climate\_variableit + μi + θt + ϵit (1) where locations are indexed by i, observational periods are indexed by t, β is the parameter of interest and ϵ is the error. If different locations in a sample exhibit different average levels of conflict - perhaps because of cultural, historical, political, economic, geographic or institutional differences between the locations - this will be accounted for by the location-specific constants μ (commonly known as “fixed effects”). Time-specific constants θ (a dummy for each time period) flexibly account for other time-trending variables such as economic growth or gradual demographic changes that could be correlated with both climate and conflict. In some cases, such as in time series, the θt parameters may be replaced by a generic trend (e.g.,Formula) which is possibly nonlinear and is either common to all locations or may be location-specific (e.g., Formula). Our conclusions from the literature are based only on those studies that implement Eq. 1 or one of the mentioned alternatives. In select cases, when studies did not meet this criteria but the data from these analyses were publicly available or supplied by the authors, we reanalyzed the data using this common method (see supplementary materials). Many estimates of Eq. 1 in the literature and in our reanalysis account for temporal and/or spatial autocorrelation in the error term ϵ, although this adjustment was not considered a requirement for inclusion here. In the case of some paleoclimatological/archeological studies, formal statistical analysis is not implemented because the outcome variables of interest are essentially singular cataclysmic events; however, we include these studies because they follow populations over time at a fixed location and are thus implicitly using the model in Eq. 1 (these cases are noted in Table 1). We do not consider studies that are purely cross-sectional, i.e., studies that only compare rates of conflict across different locations and that attribute differences in average levels of conflict to average climatic conditions. There are many ways in which populations differ from one another (culture, history, etc.), many of them unobserved, and these “omitted variables” are likely to confound these analyses. In the language of the natural experiment, the “treatment” and “control” populations in these analyses are not comparable units, so we cannot infer whether a climatic “treatment” has a causal effect or not (12, 13, 15–17). For example, a cross-sectional study might compare average rates of civil conflict in Norway and Nigeria, attributing observed differences to the different climate of these countries - despite the fact that there are clearly many other relevant ways in which these countries differ. Nonetheless, some studies use cross-sectional analyses and attempt to control for confounding variables in regression analyses, typically using a handful of covariates such as average income or political indices. However, because the full suite of determinants of conflict are unknown and unmeasured, it is likely impossible that any cross-sectional study can explicitly account for all important differences between populations. Rather than presuming that all confounders are accounted for, the studies we evaluate only compare Norway or Nigeria to themselves at different moments in time, thereby ensuring that the structure, history and geography of comparison populations are nearly identical. Some studies implement versions of Eq. 1 that are expanded to explicitly “control” for potential confounding factors, such as average income. In many cases this approach is more harmful than helpful because it introduces bias in the coefficients describing the effect of climate on conflict. This problem occurs when researchers control for variables that are themselves affected by climate variation, causing either (i) the signal in the climate variable of interest to be inappropriately absorbed by the “control” variable, or (ii) the estimate to be biased because populations differ in unobserved ways that become artificially correlated with climate when the “control” variable is included. This methodological error is commonly termed “bad control” (12) and we exclude results obtained using this approach. The difficulty in this setting is that climatic variables affect many of the socioeconomic factors commonly included as control variables - things like crop production, infant mortality, population (via migration or mortality), and even political regime type. To the extent that these outcome variables are used as controls in Eq. 1, studies might draw mistaken conclusions about the relationship between climate and conflict. Because this error is so salient in the literature, we provide examples below. A full treatment can be found in (12, 18). For an example of (i), consider whether variation in temperature increases conflict. In many studies of conflict, researchers often employ a “standard” set of controls which are correlates of conflict, such as per capita income. However, evidence suggests that income is itself affected by temperature (19–21), so if part of the effect of temperature on conflict is through income, then “controlling” for income in Eq. 1 will lead the researcher to underestimate the role of temperature in conflict. This occurs because much of the effect of temperature will be absorbed by the income variable, biasing the temperature coefficient toward zero. At the extreme, if temperature influences conflict only through income, then controlling for income would lead the researcher in this example to draw exactly the wrong conclusion about the relationship between temperature and conflict: that there is no effect of temperature on conflict. For an example of (ii), imagine that a measure of “politics” and temperature both have a causal effect on conflict and that both politics and temperature have an effect on income, but that income has no effect on conflict. If politics and temperature are uncorrelated, estimates of Eq. 1 that do not control for politics will still recover the unbiased effect of temperature. However, If income is introduced to Eq. 1 as a “control” while politics is left out of the model, perhaps because it is more difficult to measure, then it will appear as if there is an association between income and conflict because income will be serving as a proxy measure for politics. In addition, this adjustment to Eq. 1 also biases the estimated effect of temperature. This bias occurs because the types of countries that have high income when temperature is high are different, in terms of their average politics, than those countries that have high income when temperature is low. Thus, if income is “held fixed” as a control variable in a regression model, the comparison of conflict across temperatures is not an apples-to-apples comparison because politics will be systematically different across countries at different temperatures, generating a bias that can have either sign. In this example, the inclusion of income in the model leads to two incorrect conclusions: it biases the estimated relationship between climate and conflict and it implicates income as playing a role in conflict when it does not. Statistical Precision We consider each study’s estimated relationship between climate and conflict as well as the estimate’s precision. Because sampling variability and sample sizes differ across studies, some analyses present results that are more precise than other studies. Recognizing this fact is important when synthesizing a diverse literature, as some apparent differences between studies can be reconciled by evaluating the uncertainty in their findings. For example, some studies report associations that are very large or very small but with uncertainties that are also very large, leading us to place less confidence in these extreme findings. This intuition is formalized in our meta-analysis which aggregates results across studies by down-weighting results that are less precisely estimated. The strength of a finding is sometimes summarized in a statement regarding its “statistical significance,” which describes the signal-to-noise ratio in an individual study. However, in principle the “signal” is a relationship that exists in the real world and cannot be affected by the researcher, whereas the level of “noise” in a given study’s finding (i.e., its uncertainty) is a feature specific to that study - a feature that can be affected by a researcher's decisions, such as the size of the sample they choose to analyze. Thus, while it is useful to evaluate whether individual findings are statistically significant and it is important to down-weight highly imprecise findings, individual studies provide useful information even when they are not statistically significant. To summarize the evidence that each statistical study provides while also taking into account its precision, we separately consider three questions for each study in Table 1: (1) Is the estimated average effect of climate on conflict quantitatively “large” in magnitude (discussed below), regardless of its uncertainty? (2) Is the reported effect large enough and estimated with sufficient precision that the study can reject the null hypothesis of “no relationship” at the 5% level? (3) If the study cannot reject the hypothesis of “no relationship,” can it reject the hypothesis that the relationship is quantitatively large? In the literature, often only question 2 is evaluated in any single analysis. Yet it is important to consider the magnitude of climate influence (question 1) separately from its statistical precision because the magnitude of these effects tell us something about the potential importance of climate as a factor that may influence conflict, so long as we are mindful that evidence is weaker if a study’s results are less certain. In cases where the estimated effect is smaller in magnitude and not statistically different than zero, it is important to consider whether a study provides strong evidence of zero association - i.e., the study rejects the hypothesis that an effect is large in magnitude (question 3) - or relatively weak evidence because the estimated confidence interval spans large effects as well as spanning zero effect. Evaluating If an Effect Is “Important” Evaluating whether an observed causal relationship is “important” is a subjective judgement that is not essential to our scientific understanding of whether there is a causal relationship. Nonetheless, because “importance” in this literature has sometimes been incorrectly conflated with statistical precision or inferred from incorrect interpretations of Eq. 1 and its variants, we explain our approach to evaluating importance. Our preferred measure of importance is to ask a straightforward question: Do changes in climate cause changes in conflict risk that an expert, policy-maker or citizen would consider large? To aid comparisons, we operationalize this question by considering an effect important if authors of a particular study state the size of the effect is substantive, or if the effect is greater than a 10% change in conflict risk for each 1 standard deviation (1σ) change in climate variables. This second criteria uses an admittedly arbitrary threshold, and other threshold selections would be justifiable. However, we contend this threshold is relatively conservative since most policy-makers or citizens would be concerned by effects well below 10%/σ. For instance, since random variation in a normally distributed climate variable lies in a 4σ range for 95% of its realizations, even a 3%/σ effect size would generate variation in conflict of 12% of its mean, which is probably important to those individuals experiencing these shifts. In some prior studies, authors have argued that a particular estimated effect is “unimportant” based on whether a climatic variable substantially changes goodness-of-fit measures (e.g., R2) for a particular statistical model, sometimes in comparison to other predictor variables (14, 22–24). We do not use this criteria here for two reasons. First, goodness-of-fit measures are sensitive to the quantity of noise in a conflict variable: more noise reduces goodness-of-fit - thus, under this metric, irrelevant measurement errors that introduce noise into conflict data will reduce the apparent “importance” of climate as a cause of conflict, even if the effect of climate on conflict is quantitatively large. Second, comparing the goodness-of-fit across multiple predictor variables often makes little sense in many contexts since (i) longitudinal models typically compare variables that predict both where a conflict will occur and when a conflict occur and (ii) these models typically compare the causal effect of climatic variables with the non-causal effects of confounding variables, such as endogenous covariates. These are apples-to-oranges comparisons and the faulty logic of both types of comparison are made clear with examples. For an example of (i), consider an analyst comparing violent crime over time in New York City and North Dakota who finds that the number of police on the street each day are important for predicting how much crime occurs on that day, but that a population variable describes more of the variation in crime since crime and population in North Dakota are both low. Clearly this comparison is not informative, since the reason that there is little crime in North Dakota has nothing to do with the reason why crime is lower in New York City on days when there are many police on the street. The argument that variations in climate are “not important” to predicting when conflict occurs because other variables are good predictors of where conflict occurs is analogous to the strange statement that the number of police in New York City are “not important” for predicting crime rates because North Dakota has lower crime that is attributable to its lower population. For an example of (ii), suppose that both higher rainfall and higher household income lower the likelihood of civil conflict, but household income is not observed and instead a variable describing the average observable number of cars each household owns is included in the regression. Because wealthier households are better able to afford cars, the analyst finds that populations with more cars have a lower risk of conflict. This relationship clearly does not have a causal interpretation and comparing the “effect of car ownership on conflict” with the effect of rainfall on conflict does not help us better understand the importance of the rainfall variable. Published studies that make similar comparisons do so with variables that the authors suggest are more relevant than cars, but the uninformative nature of comparisons between causal effects and non-causal correlations is the same. Functional Form and Evidence of Nonlinearity Some studies assume a linear relationship between climatic factors and conflict risk, while others assume a non-linear relationship. Taken as a whole, the evidence suggests that over a sufficiently large range of temperatures and rainfall levels, both temperature and precipitation appear to have a non-linear relationship with conflict, at least in some contexts. However, this curvature is not apparent in every study, probably because the range of temperatures or rainfall levels contained within a sample may be relatively limited. Thus, most studies report only linear relationships that should be interpreted as local linearizations of a more complex - and possibly curved - response function. As we will show, all modern analyses that address temperature impacts find that higher temperatures lead to more conflict. However, a few historical studies that examine temperate locations during cold epochs do find that abrupt cooling from an already cold baseline temperature may lead to conflict. Taken together, this collection of locally linear relationships indicates a global relationship with temperature that is non-linear. In studies of rainfall impacts, the distinction between linearity and curvature is made fuzzy by the multiple ways that rainfall changes have been parameterized in existing studies. Not all studies use the same independent variable, and because a simple transformation of an independent variable can change the response function from curved to linear and visa versa, this makes it difficult to determine whether results agree. In an attempt to make findings comparable, when replicating the studies that originally examine a non-linear relationship between rainfall and conflict we follow the approach of Hidalgo et al. (25) and use the absolute value of rainfall deviations from the mean as the independent variable; in studies that originally examined linear relationships we leave the independent variable unaltered. Because these two approaches in the literature (and our reanalysis) differ, we make the distinction clear in our figures through the use of two different colors. Results from the Quantitative Literature We divide our review topically, examining in turn the evidence on how climatic changes shape personal violence, group-level violence, and the breakdown of social order and political institutions. Results from twelve example studies of recent data (post-1950) are displayed in Fig. 2, which we replicated using the common statistical framework described above, and which were chosen to represent a broad cross section of outcomes, geographies, and time periods (see supplementary materials). Findings from several studies of historical data are collected in Fig. 3, where the different time scales of climatic events can be easily compared. A listing and description of all primary studies are in Table 1. For a detailed description and evaluation of each individual study, we refer readers to (26). Fig. 2 View larger version: In this page In a new window Download PowerPoint Slide for Teaching Fig. 2 Empirical studies indicate that climatological variables have a large effect on the risk of violence or instability in the modern world. Examples from studies of modern data that identify the causal effect of climate variables on human conflict. Both dependent and independent variables have had location-effects and trends removed, so all samples have a mean of zero. Relationships between climate and conflict outcomes are shown with non-parametric “watercolor regressions”, where the color intensity of 95% confidence intervals depicts the likelihood that the true regression line passes through a given value (darker is more likely) (128). White line is the conditional mean (129, 130). Climate variables are indicated by color: red = temperature, green = rainfall deviations from normal, blue = precipitation loss, black = ENSO. Panel titles describe the outcome variable, location, unit of analysis, sample size and study. Because the samples examined in each study differ, the units and scales change across each panel (see Figs. 4 and 5 for standardized effect-sizes). “Rainfall deviation” represents the absolute value of location-specific rainfall anomalies, with both abnormally high and abnormally low rainfall events described as having a large rainfall deviation. “Precipitation Loss” is an index describing how much lower precipitation is relative to the prior year or long-term mean. Fig. 3 View larger version: In this page In a new window Download PowerPoint Slide for Teaching Fig. 3 Examples of paleoclimate reconstructions that find associations between climatic changes and human conflict. Lines are climate reconstructions (red = temperature, blue = precipitation, orange = drought; smoothed moving averages when light gray lines are shown), and dark gray bars indicate periods of substantial social instability, violent conflict, or the breakdown of political institutions. (A) Alluvial sediments from the Cariaco Basin indicate substantial multi-year droughts coinciding with the collapse of the Maya (84). (B) Reconstruction of a drought index from tree rings in Vietnam show sustained mega-droughts prior the collapse of the Angkor kingdom (85). (C) Sediments from Lake Huguang Maar in China indicate abrupt and sustained periods of reduced summertime precipitation that coincided with most major dynastic transitions (79). The collapse of the Tang Dynasty (907) coincided with the terminal collapse of the Maya (A), both of which occurred when the Pacific Ocean altered rainfall patterns in both hemispheres (79). Similarly, the collapse of the Yuan Dynasty (1368) coincided with collapse of Angkor (B) which shares the same regional climate. (D) Tiwanaku cultivation of the Lake Titicaca region ended abruptly following a drying of the region, as measured by ice accumulation in the Quelccaya Ice Cap, Peru (80). (E) Continental dust blown from Mesopotamia into the Gulf of Oman indicate terrestrial drying that is coincident with the collapse of the Akkadian empire (83). (F) European tree rings indicate that anomalously cold periods were associated with major periods of instability on the European continent (62). Personal Violence and Crime Studies in psychology and economics have repeatedly found that subjects are more likely to exhibit aggressive or violent behavior toward others if ambient temperatures at the time of observation are higher (Fig. 2, A to C), a result that has been obtained in both experimental (27, 28) and natural-experimental (29–39) settings. Documented aggressive behaviors that respond to temperature range from somewhat less consequential - e.g., horn-honking while driving (27) and inter-player violence during sporting events (36) - to much more serious - e.g., the use of force during police training (28), domestic violence within households (29, 37), and violent crimes such as assault or rape (30–35, 38). Although the physiological mechanism linking temperature to aggression remains unknown, the causal association appears robust across a variety of contexts. Importantly, because aggression at high temperature increases the likelihood that intergroup conflicts escalate in some contexts (36) and the likelihood that police officers use force (28), it is possible that this mechanism could affect the prevalence of larger scale group-level conflicts. In low-income settings, extreme rainfall events that adversely affect agricultural income are also associated with higher rates of personal violence (40–42) and property crime (43). High temperatures are also associated with increased property crime (34, 35, 38), but violent crimes appear to rise with temperature more quickly than property crimes (38). Group-Level Violence and Political Instability Some forms of intergroup violence, such as Hindu-Muslim riots (Fig. 2D), tend to be more likely following extreme rainfall conditions (44–47). This relationship between intergroup violence and rainfall is primarily documented in low-income settings, suggesting that reduced agricultural production may be an important mediating mechanism - although alternative explanations cannot be excluded. Low water availability (23, 46, 48–57), very low temperatures (58–63) and very high temperatures (14, 21, 23, 51, 64–66) have been associated with organized political conflicts in a variety of low-income contexts (Fig. 2, E, F, H, I, K, and L). The structure of this relationship again seems to implicate a pathway through climate-induced changes in income, either agricultural (48, 67–69) or non-agricultural (20, 21), although this hypothesis remains speculative. Large deviations from normal precipitation have also been shown to lead to the forceful reallocation of wealth (25) (Fig. 2G) or the non-violent replacement of incumbent leaders (70, 71) (Fig. 2J). Some authors recently suggested that contradictory evidence is widespread among quantitative studies of climate and human conflict (72–74), but the level of disagreement appears overstated. Two studies (22, 24) estimate that temperature and rainfall events have a limited impact on civil war in Africa, but the confidence intervals around these estimates are sufficiently wide that they do not reject a relatively large effect of climate on conflict that is consistent with 35 other studies of modern data and 28 other studies of inter-group conflict. Within the broader literature of primary statistical studies, these results represent 4% of all reported findings (Table 1). Isolated studies also suggest that windstorms and floods have limited observable effect on civil conflicts (75) and that anomalously high rainfall is associated with higher incidence of terrorist attacks (76). Institutional Breakdown Under sufficiently high levels of climatological stress, pre-existing social institutions may strain beyond recovery and lead to major changes in governing institutions (77–79) (Fig. 3C), a process that often involves the forcible removal of rulers. High levels of climatological stress have also led to major changes in settlement patterns and social organization (80, 81) (Fig. 3D). Finally, in extreme cases, entire communities, civilizations and empires collapse entirely following large changes in climatic conditions (62, 79, 80, 82–89) (Fig. 3, A to C, E, and F). These documented catastrophic failures all precede the twentieth century, yet the level of economic development in these communities at the time of their collapse was similar to the level of development in many poor countries of the modern world [see (26) for a comparison], an indicator that these historical cases may continue to have modern relevance. Synthesis of Findings Once attention is restricted to those studies able to make rigorous causal claims about the relationship between climate and conflict, some general patterns become clear. Here we identify, for the first time, commonalities across results that span diverse socials systems, climatological stimuli and research disciplines. Generality: Samples, Spatial Scales, and Rates of Climate Change Social conflicts at all scales and levels of organization appear susceptible to climatic influence, and multiple dimensions of the climate system are capable of influencing these various outcomes. Studies documenting this relationship can be found in data samples covering 10,000 BCE to the present and this relationship has been identified multiple times in each major region, as well as in multiple samples with global coverage (Fig. 1A). Climatic influence on human conflict appears in both high and low income societies, although some types of conflict, such as civil war, are rare in high income populations do not exhibit a strong dependance on climate in those regions (51). Nonetheless, many other forms of conflict in high income countries such as violent crime (35, 38), police violence (28), or leadership changes (71), do respond to climatic changes. These forms of conflict are individually less extreme, but their total social cost may be large because they are widespread. For example, during 1979-2009 there were more than two million violent crimes (assault, murder and rape) per year on average in the United States alone (38), so small percentage changes can lead to substantial increases in the absolute number of these types of events. Climatic perturbations at spatial scales ranging from a building (27, 28, 36) to the globe (51) have been found to influence human conflict or social stability (Fig. 1B). The finding that climate influences conflict across multiple scales suggests that coping or adaptation mechanisms are often limited. Interestingly, as shown in Fig. 1B, there is a positive association between the temporal and spatial scales of observational units in studies documenting a climate-conflict link. This might indicate that larger social systems are less vulnerable to high frequency climate events, or it may be that higher-frequency climate events are more difficult to detect in studies examining outcomes over wide spatial scales. Finally, it is sometimes argued that societies are particularly resilient to climate perturbations of a specific temporal scale - perhaps they are capable of buffering themselves against short-lived climate events, or alternatively that they are able to adapt to conditions that are persistent. With respect to human conflict, the available evidence does not support either of these claims. Climatic anomalies of all temporal durations, from the anomalous hour (28) to the anomalous millennium (81), have been implicated in some form of human conflict (Fig. 1B). The association between climatic events and human conflict is general in the sense that it has been observed almost everywhere: across types of conflict, across human history, across regions of the world, across income groups, across the various durations of climatic changes, and across all spatial scales. However, it is not true that all types of climatic events influence all forms of human conflict or that climatic conditions are the sole determinant of human conflict. The influence of climate is detectable across contexts, but we strongly emphasize that it is only one of many factors that contribute to conflict [see (90) for a review of these other factors]. The Direction and Magnitude of Climatic Influence on Human Conflict We must consider the magnitude of the climate's influence in order to evaluate whether climatic events play an important role in the occurrence of conflict, and whether anthropogenic climate change has the potential to substantially alter future conflict outcomes. Quantifying the magnitude of climatic impact in archeological/paleo-climatological studies is difficult because outcomes of interest are often one-off cataclysmic events (e.g., societal collapse) and we typically do not observe how the universe of societies would have responded to similar sized shocks. Modern data samples, however, generally contain a large number of comparable social units (e.g., countries) that are repeatedly exposed to climatic variation, and this setting that is more amenable to statistical analyses that quantify how changes in climate affect the risk of conflict within an individual social unit. To compare quantitative results across studies of modern data, we computed standardized effect sizes for those studies where it was possible to do so, evaluating the effect of a 1σ change in the explanatory climate variable and expressing the result as a percentage change in the outcome variable. Because we restrict our attention to studies that examine changes in climate variables over time, the relevant standard deviation is based only on inter-temporal changes at each specific location instead of comparing variation in climate across different geographic locations. Our results are displayed in Figs. 4 and 5 (colors match Figs. 2 and 3). Nearly all studies suggest that warmer temperatures, lower or more extreme rainfall, or warmer El Niño-Southern Oscillation (ENSO) conditions lead to a 2-40% increase in the conflict outcome per 1σ in the observed climate variable. The consistent direction of temperature’s influence is particularly remarkable since all 27 modern estimates (including ENSO and temperature-based drought indices, 20 estimates are shown in Figs. 4 and 5) indicate that warmer conditions generate more conflict, a result that would be extremely unlikely to occur by chance alone if temperature had no effect on conflict. It is more difficult to interpret whether the sign of rainfall-related variables agree because these variables are parametrized several different ways, so Figs. 4 and 5 present likelihoods for different parameterizations separately. However, if all modern rainfall estimates are pooled (including ENSO and rainfall-based drought indices, 13 estimates are shown in Figs. 4 and 5) using signs shown in Figs. 4 and 5, then the sign of the effect in 16 out of 18 estimates agree. Fig. 4 View larger version: In this page In a new window Download PowerPoint Slide for Teaching Fig. 4 Modern empirical estimates for the effect of climatic events on the risk of interpersonal violence. Each marker represents the estimated effect of a 1σ increase in a climate variable, expressed as a percentage change in the outcome variable relative to its mean. Whiskers represent the 95% confidence interval on this point estimate. Colors indicate the forcing climate variable. A coefficient is positive if conflict increases with higher temperature (red), greater rainfall loss (blue), or greater rainfall deviation from normal (green). Dashed line is the median estimate, and the solid black line the precision-weighted mean with its 95% confidence interval shown in gray. The panels on the right show the precision-weighted mean effect (circle) and the distribution of study results for all 11 results looking at individual conflict or for the subset of 8 results focusing on temperature effects; distributions of effect sizes are either precision-weighted (solid line) or derived from a Bayesian hierarchical model (dashed line). See supplementary materials for details on the individual studies and on the calculation of mean effects and their distribution. Fig. 5 View larger version: In this page In a new window Download PowerPoint Slide for Teaching Fig. 5 Modern empirical estimates for the effect of climatic events on the risk of intergroup conflict. Each marker represents the estimated effect of a 1σ increase in a climate variable, expressed as a percentage change in the outcome variable relative to its mean. Whiskers represent the 95% confidence interval on this point estimate. Colors indicate the forcing climate variable. A coefficient is positive if conflict increases with higher temperature (red), greater rainfall loss (blue), greater rainfall deviation from normal (green), more floods and storms (gray), more El Niño-like conditions (brown), or more drought (orange) as captured by different drought indices. Dashed line is the median estimate, and the solid black line the precision-weighted mean with its 95% confidence interval shown in gray. The panels at right show the precision-weighted mean effect (circle) and the distribution of study results for all 21 results looking at intergroup conflict or for the subset of 12 results focusing on temperature effects (which includes the ENSO and drought studies); distributions of effect sizes are either precision-weighted (solid line) or derived from a Bayesian hierarchical model (dashed line). See supplementary materials for details on the individual studies and on the calculation of mean effects and their distribution. Under the assumption that there is some underlying similarity across studies, we compute the average effect of climate variables across studies by weighting each estimate according to its precision (the inverse of the estimated variance), a common approach that penalizes uncertain estimates (91). We also calculate the confidence interval on this mean by assuming independence across studies, although this assumption is not critical to our central findings (in the supplementary materials we present results where we relax this assumption and show that it is not essential). The precision-weighted average effect on interpersonal conflict is a 2.3% increase for each 1σ change in climatic variables (s.e.= 0.12%, p < 0.001, Fig. 4 and table S1) and the analogous estimate for intergroup conflict is 11.1% (s.e.= 1.3%, p < 0.001, Fig. 5 and table S1). These precision-weighted averages are relatively un-influenced by outliers since outlier estimates in our sample tend to have low precision and thus low weight in the meta-analysis. The corresponding medians, which are also insensitive to outliers, are comparable: 3.9% for personal conflict and 13.6% for group conflict. If we restrict our attention to only the effects of temperature, the precision-weighted average effect is similar for interpersonal conflict (2.3%), but for intergroup conflict rises to 13.2% per 1σ in temperature (s.e.= 2.0, p < 0.001, Fig. 5). Regarding the interpretation of these effect sizes, we note that while the average effect for interpersonal violence is smaller than the average effect for intergroup conflict in percentage terms, the baseline number of incidents of interpersonal violence is dramatically higher, meaning a small percentage increase can represent a substantial increase in total incidents. We estimate the precision-weighted probability distribution of study-level effect-sizes in Figs. 4 and 5 and in table S1. These distributions are centered at the precision-weighted averages described above and can be interpreted as the distribution of results from which studies’ findings are drawn. The distribution for interpersonal conflict is narrow around its mean, likely because most interpersonal conflict studies focus on one country (the United States) and use very large samples and derive very precise estimates. The distribution for intergroup conflict is broader and covers values that are larger in magnitude, with an interquartile range 6 to 14% per 1σ and the 5-95th percentiles spanning –5 to 32% per 1σ (table S1). We estimate that for the intergroup and interpersonal conflict studies, respectively, 10% and 0% of the probability mass of the distributions of effect sizes lies below zero. Figures 4 and 5 make it clear that even though there is substantial agreement across results, some heterogeneity across estimates remains. It is possible that some of this variation is meaningful, perhaps because different types of climate variables have different impacts or because the social, economic, political or geographic conditions of a society mediate its response to climatic events. For instance, poorer populations appear to have larger responses, consistent with prior findings that such populations are more vulnerable to climatic shifts (51). However, it is also possible that some of this variation is due to differences in how conflict outcomes are defined, to measurement error in climate variables, or to remaining differences in model specifications that we could not correct in our reanalysis. To formally characterize the variation in estimated responses across studies, we use a Bayesian hierarchical model that does not require knowledge of the source of between-study variation (92) (see supplementary materials). Under this approach, estimates of the precision-weighted mean are essentially unchanged, and we recover estimates for the between-study standard deviation (a measure of the underlying dispersion of “true” effect sizes across studies) that are half of the precision-weighted mean for interpersonal conflict, and two-thirds of the precision-weighted mean for intergroup conflict (median estimates; see supplementary materials, fig. S3 and tables S2 and S3). By comparison, if variation in effect sizes across studies was driven by sampling variation alone, then this standard deviation in the underlying distribution of effect sizes would be zero. This suggests “true” effects likely differ across settings, and understanding this heterogeneity should be a primary goal of future research. Publication Bias Publication bias is a longstanding concern across the sciences, with a common form of bias arising from the research community’s perceived preference for positive rather than null results. Although it is always possible that publication bias played a role in the publication of a specific analysis, there are multiple reasons why publication bias is unlikely to be driving our findings about the literature on climate and conflict. First, we include working papers in our analysis (as is common practice in the social sciences), thereby eliminating editorial selection. Second, the central results presented here are replicated in multiple disciplines and across diverse samples. Third, the large number of positive findings present in the literature since 2009 could provide limited professional incentive for researchers to publish yet another positive finding, and benefits might be higher to those who publish results with alternative findings. Fourth, many analyses are not explicitly focused on the direct effect of climate on conflict but instead use climatic variations instrumentally (25, 35, 48, 71, 77) or account for it as an ancillary covariate in their analysis [e.g., (37)] while trying to study a different research question - indicating that these authors have little professional stake in the sign, magnitude or statical significance of the climatic effects they are presenting. Fifth, we reanalyze the raw data from many studies using a common statistical framework, possibly “undoing” adjustments that authors might be making to their analysis (consciously or unconsciously) that make their findings appear stronger - partial support for this idea is provided by individual studies that present significant results, but whose results are only marginally significant or no longer significant after our reanalysis (see supplementary materials for details). Finally, we look for evidence of publication bias by examining whether the statistical strength of individual studies reflects their sample size (93) and do not find systematic evidence of strong bias in absolute terms or in comparison to other social science literatures (see fig. S4, table S4, and supplementary materials). Implications for Future Climatic Changes The above evidence makes a prima facie case that future anthropogenic climate change could worsen conflict outcomes across the globe in comparison to a future with no climatic changes, given the large expected increase in global surface temperatures and the likely increase in variability of precipitation across many regions over coming decades (94, 95). Recalling our finding that a 1σ change in a location's temperature is associated with an average 2.3% increase in the rate of interpersonal conflict and a 13.2% increase in the rate of intergroup conflict, and assuming that future populations will respond to climatic shifts similarly to how current populations respond, one can consider the potential effect of anthropogenic warming by rescaling expected temperature changes according to each location’s historical variability. While not all conflict outcomes have been shown responsive to changes in temperature, many have, and the results uniformly indicate that increasing temperatures are harmful in regions that are temperate or warm initially. In Fig. 6 we plot expected warming by 2050, computed as the ensemble mean for 21 climate models running the A1B emissions scenario, in terms of location-specific standard deviations (96). Almost all inhabited locations warm by > 2σ, with the largest increases exceeding 4σ in tropical regions that are already warm and currently experience relatively low inter-annual temperature variability. These large climatological changes, combined with the quantitatively large effect of climate on conflict - particularly intergroup conflict - suggest that amplified rates of human conflict could represent a large and critical impact of anthropogenic climate change Two reasons are often given as to why climate change might not have a substantive impact on human conflict: future climate change will occur gradually and will thus allow societies to adapt, and the modern world today is less susceptible to climate variation than it has been in the past. However, if slower-moving climate shocks have smaller effects, or if the world has become less climate sensitive, it is unfortunately not obvious in the data. Gradual climatic changes appear to adversely affect conflict outcomes, and the majority of the studies we review use a sample period that extends into the 21st century (recall Fig. 1). Furthermore, some studies explicitly examine whether populations inhabiting hotter climates exhibit less conflict when hot events occur, but find little evidence that these areas are more adapted (31, 38). We also note that many of the modern linkages between high temperature anomalies and intergroup conflict have been characterized in Africa (14, 23, 52, 64, 66) or the global tropics and subtropics (21, 51), regions with hot climates where we would expect populations to be best adapted to high temperatures. Nevertheless, it is always possible that future populations will adapt in previously unobserved ways, but it is impossible to know if and to what extent these adaptations will make conflict more or less likely. Studies of non-conflict outcomes do indicate that in some situations, historical adaptation to climate is observable, albeit costly (97–100), while in other cases there is limited evidence that any adaptation is occurring (19, 101). To our knowledge, no study has characterized the scale or scope for adaptation to climate in terms of conflict outcomes, and we believe this is an important area for future research. Given the quantitatively large effect of climate on conflict, future adaptations will need to be dramatic if they are to offset the potentially large amplification of conflict. Future Research Given the remarkable consistency of available quantitative evidence linking climate and conflict, in our view the top research priority in this field should be to narrow the number of competing explanatory hypotheses. Beyond efforts to mitigate future warming, limiting climate’s future influence on conflict requires that we understand the causal pathways that generate the observed association. This task is made difficult by the likely situation that multiple mechanisms contribute to the observed relationships and that different mechanisms dominate in different contexts. The rich qualitative literature (3–7) suggest that a multiplicity of mechanisms may be at work. To date, no study has been able to conclusively pin down the full set of causal mechanisms, although some studies find suggestive evidence that a particular pathway contributes to the observed association in a particular context. In most cases, this is accomplished by “fingerprinting” the effect of climate on an intermediary variable, such as income, and showing that the same statistical fingerprint is visible in the climate's effect on conflict. This approach - typically called “instrumental variables” (12) in the social sciences - identifies a mechanism linking climate and conflict under the assumption that climate's only influence on conflict is through the particular intermediate variable in question. Because this assumption is often difficult or impossible to test, evidence from this approach is more suggestive than conclusive in uncovering mechanisms (51). An alternate and promising research design that can help rule out certain hypotheses is to study situations where plausibly exogenous events block a proposed pathway in a “treated” subpopulation and then to compare whether the climate-conflict association persists or disappears in both the treatment and control subpopulations. An example of this approach, Sarsons (2011) examines whether rainfall shortages in India lead to riots because they depress local agricultural income (45). By showing that rainfall shortages and riots continue to occur together in districts with dams that supply irrigation, investments that partially decouple local agricultural income from temporary rain shortfalls, Sarsons argues that the rainfall effect on riots is unlikely to be operating solely through changes in local agricultural income. Plausible Mechanisms The following hypotheses have, in our judgement, received the strongest empirical support in existing analyses, although the evidence is still often inconclusive. A common hypothesis focuses on local economic conditions and labor markets, and argues that when climatic events cause economic productivity to decline (19–21, 68, 69, 102–104), the value of engaging in conflict is likely to rise relative to the value of participating in normal economic activities (48, 52, 105–110). A competing hypothesis on state capacity argues that these declines in economic productivity reduce the strength of governmental institutions (e.g., if tax revenues fall), curtailing their ability to suppress crime and rebellion or encouraging competitors to initiate conflict during these periods of relative state weakness (61, 70, 71, 77–79, 84, 85). A second set of hypotheses focus on what has more generally been termed “grievances”. Hypotheses about inequality contend that when climatic events increase actual (or perceived) social and economic inequalities in a society (111, 112), this could increase conflict by motivating attempts to redistribute assets (25, 34, 35, 43). Evidence linking changes in food prices to conflict (61, 113–115) can be interpreted similarly - e.g., food riots due to a government's perceived inability to keep food affordable - particularly when some members of society can influence food markets (111, 116). Climate-induced migration and urbanization might also be implicated in conflict. If climatic events cause large population displacements or rapid urbanization (97, 117, 118,), this might lead to conflicts over geographically stationary resources that are unrelated to the climate (119) but become relatively scarce where populations concentrate. Changes in climate might also affect the logistics of human conflict (76, 120), for example by altering the physical environment (e.g., road quality) in which disputes or violence might occur (52, 120, 121). Finally, climate anomalies might result in conflict because they can make cognition and attribution more difficult or error-prone, or they many affect aggression through some physiological mechanism. For instance, climatic events may alter individuals' ability to reason and correctly interpret events (27, 28, 30, 31, 34–36), possibly leading to conflicts triggered by misunderstandings. Alternatively, if climatic changes and their economic consequences are inaccurately attributed to the actions of an individual or group (63, 122–125), for example an inept political leader (71), this may lead to violent actions that try to return economic conditions to normal by removing the “offending” population. Selecting Climate Variables and Conflict Outcomes Climate variables that have been previously analyzed, such as seasonal temperatures, precipitation, water availability indices, and climate indices, may be correlated with one another and autocorrelated across both time and space. For instance, temperature and precipitation time-series tend to be negatively correlated in much of the tropics and drought indices tend to be spatially correlated (51, 126). Unfortunately, only a few of the existing studies account for the correlations between different variables, so it may be that some studies mistakenly measure the influence of an omitted climate variable by proxy [see (126) for a complete discussion of this issue]. Except for the experiments linking temperature to aggression (27, 28), only a few studies demonstrate that a specific climate variable is more important for predicting conflict than other climate variables or that climatic changes during a specific season are more important than during other seasons. Furthermore, no study isolates a particular type of climatic change as the most influential and no study has identified whether temporal or spatial autocorrelations in climatic variables are mechanistically important. Identifying the climatic variables, timing of events and forms of autocorrelation that influence conflict will help us better understand the mechanisms linking climatic changes to conflict. A similar situation exists with the choice of conflict outcomes. Most analyses simply document changes in the rate at which conflicts are reported in aggregate, but this approach provides only limited insight into how the evolution of conflict is impacted by climatic variables. A path for future investigation is to link climate data with richer conflict data that describes different stages of the conflict “lifecycle.” For example, future studies could examine how often non-violent group disputes become violent. Two studies in this review (28, 36) demonstrate the usefulness of selecting conflict-variables other than total conflict rates. By examining the probability that an initial confrontation escalates rather than just counting the total number of conflicts, these studies demonstrate that high temperatures lead to more violence by increasing the likelihood that a small conflict escalates into a larger conflict. Conclusion Findings from a growing corpus of rigorous quantitative research across multiple disciplines suggest that past climatic events have exerted significant influence on human conflict. This influence appears to extend across the world, throughout history, and at all scales of social organization. We do not conclude that climate is the sole - or even primary - driving force in conflict, but we do find that when large climate variations occur, they can have substantial effects on the incidence of conflict across a variety of contexts. The median effect of a 1σ change in climate variables generates an 14% change in the risk of intergroup conflict and a 4% change in interpersonal violence, across the studies that we review where it is possible to calculate standardized effects. If future populations respond similarly to past populations, then anthropogenic climate change has the potential to substantially increase conflict around the world, relative to a world without climate change. Although there is remarkable convergence of quantitative findings across disciplines, many open questions remain. Existing research has successfully established a causal relationship between climate and conflict but is unable to fully explain the mechanisms. This fact motivates our proposed research agenda and urges caution when applying statistical estimates to future warming scenarios. Importantly, however, it does not imply that we lack evidence of a causal association. The studies in this analysis were selected for their ability to provide reliable causal inferences and they consistently point toward the existence of at least one causal pathway. To place the state of this research in perspective, it is worth recalling that statistical analyses identified the smoking of tobacco as a proximate cause of lung cancer by the 1930's (127), although the research community was unable to provide a detailed account of the mechanisms explaining the linkage until many decades later. So although future research will be critical in pinpointing why climate affects human conflict, disregarding the potential effect of anthropogenic climate change on human conflict in the interim is, in our view, a dangerously misguided interpretation of the available evidence. Numerous competing theories have been proposed to explain the linkages between the climate and human conflict, but none have been convincingly rejected and all appear to be consistent with at least some existing results. It seems likely that climatic changes influence conflict through multiple pathways that may differ between contexts and innovative research to identify these mechanisms is a top research priority. Achieving this research objective holds great promise, as the policies and institutions necessary for conflict resolution can only be built if we understand why conflicts arise. The success of such institutions will be increasingly important in the coming decades as changes in climatic conditions amplify the risk of human conflicts.

#### Traditional risk assessment should be ignored—potential disastrous effects of warming should be treated as 100% likely even if they win some defense

Emanuel 12—atmospheric science professor @ MIT

Kerry, “Probable Cause” [http://www.foreignpolicy.com/articles/2012/11/09/probable\_cause?page=full] November 9 //mtc

At its best, climate science deals in probabilities. This means that under ideal conditions, scientists can estimate how a given climate signal alters the chances of a particular event. For example, we can now begin to estimate how global warming changes the probability of destructive hurricane landfalls. But in the case of hybrid storms like Sandy, which combine hurricane and winter storm characteristics, science hasn't even progressed to the point of assessing probabilities. Although this point may seem straightforward, it is routinely spun and misinterpreted. My colleagues and I try to make concise statements such as "Science has not established a link between hybrid events and climate change." But often, such statements are spun by climate skeptics into "Science has established that there is no link between Sandy and climate change." Others see Sandy as a harbinger of what climate change may look like, or emphasize (as I have) that sea level rise and increased atmospheric moisture can only worsen the effects of storms like Sandy. But there is a more fundamental reason that science has failed to properly inform public debate -- its inherent conservatism. For scientists, an asymmetric reward structure means that it is better to be a little late in what proves to be an important discovery than to publish too soon and be proved wrong. As a result, scientists often ignore apparent patterns in their data if there is as little as a 5 percent probability that they could have arisen by chance. But while this philosophy makes sense for science, it can be disastrous when applied to risk assessment. For example, the Fukushima Dai-ichi nuclear disaster occurred, in part, because the plant was built to withstand tsunamis triggered by offshore earthquakes up to magnitude 8.3 -- the largest earthquake that scientists conservatively estimated might be possible. But what was a "conservative" estimate for science was anything but conservative in the arena of risk management. Given the enormous potential downside, it would have made far more sense to build in a margin of error that might have withstood the magnitude 9.0 quake that did occur. The same can be said of climate change policy. The world has suffered an extraordinary string of weather disasters over the past decade, ranging from crippling droughts and floods, to severe tornado and hail outbreaks, to highly destructive hurricanes. Insurance industry statistics reflect a substantial increase in damages from these events, but in only a few cases can scientists confidently attribute them to climate change. (For example, increased incidence of droughts, floods, and high category hurricanes may be partly pinned on climate change.) But we know next to nothing about the relationship between climate change and other weather phenomena, such as tornadoes, and we have yet to establish a link to hybrid storms like Sandy. For all but a few of these phenomena, the scientifically correct conclusion is that we can't rule out the possibility that they were purely manifestations of natural variability. But from a public policy perspective, it would be prudent to assume that climate change might be behind some of these changes, given that it is manifestly changing the environment in which these events develop. Consider the following thought experiment. Suppose we begin pumping sulfate aerosols into the stratosphere in an attempt to slow the pace of global warming. Suppose further, that over the next two years we suffer unprecedented drought, summer freezes, and a series of crippling blizzards. When confronted, scientists say that they need at least ten more years of data to establish with 95 percent confidence whether or not these phenomena were made substantially more likely by the sulfate aerosols. My guess is that most everyone, including scientists, would want the experiment terminated right away. A small chance that the signal is real justifies taking action, given the magnitude of the consequences. The real experiment we are performing by increasing greenhouse gas concentrations in our atmosphere differs from the thought experiment in several crucial respects. First, it is accidental rather than intentional, thereby entailing a different moral culpability. Second, turning off the experiment would be costly, especially for many of the most profitable industries on the planet. And finally, we must terminate the experiment very soon to minimize risks that will continue for hundreds of years. Yet the outcome asymmetry of global warming is real and must be accounted for in any rational assessment of its risks. The most likely outcomes would have serious but manageable consequences for our descendents. Somewhat less probable, but not impossible, are benign outcomes. On the far side of the probability distribution are dire consequences ranging from flooded coastal cities to global armed conflict brought about by natural disasters and chronic food and water shortages. Reasonable people will differ on how far we should go to mitigate these highly asymmetric risks. But the argument that there is no risk or that we should do nothing is both scientifically and morally indefensible.

## 2AC Stuff – Warming

### Yes Extinction

#### Causes extinction—4 degree projections trigger a laundry list of extinction scenarios

Roberts 13—citing the World Bank Review’s compilation of climate studies

- 4 degree projected warming, can’t adapt

- heat wave related deaths, forest fires, crop production, water wars, ocean acidity, sea level rise, climate migrants, biodiversity loss

David, “If you aren’t alarmed about climate, you aren’t paying attention” [http://grist.org/climate-energy/climate-alarmism-the-idea-is-surreal/] January 10 //mtc

We know we’ve raised global average temperatures around 0.8 degrees C so far. We know that 2 degrees C is where most scientists predict catastrophic and irreversible impacts. And we know that we are currently on a trajectory that will push temperatures up 4 degrees or more by the end of the century. What would 4 degrees look like? A recent World Bank review of the science reminds us. First, it’ll get hot: Projections for a 4°C world show a dramatic increase in the intensity and frequency of high-temperature extremes. Recent extreme heat waves such as in Russia in 2010 are likely to become the new normal summer in a 4°C world. Tropical South America, central Africa, and all tropical islands in the Pacific are likely to regularly experience heat waves of unprecedented magnitude and duration. In this new high-temperature climate regime, the coolest months are likely to be substantially warmer than the warmest months at the end of the 20th century. In regions such as the Mediterranean, North Africa, the Middle East, and the Tibetan plateau, almost all summer months are likely to be warmer than the most extreme heat waves presently experienced. For example, the warmest July in the Mediterranean region could be 9°C warmer than today’s warmest July. Extreme heat waves in recent years have had severe impacts, causing heat-related deaths, forest fires, and harvest losses. The impacts of the extreme heat waves projected for a 4°C world have not been evaluated, but they could be expected to vastly exceed the consequences experienced to date and potentially exceed the adaptive capacities of many societies and natural systems. [my emphasis] Warming to 4 degrees would also lead to “an increase of about 150 percent in acidity of the ocean,” leading to levels of acidity “unparalleled in Earth’s history.” That’s bad news for, say, coral reefs: The combination of thermally induced bleaching events, ocean acidification, and sea-level rise threatens large fractions of coral reefs even at 1.5°C global warming. The regional extinction of entire coral reef ecosystems, which could occur well before 4°C is reached, would have profound consequences for their dependent species and for the people who depend on them for food, income, tourism, and shoreline protection. It will also “likely lead to a sea-level rise of 0.5 to 1 meter, and possibly more, by 2100, with several meters more to be realized in the coming centuries.” That rise won’t be spread evenly, even within regions and countries — regions close to the equator will see even higher seas. There are also indications that it would “significantly exacerbate existing water scarcity in many regions, particularly northern and eastern Africa, the Middle East, and South Asia, while additional countries in Africa would be newly confronted with water scarcity on a national scale due to population growth.” Also, more extreme weather events: Ecosystems will be affected by more frequent extreme weather events, such as forest loss due to droughts and wildfire exacerbated by land use and agricultural expansion. In Amazonia, forest fires could as much as double by 2050 with warming of approximately 1.5°C to 2°C above preindustrial levels. Changes would be expected to be even more severe in a 4°C world. Also loss of biodiversity and ecosystem services: In a 4°C world, climate change seems likely to become the dominant driver of ecosystem shifts, surpassing habitat destruction as the greatest threat to biodiversity. Recent research suggests that large-scale loss of biodiversity is likely to occur in a 4°C world, with climate change and high CO2 concentration driving a transition of the Earth’s ecosystems into a state unknown in human experience. Ecosystem damage would be expected to dramatically reduce the provision of ecosystem services on which society depends (for example, fisheries and protection of coastline afforded by coral reefs and mangroves.) New research also indicates a “rapidly rising risk of crop yield reductions as the world warms.” So food will be tough. All this will add up to “large-scale displacement of populations and have adverse consequences for human security and economic and trade systems.” Given the uncertainties and long-tail risks involved, “there is no certainty that adaptation to a 4°C world is possible.” There’s a small but non-trivial chance of advanced civilization breaking down entirely. Now ponder the fact that some scenarios show us going up to 6 degrees by the end of the century, a level of devastation we have not studied and barely know how to conceive. Ponder the fact that somewhere along the line, though we don’t know exactly where, enough self-reinforcing feedback loops will be running to make climate change unstoppable and irreversible for centuries to come. That would mean handing our grandchildren and their grandchildren not only a burned, chaotic, denuded world, but a world that is inexorably more inhospitable with every passing decade.

### International Coop Key

#### Not irreversible – international cooperation is key

Lucon, Romeiro, Pacca 13 (Oswaldo, senior adviser on Energy and Climate Change to the São Paulo State Government, Brazil, Viviane,  Ph.D. Candidate on energy at the University of Sao Paulo, Sergio, associate professor at the University of Sao Paulo, "Reflections on the international climate change negotiations: A synthesis of a working group on carbon emission policy and regulation in Brazil", Energy Policy, Volume 59, August, Pages 938-941)

2. Climate policies and mechanisms: past and future For more than two decades international negotiations have been trying to design and implement treaties to control climate change, with modest practical results in terms of curbing emissions. Future climate regimes are uncertain and challenged by factors such as the global financial crisis, soaring emission trends in emerging economies, little ambition of Annex I countries, and loopholes in existing pledges. Currently, tracks are being pursued simultaneously. Firstly, the international community has agreed to an interim system of voluntary pledges under the UNFCCC’s Copenhagen and Cancun Agreement ([IISD, 2010](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib11)). Second, national governments are imposing domestic policies that could evolve into linked cross-national systems ([Michonski and Levi, 2010](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X%22%20%5Cl%20%22bib23)) Third, States like California and Sao Paulo are putting forward ambitious emission reduction policies, raising the bar for national initiatives ([Stavins, 2012](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X%22%20%5Cl%20%22bib25), [Lucon and Goldemberg, 2010](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib19), [FAPESP, 2010](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib7)). Fourth, the international community has set a goal of re-negotiating a new, large scale, binding treaty by 2015 through the Durban Platform for Enhanced Action ([UNFCCC, 2011](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib29)). Because metrics differ considerably amongst such systems, making it less clear which approaches might be the most successful, a solid polycentric approach will depend on a robust international coordination and sound scientific communication.¶ The UNFCCC talks have stalled in large part because while there is much agreement that more needs to be done, there is no agreement on how new efforts should be internationally coordinated, how the atmospheric budget should be allocated, and how burdens should be shared. Although negotiations in the next two Conferences of the Parties to the UNFCCC will certainly address carbon budgets, emerging economies (especially the BRICS) remain attached to the principle of common but differentiated responsibilities (CBDR), which allows for these countries to overestimate their future emission trend lines, making it doubtful whether mitigation efforts are additional or business-as-usual. Annex I pivotal countries are at the same time required to commit to more ambitious goals, beyond those from the Kyoto Protocol’s first commitment period, but have taken relatively little to the table.¶ Many countries face a critical challenge with their energy system: increasing incomes in growing economies; providing energy access to the poorest, and bringing them towards meeting the common climate change objectives ([International Energy Agency, 2012](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib13)). Others struggle to cope with their climate law with new realities, such as the phase-out of nuclear power or land use change impacts. In this complicated gridlock, practical solutions need to emerge from both OECD and BRICS, in order to steer the international negotiation process ([Keohane and Victor, 2011](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X%22%20%5Cl%20%22bib17), [Victor, 2011](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib30) and [Mattoo and Subramanian, 2012](http://www.sciencedirect.com.proxy-remote.galib.uga.edu/science/article/pii/S030142151300311X#bib20)).

### Anthropogenic

#### Warming is anthropogenic – most comphrensive analysis to date proves

Green 13 – Professor of Chemistry @ Michigan Tech,

\*John Cook – Fellow @ Global Change Institute, produced climate communication resources adopted by organisations such as NOAA and the U.S. Navy

\*\*Dana Nuccitelli – MA in Physics @ UC-Davis

\*\*\*Mark Richardson – PhD Candidate in Meteorology, et al.,

(“Quantifying the consensus on anthropogenic global warming in the scientific literature,” Environmental Research Letters, 8.2)

An accurate perception of the degree of scientific consensus is an essential element to public support for climate policy (Ding et al 2011). Communicating the scientific consensus also increases people's acceptance that climate change (CC) is happening (Lewandowsky et al 2012). Despite numerous indicators of a consensus, there is wide public perception that climate scientists disagree over the fundamental cause of global warming (GW; Leiserowitz et al 2012, Pew 2012). In the most comprehensive analysis performed to date, we have extended the analysis of peer-reviewed climate papers in Oreskes (2004). We examined a large sample of the scientific literature on global CC, published over a 21 year period, in order to determine the level of scientific consensus that human activity is very likely causing most of the current GW (anthropogenic global warming, or AGW). Surveys of climate scientists have found strong agreement (97–98%) regarding AGW amongst publishing climate experts (Doran and Zimmerman 2009, Anderegg et al 2010). Repeated surveys of scientists found that scientific agreement about AGW steadily increased from 1996 to 2009 (Bray 2010). This is reflected in the increasingly definitive statements issued by the Intergovernmental Panel on Climate Change on the attribution of recent GW (Houghton et al 1996, 2001, Solomon et al 2007). The peer-reviewed scientific literature provides a ground-level assessment of the degree of consensus among publishing scientists. An analysis of abstracts published from 1993–2003 matching the search 'global climate change' found that none of 928 papers disagreed with the consensus position on AGW (Oreskes 2004). This is consistent with an analysis of citation networks that found a consensus on AGW forming in the early 1990s (Shwed and Bearman 2010). Despite these independent indicators of a scientific consensus, the perception of the US public is that the scientific community still disagrees over the fundamental cause of GW. From 1997 to 2007, public opinion polls have indicated around 60% of the US public believes there is significant disagreement among scientists about whether GW was happening (Nisbet and Myers 2007). Similarly, 57% of the US public either disagreed or were unaware that scientists agree that the earth is very likely warming due to human activity (Pew 2012). Through analysis of climate-related papers published from 1991 to 2011, this study provides the most comprehensive analysis of its kind to date in order to quantify and evaluate the level and evolution of consensus over the last two decades. 2. Methodology This letter was conceived as a 'citizen science' project by volunteers contributing to the Skeptical Science website (www.skepticalscience.com). In March 2012, we searched the ISI Web of Science for papers published from 1991–2011 using topic searches for 'global warming' or 'global climate change'. Article type was restricted to 'article', excluding books, discussions, proceedings papers and other document types. The search was updated in May 2012 with papers added to the Web of Science up to that date. We classified each abstract according to the type of research (category) and degree of endorsement. Written criteria were provided to raters for category (table 1) and level of endorsement of AGW (table 2). Explicit endorsements were divided into non-quantified (e.g., humans are contributing to global warming without quantifying the contribution) and quantified (e.g., humans are contributing more than 50% of global warming, consistent with the 2007 IPCC statement that most of the global warming since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations). Table 1. Definitions of each type of research category. Category Description Example (1) Impacts Effects and impacts of climate change on the environment, ecosystems or humanity '...global climate change together with increasing direct impacts of human activities, such as fisheries, are affecting the population dynamics of marine top predators' (2) Methods Focus on measurements and modeling methods, or basic climate science not included in the other categories 'This paper focuses on automating the task of estimating Polar ice thickness from airborne radar data...' (3) Mitigation Research into lowering CO2 emissions or atmospheric CO2 levels 'This paper presents a new approach for a nationally appropriate mitigation actions framework that can unlock the huge potential for greenhouse gas mitigation in dispersed energy end-use sectors in developing countries' (4) Not climate-related Social science, education, research about people's views on climate 'This paper discusses the use of multimedia techniques and augmented reality tools to bring across the risks of global climate change' (5) Opinion Not peer-reviewed articles 'While the world argues about reducing global warming, chemical engineers are getting on with the technology. Charles Butcher has been finding out how to remove carbon dioxide from flue gas' (6) Paleoclimate Examining climate during pre-industrial times 'Here, we present a pollen-based quantitative temperature reconstruction from the midlatitudes of Australia that spans the last 135 000 years...' Table 2. Definitions of each level of endorsement of AGW. Level of endorsement Description Example (1) Explicit endorsement with quantification Explicitly states that humans are the primary cause of recent global warming 'The global warming during the 20th century is caused mainly by increasing greenhouse gas concentration especially since the late 1980s' (2) Explicit endorsement without quantification Explicitly states humans are causing global warming or refers to anthropogenic global warming/climate change as a known fact 'Emissions of a broad range of greenhouse gases of varying lifetimes contribute to global climate change' (3) Implicit endorsement Implies humans are causing global warming. E.g., research assumes greenhouse gas emissions cause warming without explicitly stating humans are the cause '...carbon sequestration in soil is important for mitigating global climate change' (4a) No position Does not address or mention the cause of global warming (4b) Uncertain Expresses position that human's role on recent global warming is uncertain/undefined 'While the extent of human-induced global warming is inconclusive...' (5) Implicit rejection Implies humans have had a minimal impact on global warming without saying so explicitly E.g., proposing a natural mechanism is the main cause of global warming '...anywhere from a major portion to all of the warming of the 20th century could plausibly result from natural causes according to these results' (6) Explicit rejection without quantification Explicitly minimizes or rejects that humans are causing global warming '...the global temperature record provides little support for the catastrophic view of the greenhouse effect' (7) Explicit rejection with quantification Explicitly states that humans are causing less than half of global warming 'The human contribution to the CO2 content in the atmosphere and the increase in temperature is negligible in comparison with other sources of carbon dioxide emission' Abstracts were randomly distributed via a web-based system to raters with only the title and abstract visible. All other information such as author names and affiliations, journal and publishing date were hidden. Each abstract was categorized by two independent, anonymized raters. A team of 12 individuals completed 97.4% (23 061) of the ratings; an additional 12 contributed the remaining 2.6% (607). Initially, 27% of category ratings and 33% of endorsement ratings disagreed. Raters were then allowed to compare and justify or update their rating through the web system, while maintaining anonymity. Following this, 11% of category ratings and 16% of endorsement ratings disagreed; these were then resolved by a third party. Upon completion of the final ratings, a random sample of 1000 'No Position' category abstracts were re-examined to differentiate those that did not express an opinion from those that take the position that the cause of GW is uncertain. An 'Uncertain' abstract explicitly states that the cause of global warming is not yet determined (e.g., '...the extent of human-induced global warming is inconclusive...') while a 'No Position' abstract makes no statement on AGW. To complement the abstract analysis, email addresses for 8547 authors were collected, typically from the corresponding author and/or first author. For each year, email addresses were obtained for at least 60% of papers. Authors were emailed an invitation to participate in a survey in which they rated their own published papers (the entire content of the article, not just the abstract) with the same criteria as used by the independent rating team. Details of the survey text are provided in the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia). 3. Results The ISI search generated 12 465 papers. Eliminating papers that were not peer-reviewed (186), not climate-related (288) or without an abstract (47) reduced the analysis to 11 944 papers written by 29 083 authors and published in 1980 journals. To simplify the analysis, ratings were consolidated into three groups: endorsements (including implicit and explicit; categories 1–3 in table 2), no position (category 4) and rejections (including implicit and explicit; categories 5–7). We examined four metrics to quantify the level of endorsement: (1) The percentage of endorsements/rejections/undecideds among all abstracts. (2) The percentage of endorsements/rejections/undecideds among only those abstracts expressing a position on AGW. (3) The percentage of scientists authoring endorsement/ rejection abstracts among all scientists. (4) The same percentage among only those scientists who expressed a position on AGW (table 3). Table 3. Abstract ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all abstracts % among abstracts with AGW position (%) % of all authors % among authors with AGW position (%) Endorse AGW 32.6% (3896) 97.1 34.8% (10 188) 98.4 No AGW position 66.4% (7930) — 64.6% (18 930) — Reject AGW 0.7% (78) 1.9 0.4% (124) 1.2 Uncertain on AGW 0.3% (40) 1.0 0.2% (44) 0.4 3.1. Endorsement percentages from abstract ratings Among abstracts that expressed a position on AGW, 97.1% endorsed the scientific consensus. Among scientists who expressed a position on AGW in their abstract, 98.4% endorsed the consensus. The time series of each level of endorsement of the consensus on AGW was analyzed in terms of the number of abstracts (figure 1(a)) and the percentage of abstracts (figure 1(b)). Over time, the no position percentage has increased (simple linear regression trend 0.87% ± 0.28% yr−1, 95% CI, R2 = 0.66,p < 0.001) and the percentage of papers taking a position on AGW has equally decreased. Reset Figure 1. (a) Total number of abstracts categorized into endorsement, rejection and no position. (b) Percentage of endorsement, rejection and no position/undecided abstracts. Uncertain comprise 0.5% of no position abstracts. Export PowerPoint slide Download figure: Standard (154 KB)High-resolution (248 KB) The average numbers of authors per endorsement abstract (3.4) and per no position abstract (3.6) are both significantly larger than the average number of authors per rejection abstract (2.0). The scientists originated from 91 countries (identified by email address) with the highest representation from the USA (N = 2548) followed by the United Kingdom (N = 546), Germany (N = 404) and Japan (N = 379) (see supplementary table S1 for full list, available at stacks.iop.org/ERL/8/024024/mmedia). 3.2. Endorsement percentages from self-ratings We emailed 8547 authors an invitation to rate their own papers and received 1200 responses (a 14% response rate). After excluding papers that were not peer-reviewed, not climate-related or had no abstract, 2142 papers received self-ratings from 1189 authors. The self-rated levels of endorsement are shown in table 4. Among self-rated papers that stated a position on AGW, 97.2% endorsed the consensus. Among self-rated papers not expressing a position on AGW in the abstract, 53.8% were self-rated as endorsing the consensus. Among respondents who authored a paper expressing a view on AGW, 96.4% endorsed the consensus. Table 4. Self-ratings for each level of endorsement, shown as percentage and total number of papers. Position % of all papers % among papers with AGW position (%) % of respondents % among respondents with AGW position (%) Endorse AGWa 62.7% (1342) 97.2 62.7% (746) 96.4 No AGW positionb 35.5% (761) — 34.9% (415) — Reject AGWc 1.8% (39) 2.8 2.4% (28) 3.6 aSelf-rated papers that endorse AGW have an average endorsement rating less than 4 (1 =explicit endorsement with quantification, 7 = explicit rejection with quantification). bUndecided self-rated papers have an average rating equal to 4. cRejection self-rated papers have an average rating greater than 4. Figure 2(a) shows the level of self-rated endorsement in terms of number of abstracts (the corollary to figure 1(a)) and figure 2(b) shows the percentage of abstracts (the corollary to figure 1(b)). The percentage of self-rated rejection papers decreased (simple linear regression trend −0.25% ± 0.18% yr−1, 95% CI, R2 = 0.28,p = 0.01, figure 2(b)). The time series of self-rated no position and consensus endorsement papers both show no clear trend over time. Reset Figure 2. (a) Total number of endorsement, rejection and no position papers as self-rated by authors. Year is the published year of each self-rated paper. (b) Percentage of self-rated endorsement, rejection and no position papers. Export PowerPoint slide Download figure: Standard (149 KB)High-resolution (238 KB) A direct comparison of abstract rating versus self-rating endorsement levels for the 2142 papers that received a self-rating is shown in table 5. More than half of the abstracts that we rated as 'No Position' or 'Undecided' were rated 'Endorse AGW' by the paper's authors. Table 5. Comparison of our abstract rating to self-rating for papers that received self-ratings. Position Abstract rating Self-rating Endorse AGW 791 (36.9%) 1342 (62.7%) No AGW position or undecided 1339 (62.5%) 761 (35.5%) Reject AGW 12 (0.6%) 39 (1.8%) Figure 3 compares the percentage of papers endorsing the scientific consensus among all papers that express a position endorsing or rejecting the consensus. The year-to-year variability is larger in the self-ratings than in the abstract ratings due to the smaller sample sizes in the early 1990s. The percentage of AGW endorsements for both self-rating and abstract-rated papers increase marginally over time (simple linear regression trends 0.10 ± 0.09% yr−1, 95% CI, R2 = 0.20,p = 0.04 for abstracts, 0.35 ± 0.26% yr−1, 95% CI, R2 = 0.26,p = 0.02 for self-ratings), with both series approaching approximately 98% endorsements in 2011. Reset Figure 3. Percentage of papers endorsing the consensus among only papers that express a position endorsing or rejecting the consensus. Export PowerPoint slide Download figure: Standard (83 KB)High-resolution (128 KB) 4. Discussion Of note is the large proportion of abstracts that state no position on AGW. This result is expected in consensus situations where scientists '...generally focus their discussions on questions that are still disputed or unanswered rather than on matters about which everyone agrees' (Oreskes 2007, p 72). This explanation is also consistent with a description of consensus as a 'spiral trajectory' in which 'initially intense contestation generates rapid settlement and induces a spiral of new questions' (Shwed and Bearman 2010); the fundamental science of AGW is no longer controversial among the publishing science community and the remaining debate in the field has moved to other topics. This is supported by the fact that more than half of the self-rated endorsement papers did not express a position on AGW in their abstracts. The self-ratings by the papers' authors provide insight into the nature of the scientific consensus amongst publishing scientists. For both self-ratings and our abstract ratings, the percentage of endorsements among papers expressing a position on AGW marginally increased over time, consistent with Bray (2010) in finding a strengthening consensus. 4.1. Sources of uncertainty The process of determining the level of consensus in the peer-reviewed literature contains several sources of uncertainty, including the representativeness of the sample, lack of clarity in the abstracts and subjectivity in rating the abstracts. We address the issue of representativeness by selecting the largest sample to date for this type of literature analysis. Nevertheless, 11 944 papers is only a fraction of the climate literature. A Web of Science search for 'climate change' over the same period yields 43 548 papers, while a search for 'climate' yields 128 440 papers. The crowd-sourcing techniques employed in this analysis could be expanded to include more papers. This could facilitate an approach approximating the methods of Doran and Zimmerman (2009), which measured the level of scientific consensus for varying degrees of expertise in climate science. A similar approach could analyze the level of consensus among climate papers depending on their relevance to the attribution of GW. Another potential area of uncertainty involved the text of the abstracts themselves. In some cases, ambiguous language made it difficult to ascertain the intended meaning of the authors. Naturally, a short abstract could not be expected to communicate all the details of the full paper. The implementation of the author self-rating process allowed us to look beyond the abstract. A comparison between self-ratings and abstract ratings revealed that categorization based on the abstract alone underestimates the percentage of papers taking a position on AGW. Lastly, some subjectivity is inherent in the abstract rating process. While criteria for determining ratings were defined prior to the rating period, some clarifications and amendments were required as specific situations presented themselves. Two sources of rating bias can be cited: first, given that the raters themselves endorsed the scientific consensus on AGW, they may have been more likely to classify papers as sharing that endorsement. Second, scientific reticence (Hansen 2007) or 'erring on the side of least drama' (ESLD; Brysse et al 2012) may have exerted an opposite effect by biasing raters towards a 'no position' classification. These sources of bias were partially addressed by the use of multiple independent raters and by comparing abstract rating results to author self-ratings. A comparison of author ratings of the full papers and abstract ratings reveals a bias toward an under-counting of endorsement papers in the abstract ratings (mean difference 0.6 in units of endorsement level). This mitigated concerns about rater subjectivity, but suggests that scientific reticence and ESLD remain possible biases in the abstract ratings process. The potential impact of initial rating disagreements was also calculated and found to have minimal impact on the level of consensus (see supplemental information, section S1 available at stacks.iop.org/ERL/8/024024/mmedia). 4.2. Comparisons with previous studies Our sample encompasses those surveyed by Oreskes (2004) and Schulte (2008) and we can therefore directly compare the results. Oreskes (2004) analyzed 928 papers from 1993 to 2003. Over the same period, we found 932 papers matching the search phrase 'global climate change' (papers continue to be added to the ISI database). From that subset we eliminated 38 papers that were not peer-reviewed, climate-related or had no abstract. Of the remaining 894, none rejected the consensus, consistent with Oreskes' result. Oreskes determined that 75% of papers endorsed the consensus, based on the assumption that mitigation and impact papers implicitly endorse the consensus. By comparison, we found that 28% of the 894 abstracts endorsed AGW while 72% expressed no position. Among the 71 papers that received self-ratings from authors, 69% endorse AGW, comparable to Oreskes' estimate of 75% endorsements. An analysis of 539 'global climate change' abstracts from the Web of Science database over January 2004 to mid-February 2007 found 45% endorsement and 6% rejection (Schulte 2008). Our analysis over a similar period (including all of February 2007) produced 529 papers—the reason for this discrepancy is unclear as Schulte's exact methodology is not provided. Schulte estimated a higher percentage of endorsements and rejections, possibly because the strict methodology we adopted led to a greater number of 'No Position' abstracts. Schulte also found a significantly greater number of rejection papers, including 6 explicit rejections compared to our 0 explicit rejections. See the supplementary information (available at stacks.iop.org/ERL/8/024024/mmedia) for a tabulated comparison of results. Among 58 self-rated papers, only one (1.7%) rejected AGW in this sample. Over the period of January 2004 to February 2007, among 'global climate change' papers that state a position on AGW, we found 97% endorsements. 5. Conclusion The public perception of a scientific consensus on AGW is a necessary element in public support for climate policy (Ding et al 2011). However, there is a significant gap between public perception and reality, with 57% of the US public either disagreeing or unaware that scientists overwhelmingly agree that the earth is warming due to human activity (Pew 2012). Contributing to this 'consensus gap' are campaigns designed to confuse the public about the level of agreement among climate scientists. In 1991, Western Fuels Association conducted a $510 000 campaign whose primary goal was to 'reposition global warming as theory (not fact)'. A key strategy involved constructing the impression of active scientific debate using dissenting scientists as spokesmen (Oreskes 2010). The situation is exacerbated by media treatment of the climate issue, where the normative practice of providing opposing sides with equal attention has allowed a vocal minority to have their views amplified (Boykoff and Boykoff 2004). While there are indications that the situation has improved in the UK and USA prestige press (Boykoff 2007), the UK tabloid press showed no indication of improvement from 2000 to 2006 (Boykoff and Mansfield 2008). The narrative presented by some dissenters is that the scientific consensus is '...on the point of collapse' (Oddie 2012) while '...the number of scientific "heretics" is growing with each passing year' (Allègre et al 2012). A systematic, comprehensive review of the literature provides quantitative evidence countering this assertion. The number of papers rejecting AGW is a miniscule proportion of the published research, with the percentage slightly decreasing over time. Among papers expressing a position on AGW, an overwhelming percentage (97.2% based on self-ratings, 97.1% based on abstract ratings) endorses the scientific consensus on AGW.

## 2AC Stuff – Bioterror

### Arms Race

#### High risk of theft, lethal spread and arms races

Hynes 11 (H. Patricia Hynes, former professor of environmental health from Boston University and chair of the board of the Traprock Center for Peace and Justice. “Biological Weapons: Bargaining With the Devil,” 8-18-11,

http://www.truth-out.org/news/item/2693:biological-weapons-bargaining-with-the-devil#3.)

The bullish climate of the "war on terrorism" set off a massive flow of federal funding for research on live, virulent bioweapons' organisms (also referred to as biodefense, bioterrorism and biosafety organisms) to federal, university and private laboratories in rural, suburban and urban areas. Among the federal agencies building or expanding biodefense laboratories are the Departments of Defense (DoD), Homeland Security, State and Agriculture; the Environmental Protection Agency; and the National Institutes of Health (NIH). A new network, comprised of two large national biowarfare laboratories at BU and University of Texas, Galveston medical centers, more than a dozen small regional laboratories and ten Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases Research, was designed for funding by the National Institute for Allergy and Infectious Diseases, a division of NIH. The validation offered by the federal health research agency for ramped-up biological warfare research is the dual use of the research results: "better vaccines, diagnostics and therapeutics against bioterrorist agents but also for coping with naturally occurring disease." Today, in dozens of newly sprung laboratories, research on the most lethal bacteria and viruses with no known cure is being conducted in an atmosphere of secrecy, with hand-picked internal review boards and little, if any, public oversight or accountability. Fort Detrick, Maryland, a longstanding military base and major government research facility, is the site of the largest biodefense lab being built in the United States. Here, biowarfare pathogens will be created, including new genetically engineered viruses and bacteria, in order to simulate potential bioweapons attacks by terrorist groups. Novel, lethal organisms and methods of delivery in biowarfare will be tested, all rationalized by the national security need to study them and develop a figurative bioshield against them. In fact, Fort Detrick's research agenda - modifying and dispersing lethal and genetically modified organisms - has "unmistakable hallmarks of an offensive weapons program" ... "in essence creating new threats that we're going to have to defend ourselves against" - threats from accidents, theft of organisms and stimulus of a bioarms race.(3)

## 2AC Stuff – Add-Ons

### China Pollution

#### China will model citizen provisions – solves pollution

Goldman 5 (Patti, Managing Attorney for Earthjustice's Seattle office, “Environmental Law in China,” 10-22-5, <http://earthjustice.org/features/dispatches-from-china>)

Sun Youhai, the Director of the Environmental and Resource Committee of the People's Congress provided an overview of the development of China's environmental law, moving from an early period of little regulation to framework laws and then progressive amendments and enactment of new laws to cover various modes of pollution and natural resource issues. He candidly identified the key weaknesses in the current scheme as: (1) lack of enforcement because local governments are so closely tied to and economically dependent (through their tax revenues) on the polluting industries; and (2) the lack of specific standards and implementing systems in the current laws. However, he expressed optimism that China could attain a stronger legal environmental protection regime due to greater public attention to the environment, a growing focus on public participation in environmental decisionmaking, and current government policies that favor building a harmonious society that integrates economic development, sustainability, human health and environmental protection. What was striking to this American observer was the strength of the pro-environment rhetoric coming from a Chinese official. Sun Youhai admitted that economic development is a strong force that often trumps environmental protection, but he then identified the need to have mechanisms in place to curb that impulse. He also gave credence to embodying into Chinese law such concepts as the precautionary principle, corporate social responsibility, and the polluter pays principle. And he touted the benefits of public participation as anti-environmental forces in the United States are poised to weaken the U.S. National Environmental Policy Act. The afternoon turned to China's 2003 Environmental Impact Assessment law with Wang Canfa, Professor at China University of Politics and Law and founder and director of the Center for Legal Assistance to Pollution Victims. He walked through the law's provisions with criticisms that echo those experienced under the U.S. National Environmental Policy Act. For example, a power plant divided its project into two components, neither of which warranted a full environmental impact assessment alone when such an assessment would be required by the project as a whole. He also lamented the fact that an environmental impact assessment does not compel the government to make the most environmentally sound decision and recounted an example where the government's analysis of an appeal supported canceling construction of a high-voltage electric line but it allowed the project to proceed in the end. While many of the issues resemble those still experienced in the U.S., China's law suffers from its early stage where implementation mechanisms are still not fully developed. When the law was adopted, a provision that would have allowed citizens to enforce the law's mandates was rejected. As a result, advocates like Professor Wang are struggling to create effective mechanisms for administrative and judicial review. The law's principal enforcement mechanism is currently in the hands of the government, which recently responded to criticism of its lack of enforcement by ordering approximately 30 projects to stop because they had proceeded without an environmental impact assessment. While the stop work orders may seem bold on the surface, they merely delayed most of the projects by a few weeks while additional paperwork was filed. The decision to proceed with the projects received little or no scrutiny in light of the tardy assessments.

**Extinction**

**Yee and Storey 02**

[Herbert Yee, Professor of Politics and IR, Hong Kong Baptist University --AND-- Ian Storey, Lecturer in Defence Studies at Deakin, 02

“The China Threat: Perceptions, Myths and Reality,” p5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

### CMR

#### Plan solves CMR

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though, he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

FOR THE WORLD’S MILITARIES, March 12, 2013, pp. 42-53]

**U.S. Environmental Laws Serve to Uphold the Longstanding Tradition of Civilian Control of the Military** Ultimately, judicial enforcement through the APA and myriad citizen suit provisions within environmental statutes upholds the U.S.’s longstanding tradition of civilian control over the military. Such enforcement furthers the Constitution’s adherence to a civilian controlled military led by an elected President serving as Commander-in-Chief of the Army and Navy, and addresses the centuries-old concern about a standing Army as a potential danger and concerns regarding separation of powers. This is more important than ever, as there has been an increasing chasm between civil and military sectors with the emergence of an all-volunteer force emerging at the end of the Vietnam War and a comparative lower number of elected officials with military service. For example, James Madison, in Federalist No 51, warned that “usurpations are guarded against by a division of the government into distinct and separate departments.” The Founders desired to have all three branches of government assert some form of control over the military. Today, American environmental law is largely faithful to the Founders’ vision in not carving out a completely different set of laws for the military. This ensures constitutional control and day-to-day accountability to its citizens, reaffirming the longstanding tradition of civilian control of the military and serving as a bulwark against usurpation. This is significant. For many day-to-day matters, the U.S. military operates separately from the civilian world that it is sworn to protect. The importance of having a military accountable to, and representative of, the citizenry serves a democracy-reinforcing function that is aligned with the Founders’ concerns regarding a military. These concerns are particularly critical today in light of the sheer size of the today’s military and the continual existence of standing armed forces. A “standing Army,” no longer a Cold War novelty, is now the new normal. The Founders could not imagine the existing military-industrial complex that exists in the U.S. with its forces stationed throughout the globe. Today, the DoD is the largest single employer in the world, a hegemonic military power that is equal in size and power to the next twelve militaries of the world combined—and it is held accountable for its environmental stewardship. Contrast, too, environmental citizen suit provisions and APA civil remedies with the U.S. military’s existing criminal justice system. Only uniformed judge advocates currently serving in the military can prosecute service member charged with a crime in a military court-martial, and there is a distinct and separate criminal law system within the military governed by the Uniformed Code of Military Justice. Civilians play a limited role in this system and, while the judgments of military courts are ultimately reviewable by the U.S. Supreme Court, this is exceedingly rare and the military justice system is effectively self-contained within the uniformed military on DoD installations. The use of civil litigation pursuant to environmental laws, by contrast, ensures continual and important oversight of the military’s actions. Consider the inherent value of citizen suit and APA provisions that allow for judicial enforceability against the DoD. These judicial protections ensure a consistent nexus and thread of accountability between the larger population and the military. On a practical level, getting on a military installation without a DoD identification card can be difficult without an official purpose for the visit. Force protection and anti-terrorism measures have only increased the difficulty of obtaining installation access since September 11th. For example, prior to the attacks on 9/11, Norfolk Naval Station was largely an open base available for tours and visits by the general public. Now, general visitations on base are rare occurrences, only increasing the divide between the civilian and military sectors Indeed, DoD is often sued by people well outside the military sphere, such as environmental groups actively engaged in reviewing—and litigating—DoD’s actions. Provided that the Article III “case or controversy” requirements are met, any person or citizen group may bring a lawsuit in federal court against DoD seeking relief pursuant to a citizen suit provision embedded within the particular environmental regulation, or pursuant to the “arbitrary and capricious” standard of the APA. There is a considerable body of litigation against DoD by environmental groups well outside the military sphere that would otherwise not normally interact with the military.

#### Nuclear war

**Cohen ’00** (Eliot A.-, Prof. @ Paul H. Nitze School of Advanced International Studies & director of the Strategic Studies department @ Johns Hopkins, worked for Dod, taught at the U.S. Naval War College, Fall, National Interest, “Why the Gap Matters - gap between military and civilian world”, <http://www.24hourscholar.com/p/articles/mi_m2751/is_2000_Fall/ai_65576871/pg_4?pi=scl>)

At the same time, the military exercises control, to a remarkable degree, of force structure and weapons acquisition. To be sure, Congress adds or trims requests at the margin, and periodically the administration will cancel a large program, such as the navy's projected replacement of the A-6 bomber. But by and large, the services have successfully protected programs that reflect ways of doing business going back for decades. One cannot explain otherwise current plans for large purchases of short-range fighter aircraft for the air force, supercarriers and traditional surface warships for the navy, and heavy artillery pieces for the army. Civilian control has meant, in practice, a general oversight of acquisition and some degree of control by veto of purchases, but nothing on the scale of earlier decisions to, for example, terminate the draft, re-deploy fleets, or develop counterinsurgency forces. The result is a force that looks very much like a shrunken version of the Cold War military of fifteen years ago- -which, indeed, was the initial post-Cold War design known as the "base force." The strength of the military voice and the weakness of civilian control, together with sheer inertia, has meant that the United States has failed to reevaluate its strategy and force structure after the Cold War. Despite a plethora of "bottom-up reviews" by official and semiofficial commissions, the force structure remains that of the Cold War, upgraded a bit and reduced in size by 40 percent. So What? WHAT WILL be the long-term consequences of these trends? To some extent, they have become visible already: the growing politicization of the officer corps; a submerged but real recruitment and retention crisis; a collapse of junior officers' confidence in their own leaders; [7] the odd antipathy between military and civilian cultures even as the two, in some respects, increasingly overlap; deadlock in the conduct of active military operations; and stagnation in the development of military forces for a geopolitical era radically different from the past one. To be sure, such phenomena have their precedents in American history. But such dysfunction occurred in a different context--one in which the American military did not have the task of maintaining global peace or a predominance of power across continents, and in which the armed forces consumed barely noticeable fractions of economic resources and decisionmakers' time. Today, the stakes are infinitely larger. For the moment, the United States dominates the globe militarily, as it does economically and culturally. It is doubtful that such predominance will long go unchallenged; were that to be the case it would reflect a change in the human condition that goes beyond all human experience of international politics over the millennia. Already, some of the signs of those challenges have begun to appear: increased tension with the rising power of China, including threats of force from that country against the United States and its allies; the development of modes of warfare--from terrorism through the spread of weapons of mass destruction--designed to play on American weaknesses; the appearance of problems (peacemaking, broadly defined) that will resist conventional solutions. None of these poses a mortal threat to the Republic, or is likely to do so anytime soon. Yet cumulatively, the consequences have been unfortunate enough; the inept conclusion to the Gulf War, the Somalia fiasco, and dithering over American policy in Yugoslavia may all partially be attributed to the poor state of American civil-military relations. So too may the subtle erosion of morale in the American military and the defense reform deadlock, which has preserved, to far too great a degree, outdated structures and mentalities. For now, to be sure, the United States is wealthy and powerful enough to afford such pratfalls and inefficiencies. But the **full consequences** will not be felt for some years, and not until a major military crisis--a challenge as severe in its way as the Korean or Vietnam War--arises. Such an eventuality; difficult as it may be to imagine today, could occur in any of a **number of venues**: in a conflict with China over Taiwan, in a desperate attempt to shore up collapsing states in Central or South America, or in a renewed outbreak of violence--this time with weapons of mass destruction thrown into the mix-in Southwest Asia. THE PARADOX of increased social and institutional vulnerability on the one hand and increased military influence on narrow sectors of policymaking on the other is the essence of the contemporary civil-military problem. Its roots lie not in the machinations of power hungry generals; they have had influence thrust upon them. Nor do they lie in the fecklessness of civilian leaders determined to remake the military in the image of civil society; all militaries must, in greater or lesser degree, share some of the mores and attitudes of the broader civilization from which they have emerged. The problem reflects, rather, deeper and more enduring changes in politics, society and technology.

## 2AC Stuff – T

### T – Restriction = Prohibit

#### 1. We meet – plan prevents the use of armed forces if their use violates environmental statutes – that’s a restriction

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### Authority means the power to make discretionary policy judgments

**Spector, 90** (Arthur, US Bankruptcy Judge, In re Premo, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION, 116 B.R. 515; 1990 Bankr. LEXIS 1471; Bankr. L. Rep. (CCH) P73,555; 90-2 U.S. Tax Cas. (CCH) P50,396;71A A.F.T.R.2d (RIA) 4677, lexis)

The word "authority", on the other hand, is defined as the "power to influence or command thought, opinion, or behavior." Id. These definitions suggest that the terms "duty" and "authority" are not synonymous. The notion of a duty implies an affirmative obligation to perform specific acts, whereas "**authority" is by its nature discretionary**. A high-level corporate officer, for example, may have the authority to "command" that any number of actions be taken, but that does not mean that he or she is obliged or required to do so. Decreasing authority requires reducing the permission to act, not the ability to act.\

#### 2. Judicial restriction means regulation

**Kerrigan** **73** (Frank, Judge @ Court of Appeal of California, Fourth Appellate District, Division Two, 29 Cal. App. 3d 815; 105 Cal. Rptr. 873; 1973 Cal. App. LEXIS 1235, SUN COMPANY OF SAN BERNARDINO, CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. PROGRESS-BULLETIN PUBLISHING COMPANY, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. (Consolidated Cases.), lexis)

While the studies were in progress, the United States Supreme Court found the impact of television cameras and lights in a courtroom setting prejudicial to the conduct of a fair trial. ( Estes v. Texas (1965) 381 U.S. 532 [14 L.Ed.2d 543, 85 S.Ct. 1628].) Shortly thereafter, in Sheppard v. Maxwell (1966) 384 U.S. 333, 358 [16 L.Ed.2d 600, 618, 86 S.Ct. 1507], the defendant's conviction of his wife's murder [\*\*879] was reversed because of "[the] carnival atmosphere at trial" and pervasive publicity affecting the fairness of the hearing. In reversing Dr. Sheppard's conviction, the court stated [\*\*\*15] that: (1) the publicity surrounding a trial may become so extensive and prejudicial in nature that unless neutralized by appropriate judicial procedures, a resultant conviction may not stand; (2) the trial court has the duty of so insulating the trial from publicity as to insure its fairness; (3) a free press plays a vital role in the effective and fair administration of justice. But the court did not set down any fixed rules to guide trial courts, law enforcement officers or media as to what could or could not be printed. Instead, the majority suggested that judicial restrictions on speech might sometimes be appropriate in the following dicta: "The courts [\*823] must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. [\*\*\*16] " (Ibid., p. 363 [16 L.Ed.2d p. 620].)

#### 3. **Restrictions” means “regulations”**

Davies 30 (Major George, “CLAUSE 1.—(Scheme regulating production, supply and sale of coal.),” February, vol 235 cc2453-558, http://hansard.millbanksystems.com/commons/1930/feb/27/clause-1-scheme-regulating-production)

Major GEORGE DAVIES The hon. Member says he has heard no reason advanced for this Amendment. I am willing to give him one, and I will tell him that the reason why the benches are not full, as they were a short time ago, is that man cannot live by bread alone and, as there is a rule against the introduction of newspapers and foodstuffs, it is necessary for some of us to refresh ourselves after a late Division. I am not going to transgress the ruling of the Chair, as we have been given very great latitude, but I want to confine myself to the point at issue, which is the regulation of sale. I have had experience in the past of efforts to regulate the sale of sugar. Like the coal industry to-day, there has been in the past an over-production of many of the fundamental articles of the life of a nation. I will not dwell on the case of rubber, but the sugar situation was entirely on all fours with this situation, as it was a question of the regulation of sale. Facing a situation very similar in kind and not dissimilar in degree to the problem now before us, those connected with that particular industry in certain countries thought it an advantage to control and regulate the sale. As soon as you use the word "regulation" in this connection it is idle to suggest that it does not mean restriction. Obviously, that is the point—to restrict—and, while 2541 it is true the word "restrict" is not in this particular Clause, and cannot be argued in connection with this Amendment, yet behind the word "regulate" is the word "restrict," in other words, controlling what has been uncontrolled, production thrown on markets not able to receive it.

## 2AC Stuff – CP

### Congress CP

#### ---Court has unique symbolic effect --- key to foreign perception of the plan

Fontana 8 (David, Associate Professor of Law – George Washington University Law School, “The Supreme Court: Missing in Action”, Dissent Magazine, Spring, http://www.dissentmagazine.org/article/?article=1165)

*The Results of Inaction*
What is the problem with this approach? The answer, simply put, is that it legitimates and even catalyzes political activity by Congress and the president, but it does so without including in this political activity the critically influential background voice of the Supreme Court on issues related to individual rights. The Court has two main powers: one has to do with law and compulsion, the other has to do with political debate. The Court can legally compel other branches of government to do something. When it told states and the federal government in Roe v. Wade that they could not criminalize all abortions, for example, the Court’s decision was a binding legal order. But the Supreme Court also plays a role in political debate, even when it does not order anyone to do anything. If the Justices discuss the potential problems for individual rights of a governmental action, even if they don’t contravene the action, their decision still has enormous import. This is because other actors (members of Congress, lawyers, newspaper editorial writers, college teachers, and many others) can now recite the Court’s language in support of their cause. Supreme Court phrases such as “one person, one vote” have enormous symbolic effect and practical influence. If there had been a case about torture, for example, and some of the justices had written in detail about its evils, then Senator Patrick Leahy (senior Democrat on the Judiciary Committee) could have used the Justices’ arguments to criticize attorney general nominee Michael Mukasey during his confirmation hearings. Attorneys for those being detained at Guantánamo could have made appearances on CNN and (even) Fox News reciting the evils of torture as described by the Court. Concerns about rights could have been presented far more effectively than if, as actually happened, the Court refused to speak to these issues. The Supreme Court’s discussion of constitutional questions is particularly important for two reasons. First, the justices view these questions from a distinct standpoint. While members of Congress and the president have to focus more on short-term and tangible goods, members of the Court (regardless of which president appointed them) focus more on the long term and on abstract values. The Court offers a perspective that the other branches simply cannot offer. Second, when the Supreme Court presents this perspective, people listen. It is and has been for some time the most popular branch of American government. Although there is some debate about terminology and measurement, most scholars agree that the Court enjoys “diffuse” rather than “specific” support. Thus, even when Americans don’t like a specific decision, they still support the Court. By contrast, when the president or Congress does something Americans don’t like, their support drops substantially. AMERICANS BECOME more aware of the Court the more it involves itself in controversies. This is because of what political scientists call “positivity bias.” The legitimating symbols of the Court (the robes, the appearance of detachment, the sophisticated legal opinions) help to separate it from other political institutions—and in a good way for the Court. If the Justices had drawn attention to violations of individual rights, most of America would have listened and possibly agreed. As it is, our politics has been devoid of a voice—and an authoritative voice—on individual rights. For most of the time since September 11, few major political figures have been willing to stand up and speak in support of these rights. Recall that the Patriot Act was passed in 2001 by a vote of ninety-eight to one in the Senate, with very little debate. Congress overwhelmingly passed the Detainee Treatment Act (DTA) of 2005, which barred many of those complaining of torture from access to a U.S. court. Congress also overwhelmingly passed the Military Commissions Act (MCA) of 2006, which prevented aliens detained by the government from challenging their detention—and barred them from looking to the Geneva Conventions as a source of a legal claim.

#### Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

**Congress will roll back the counterplan during a conflict – kills solvency**

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

#### ---National security concerns means counterplan fails

Palatucci 04

[Scott Palatucci, McElroy, Deutsch, Mulvaney, and Carpenter LLP Counsel, 2004 Widener University School of Law, THE EFFECTIVENESS OF CITIZEN SUITS IN PREVENTING THE ENVIRONMENT FROM BECOMING A CASUALTY OF WAR, L/N]

Over one hundred and twenty years ago, the Supreme Court recognized that "'public policy forbids the maintenance of any suit in a court of justice . . . which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.'" n103 Presently, the claim of "national security" as a defense is being viewed by courts as "fundamentally different" from other defenses offered by the military to escape liability for damage to the environment. n104 The ESA cases examined above have provided us with an example of this proposition, and yield the realization that a "national security" defense, wielded in response to a "citizen suit," will cause courts to circumvent and ignore the clearly defined and delineated intent of our environmental laws. n105 When considering military claims of "national security" as a viable defense to "citizen suits," courts have come full circle. Today, in most instances, regardless of whether an environmental law provides for military exemption, a valid citizen suit can be dismissed solely because its adjudication has the potential to reveal classified information. In these cases, citizen suits are usually dismissed either due to the invocation of the military and "state secrets privilege" or because of Presidential exemption. n106 Recent "Area 51" litigation, as heard by the Ninth Circuit, has shed some light on the viability of citizen suits when pitted against the military and state secrets privilege of Presidential exemption.

### Northwestern MP Adv CP

#### Counterplan doesn’t overcome the national security exemption – prevents solvency

Stellakis 10

[John C, J.D. Candidate, 2011, Villanova University School of Law; B.A.H, 2008, Villanova University., Villanova Law Review, U.S. Navy Torpedoes NEPA: Winter v. Natural Resources Defense Council May Sink Future Environmental Pleas Brought under the National Environmental Policy Act,1/1/10 <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1035&context=elj>,

The Winter holding has shown the significance of national security interests when the Court exercises discretion in deciding to fashion equitable relief.175 The Court also expressly set, and arguably raised, the bar for a requisite showing of irreparable harm to obtain a preliminary injunction for NEPA actions.176 Although narrow, the Court's decision is binding upon all courts, and thus may affect all NEPA claims brought in the lower courts. A. Weight of National Security The Winter majority demonstrated the importance of national security for both the public interest and for the Navy's interest in effectively trained sailors. 177 Although the Court discounts neither the public's environmental interest nor the effect of denying the preliminary injunction on the NRDC's interests, the majority's focus on national security serves as the Court's justification for finding an abuse of discretion by the lower courts in fashioning equitable relief, and it may be used persuasively in future cases. 178 Potential national security arguments in future cases could appeal to the Winter rationale, serving as a proverbial trump card. Courts could distinguish Winter on its narrow scope or on the facts. The Ninth Circuit distinguished Winter six months later in Internet Specialties West, Inc. v. Milon-DiGiorgio Enterprises, Inc.,179 a case dealing with trademark issues, which affirmed an injunction despite an appeal to Winters heavy public interest factor.' 80 The weight of the national security argument, however, has not yet been disturbed and may **weaken pleas for environmental protection under NEPA** if these NEPA claims will infringe military activities or other actions relating to national security. 81 NEPA and the environment may fall victim to this appeal to the national security interest. B. Raising the Irreparable Harm Bar NEPA plaintiffs seeking relief in the form of a preliminary injunction have an increased burden after Winter.'82 The relaxed standard for irreparable harm for NEPA claims, as **established in previous cases**, appears to have been set to the ordinary requisite level of establishing a likelihood of irreparable harm.183 The District Court for the Northern District of California in Save Strawberry Canyon v. Department of Energy (Strawberry Canyon),184 however, distinguished Winter and issued injunctive relief for the plaintiff.1 85 The Strawberry Canyon court found that Winter only addressed one of the two prongs of the preliminary injunction standard as established by the Ninth Circuit prior to Winter-the likelihood of success on the merits and possibility of irreparable harm prong.186 The Supreme Court in Winter neglected, according to Strawberry Canyon, to address the second prong: "A preliminary injunction is appropriate when a plaintiff demonstrates... that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.' 87 The Winter holding, therefore, might not preclude injunctive relief where the plaintiff cannot show a likelihood of success on the merits, but can show irreparable injury is likely and imminent and demonstrates serious meritorious issues with a favorable balancing of the hardships.188 While this holding allows plaintiffs to obtain injunctive relief without showing a likelihood of success on the merits, it still requires a showing of a likelihood of irreparable harm.189 The Winter likelihood standard may continue to impose an increased burden for NEPA plaintiffs seeking relief via equitable remedies. 190 The Winter holding also forecloses relief for NEPA plaintiffs who have difficulty establishing likelihood of irreparable harm, or any degree of irreparable harm acceptable in court.191 For NEPA's and the environment's sake, hopefully the Winter holding continues to remain narrow and tailored to the Navy's particular interest in antisubmarine warfare training in California, other significant military operations and activities, or when national security is truly and directly at issue. Finally, to meet the Court's seemingly established likelihood standard of irreparable harm for all NEPA claims, future NEPA plaintiffs must meet a higher burden of proof in litigation before the courts

#### Overturning winter precedent key - NEPA exemption collapses environmental litigation across the board

Narodick 9 -- J.D. Candidate, Boston University School of Law, 2010 (Benjamin I., 2009, "LEGAL UPDATE: WINTER V. NATIONAL RESOURCES DEFENSE COUNCIL: GOING INTO THE BELLY OF THE WHALE OF PRELIMINARY INJUNCTIONS AND ENVIRONMENTAL LAW," 15 B.U. J. SCI. & TECH. L. 332, L/N)

The assessment of the public interest in Winter is also **very troublesome for future environmental litigants**. This balancing test is important because injunctions are a matter of judicial discretion once the requirements for equitable relief have been established. n118 The majority in Winter determined that the district court abused its discretion in issuing the injunction due to the national interest of having a well trained navy. n119 In assessing the public value of the sonar exercises, the majority gave "great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest" even when those military authorities were clearly an interested party. n120 The Supreme Court is quick to point out that "military interests do not always trump other considerations, and we have not held that they do." n121 However, the Court has consistently ruled in the military's favor in NEPA cases, stating in one case that "whether or not the Navy has complied with NEPA "to the fullest extent possible' is beyond judicial scrutiny in this case ... the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated." n122 This level of deference, paired with the executive authority allowed by NEPA, may constitute a **de facto military exception to the NEPA standards**. n123 Winter also appears to join a trend of growing judicial deference to the [\*346] executive branch in the aftermath of the September 11 attacks. n124 The majority asserts that it must defer to the Navy because "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." n125 The logic is similar to that found in other historic cases where public pressure dictates stronger executive power to address national threats. n126 Judicial deference affects environmental litigation more acutely than other legal fields because Congress has, in the name of national security, written greater exemptions and waiver powers into environmental regulations. n127 Claimants have found information vital to the discovery and adjudication processes very difficult to acquire. n128 Additionally, the War on Terror's tangible effects on the discretion of the public and judges has made it harder to defend against an executive assertion of the public interest. n129 These trends can lead to a general dilution of the value of environmental protection in judicial forums. One example is Greater Yellowstone Coalition, where the judge determined that a combination of local economic interests, including decreased property values and shortfalls in tax revenues, could pre-empt the irreparable harm to the environment caused by the byproducts of phosphate mining. n130 This creates a unique role for economic damages, which now can be the primary ground for asserting a competing equitable interest against a preliminary injunction, but not the sole basis for asserting likely irreparable injury. n131 The combination of increasing judicial deference to the executive branch, a diminished judicial value of environmental protection, and [\*347] greater procedural barriers to obtain injunctions may make environmental litigation not only more difficult, but also create an atmosphere where such litigation is in an objectively adverse legal position by default. V. Conclusion In Winter, a majority of the Supreme Court vacated an injunction and upheld the rights of the U.S. Navy to test mid-frequency sonar despite the Navy's prediction that multiple marine mammals would sustain injuries. n132 The struggle to balance national defense measures and environmental interests continues, with all branches of the armed forces addressing what the Department of Defense has termed "encroachments." n133 More specifically, the NRDC and the Navy look poised to go to court again on similar issues, this time regarding naval sonar testing in the Atlantic Ocean. n134 The actions of the executive and judicial branches do not indicate any intent to recognize the whale's growing influence on popular culture. n135 While Winter seems more than likely to be influential in the resolution of the Atlantic Ocean dispute, its effects **will not be limited to that or any other whale-sonar case.** With the shift towards a "likely" standard of irreparable harm as a requirement of equitable relief, the burden of a party seeking a preliminary injunction has demonstratably increased. This may have a particularly detrimental effect for copyright cases, where the ability to acquire equitable relief against infringing parties is a key remedy for copyright holders. Environmental advocates, in addition to this standard, must also face more challenging tasks of proving a compelling equity in the face of both opposing interests and a broadly conceived public interest. Future courts may **choose to act differently** as attitudes change and regulations are amended but, for the time being, Winter has proven not to be a fluke in the course of American jurisprudence.

### OLC CP

#### OLC fails –

#### A) Not applicable to emergencies

Posner 11 -- Kirkland & Ellis Professor, University of Chicago Law School (Eric, 9/22/2011, "DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11:CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL," http://www.law.uchicago.edu/files/file/363-eap-deference.pdf)

The medical protocol analogy does not provi de any reason for doubting the deference thesis. Rules are valuable in many settings, in cluding emergencies; but it does not follow from that observation that courts and legislatures rather than the ex ecutive should create and enforce the rules. Each institution has specific advantag es; the executive’s advant ages are salient during emergencies. The notion that the executive can be constr ained by its own components is a paradoxical idea, and has little to recommend it. In the end, someone must have discretion to respond to unforeseen events, and in the U.S. system that ro le has been given to the president. The theory that OLC or some similar office within the exec utive branch could constrain the president rests on a confusion between rational self-binding, which presidents may (albeit with difficulty) engage in, and external constraint, which pres idents resist. OLC may serve as a device for rational self-binding, which extends the executive power; it is highly unlik ely, however, that it can serve as a constraint.

#### **B) They get ignored**

Lobel 7 -- professor of law at the University of Pittsburgh School of Law and vice president of the Center for Constitutional Rights (Jules, 3/1/2007, "The Commander in Chief and the Courts," Presidential Studies Quarterly 37(1), EBSCO)

Moreover, institutional, legal, and political checks within the executive branch have been even less effective. The Office of Legal Counsel, an institutional check within the Justice Department which is supposed to provide independent legal advice, produced secret memos written by **handpicked political appointees** providing advice that **con- formed to the bottom line their superiors desired** (Pillard 2006, 1297). When the Bybee Torture Memo, which was never intended to be publicly disclosed, was leaked to the press, the resulting firestorm of criticism caused it to be withdrawn. This problem is not limited to this administration; for decades the executive branch has sought to keep the legal advising process confidential (Pillard 2006, 1302). Moreover, the administration’s discussions of legal strategy after September 11 largely excluded the military lawyers and foreign-policy officials who presumably had the expertise that Yoo or Posner believe places the executive at a comparative advantage over judges in national security matters (Golden 2004, § 1, 1; Mayer 2006). For example, when some of the military lawyers protested the administration’s detainee policies, they were generally ignored by the small coterie of high-level officials who were driving the policies (Mayer 2006). The public deliberation and rational argumentation of differing opinions that characterize judicial proceedings are an institutional strength of the judiciary that has been sorely lacking in the administration’s determination of legal strategy in fighting terrorism. While troop movements, battle plans, and military strategies ought to be kept secret and out of the Court’s purview, legal issues and strategies, such as the definition of torture, the constitutional authority of the president to violate or suspend treaties or authorize torture, and the applicability of the Geneva Conventions in the current fight against terrorism, are matters best resolved in the course of open dialogue and debate that the judiciary, not the executive, is most institutionally attuned to.

#### The counterplan only results in executive compliance – that fails -

#### A) Overseas application

Hilbert 12 (Sarah – J.D. Candidate, William & Mary Law School, “A Legislative Solution to Environmental Protection in Military Action Overseas”, 2012, 37 Wm. & Mary Envtl. L. & Pol'y Rev. 263, lexis)

III. Solution A. Executive Orders It has been suggested that the solution to the inadequate DoD environmental regulation is an executive order. n119 Executive orders have been proposed because of the power of the executive branch and its ability to produce change. n120 Laporte points to President Carter's executive order as a successful way to promote NEPA's ideals overseas and cites DoD action prompted by President Carter's executive order as an indication that the executive order was successful. n121 Although Laporte acknowledges the downfalls of the DoD's response to President Carter's executive order, she attributes the response to "exemptions or ambiguities in the Order itself," rather than the DoD's response to the Order. n122 Executive orders, however, are not the best answer. It is true that executive orders can affect the extraterritorial application of environmental principles as President Carter's executive order furthered the goals of NEPA, n123 but this benefit is limited. n124 President Carter's executive order's purpose was to further the goals of NEPA, n125 but it did not have the power to override the presumption that NEPA could not apply extraterritorially. n126 The executive order may be able to capture general [\*278] ideals or priorities of the executive, but President Carter's executive order illustrated that those ideals and priorities can be implemented very differently after the DoD interprets the meaning of the executive order. n127 Laporte assumes that the executive branch has the expertise and time to draft an executive order that has the perfect amount of specificity, flexibility, and practicality, n128 but this is not realistic. Creating standards for the DoD in the way that Laporte describes the ideal executive order n129 is not a job for the executive branch.

#### E) Certainty – Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

#### 3. Congress will roll back the counterplan during a conflict – kills solvency

Tisler **11**

[Tiffany, J.D. Candidate, University of Toledo, 2011., FEDERAL ENVIRONMENTAL LAW WAIVERS AND HOMELAND SECURITY: ASSESSING WAIVER APPLICATION IN HOMELAND SECURITY SETTINGS AT THE SOUTHERN BORDER IN COMPARISON TO NATIONAL SECURITY SETTINGS INVOLVING THE MILITARY, Spring, 2011 The University of Toledo Law Review, L/N]

In times of war, the conflict between national-security goals and environmental laws tends to come out in favor of national security, n54 and shortly after 9/11 the United States was at war. As it was, the U.S. military never particularly liked the pre-9/11 waiver system, finding the scope of waivers too narrow and the time limits incompatible with long-term activities. n55 Thus, sensing the time to strike, the military began lobbying for changes to environmental-waiver provisions in the aftermath of 9/11. n56 The military has since actively and successfully sought changes to the waiver system, giving them much broader authority to disregard environmental laws, especially for reasons of "military readiness." n57 First, the military convinced Congress to attach riders to the 2004 and 2005 Defense Appropriations Acts exempting them from provisions of the Marine Mammal Protection Act ("MMPA"), some provisions of the ESA, and the entire Migratory [\*784] Bird Treaty Act. n58 Not only did the military successfully change the application of various sections of statute, it also changed the waiver structure for the MMPA, giving the Secretary of Defense the authority to grant waivers in addition to the President. n59 Though not always successful, military lobbying efforts have removed many external checks on military activities that impact the environment, creating a dim future for the environment. n60

## 2AC Stuff – DA

### Northwestern Pay Raise DA

#### President and DOJ prevents stripping even on policies they oppose

**Grove 12**

[Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

This Article argues that scholars have overlooked an important (and surprising) advocate for the federal judiciary in these jurisdictional struggles: the executive branch. The Constitution gives the President considerable authority to block constitutionally questionable legislation. The President can veto problematic legislation or use the threat of a veto to urge Congress to pursue other alternatives. Moreover, under Article II's Take Care Clause, the President is in charge of enforcing federal law in the federal courts - a task that he has largely delegated to the Department of Justice (DOJ). n6 The executive branch can use this enforcement authority to ensure that laws are applied in a manner that accords with constitutional values. Drawing on recent social science scholarship, this Article contends that the executive branch has a strong incentive to use this constitutional authority to oppose efforts to curb federal jurisdiction. First, social scientists have argued that the President often expresses his constitutional philosophy through litigation in the federal courts. Accordingly, the President has some incentive to ensure that the federal courts retain jurisdiction over constitutional claims. These presidential incentives are reinforced by the institutional incentives of the DOJ. Relying on theories of path dependence and institutional entrenchment, this Article argues that the DOJ has a substantial interest in defending the authority of the federal judiciary, because it can thereby maintain its own enforcement power. The DOJ has a particularly overriding interest in protecting the [\*253] appellate jurisdiction of the Supreme Court, because the Solicitor General is in charge of all federal litigation at that level. By defending the authority of the Supreme Court, the DOJ can maximize its power and influence over the development of federal law. In sum, this Article contends that the executive branch has strong institutional incentives to oppose the very kind of legislation that scholars find most problematic: restrictions on the Supreme Court's appellate jurisdiction and the federal courts' authority to adjudicate constitutional claims. The executive branch should be inclined to use its constitutional authority to shield the judiciary from such challenges to the federal judicial power. This structural argument has considerable historical support. The executive branch has sought to protect federal jurisdiction in two major ways. First, the executive branch has repeatedly opposed bills targeted at the Supreme Court's appellate review power or at federal jurisdiction over constitutional claims. n7 Notably, that has been true even when the President strongly disagreed with the federal courts' constitutional jurisprudence. For example, during the New Deal era, the Roosevelt Justice Department opposed efforts to eliminate the Supreme Court's appellate jurisdiction over constitutional claims. n8 Likewise, the Reagan Justice Department spoke out against proposals to strip federal jurisdiction over cases involving school prayer and abortion. n9 Other DOJ officials have similarly urged Congress to refrain from enacting jurisdiction-stripping proposals, at times expressly invoking the threat of a presidential veto. Although most jurisdiction-stripping bills have been defeated in the legislative process, some proposals to curb federal jurisdiction have, in recent decades, captured sufficient political support to gain the assent of both Congress and the President. But the executive branch has an additional constitutional tool to limit the impact of such laws: The DOJ controls the enforcement of most federal laws and can urge the federal judiciary to interpret those laws narrowly in order to preserve federal jurisdiction. That is the approach that recent Justice Departments have taken. Both the Clinton and the second Bush Administrations urged the courts to construe broadly worded jurisdiction-stripping statutes, like the Antiterrorism and Effective Death Penalty Act, so as to preserve jurisdiction over federal constitutional claims. n10 The federal courts, of course, could disregard these arguments and independently determine their jurisdiction. But, to the extent that the [\*254] courts are already inclined to interpret jurisdiction-stripping laws narrowly, the DOJ's arguments provide substantial reassurance that such constructions will have the support of a coequal branch of the federal government. And, in practice, the federal judiciary has proven quite receptive to the executive branch's efforts to preserve the scope of federal jurisdiction.

#### No Congressional backlash

Baum 3 (Lawrence, Professor of Political Science – Ohio State University, “The Supreme Court in American Politics”, Annual Review of Political Science, p. 173)

In recent years, some scholars with a strategic perspective have analyzed relationships between the Supreme Court and lower courts in formal terms, terms that facilitate comparison between implementation processes in the judiciary and hierarchical relationships in other settings (Kornhauser 1995, Hammond et al. 2001; see Brehm & Gates 1997, pp. 13–20). Especially important is collaborative work by Segal, Songer, and Cameron (Songer et al. 1994, 1995; Cameron et al. 2000), who have employed principal-agent theory to guide empirical studies of the relationship between the Supreme Court and federal courts of appeals. Even in this new wave of research, however, there has been little systematic comparison between courts and other policy enactors. The natural comparison is between the Supreme Court and Congress, each of which acts to shape administrative policy. It is reasonable to posit that Congress does better in getting what it wants from administrators, because its powers (especially fiscal) and its capacity to monitor the bureaucracy are appreciably stronger. The sequences of events that overcame school segregation and racial barriers to voting in the Deep South support that hypothesis. But it remains essentially untested, in part because good tests are difficult to design. Thus, we still know little about the relative success of implementation for legislative and judicial policies. Once we know more about the implementation of the Court’s decisions in absolute and relative terms, the most important question might well be why implementation is as successful as it is. The Court’s limited concrete powers would seem to aggravate the difficulties faced by all organizational leaders, so why do judges and administrators follow the Court’s lead so frequently? Within the judiciary, part of the answer undoubtedly lies in selection and socialization processes that enhance agreement about legal policy and acceptance of hierarchical authority. Even the Court’s limited powers may be sufficient to rein in administrators, especially in the era of broad legal mobilization that Epp has described: Groups that undertake litigation campaigns to achieve favorable precedents can also litigate against organizations that refuse to accept those precedents. Both judges and administrators may reduce their decision costs by using the Court’s legal rules as a guide. In any event, the relationship between the Court and policy makers who implement its policies may be an especially good subject for studies to probe the forces that reduce centrifugal tendencies in hierarchies. It is also worth asking why the Court fares so well in Congress. As noted above, few of the Court’s most controversial interventions in the past half century have been directly reversed. Nor has Congress enacted any of the numerous bills to remove the Court’s jurisdiction over areas in which the Court has aroused congressional anger. A large part of the explanation lies in the difficulty of enacting legislation in a process with so many veto points. That difficulty is especially great in an era like the current one, which lacks a strong or stable law-making majority. In such an era, interventions are likely to have significant support in government regardless of their ideological direction, and even decisions that strike down federal laws may enjoy majority support. The line of decisions since 1995 that has limited the regulatory power of the federal government (e.g., Alden v. Maine 1999, United States v. Morrison 2000) aconstitutes the most significant judicial attck on federal policy since the 1930s. But since 1995, Congress has had Republican majorities except for the bare Democratic Senate majority in 2001–2002. In that situation, any significant action to counter the Court’s policies has been exceedingly unlikely. Beyond the difficulty of enacting legislation, two other factors may come into play. First, Congress often adopts measures that limit the impact of a Court policy or that attack the policy symbolically, actions that suffice for members who want to vent their unhappiness with the Court or to claim credit with constituents who oppose the decision (see Keynes & Miller 1989). In response to Roe v. Wade (1973), for instance, Congress (often with presidential encouragement) has mandated various limits on federal funding of abortion. Two years after Miranda v. Arizona (1966), it enacted a statutory provision purportedly to supersede the Miranda rules in federal cases, a provision that federal prosecutors ignored and that the Court ultimately struck down in Dickerson v. United States (2000). Second, the Court may enjoy a degree of institutional deference in Congress, similar to that found in other relationships among the three branches but buttressed by the symbolic status of the Constitution itself. This deference tinges certain courses of action, such as restrictions on court jurisdiction, with illegitimacy. The failure of proposals to overturn the flag-burning decisions with a constitutional amendment, despite broad and deep public opposition to those decisions, reflects the symbolic power of the First Amendment. Congressional deference to the Court is not limitless, but in combination with other factors it may help to explain why the Court’s recent interventions and the Court itself have survived congressional scrutiny so well.

#### Congress likes the plan

Janofsky 05

[Michael, NY Times, 5/11/05, Pentagon Is Asking Congress to Loosen Environmental Laws, <http://www.nytimes.com/2005/05/11/politics/11enviro.html?_r=0>]

Dozens of groups have complained to Congress that the military's needs are covered by the laws that they seek to change and that waivers would result in conditions getting worse on and around the nation's military bases, endangering the health of millions of people. As the owner of 425 active bases and more than 10,000 training ranges, the Defense Department is widely regarded as one of the nation's leading polluters, producing vast amounts of chemicals from ordnance that leach into groundwater, as well as air pollution from military vehicles. The Environmental Protection Agency lists more than 130 Superfund sites on military bases. "Congress would never consider letting the nation's biggest corporate polluter off the hook," Heather Taylor, deputy legislative director for the Natural Resources Defense Council, said in a conference call with reporters. "Why, then, would Congress grant immunity to America's, and the world's, largest polluter?" Since 2001, the Pentagon has been asking Congress for greater latitude in complying with environmental laws. When it came to birds and animals, lawmakers were willing to compromise, granting exemptions to federal laws. But they have been more resistant to changes that might affect human health under the Clean Air Act; the Resource Conservation and Recovery Act, dealing with solid waste; and the Comprehensive Environmental Response, Compensation and Liability Act, which deals with toxic wastes and is better known as the Superfund law.

### Flex DA

#### Obama will continue to consult for military actions – takes out the link

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 2. Plan doesn’t affect all power – the president will do what he wants absent direct prohibition

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

<http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/MARSHALL.pdf>]

The first and perhaps overarching reason underlying the growth of presidential power is that the constitutional text on the subject is notoriously unspecific, allowing as one writer maintains, for the office “to grow with the developing nation.”19 Unlike Article I, which sets forth the specific powers granted to Congress,20 the key provisions of Article II that grant authority to the President are written in indeterminate terms such as “executive power,”21 or the duty “to take care that the laws be faithfully executed.”22 Moreover, unlike the other branches, the Presidency has consistently been deemed to possess significant inherent powers.23 Thus, many of the President’s recognized powers, such as the authority to act in times of national emergency24 or the right to keep advice from subordinates confidential,25 are nowhere mentioned in the Constitution itself. In addition, case law on presidential power is underdeveloped. Unlike the many precedents addressing Congressional26 or federal judicial27 power, there are remarkably few Supreme Court cases analyzing presidential power. And the leading case on the subject, Youngstown Sheet & Tube Co. v. Sawyer, 28 is known less for its majority opinion than for its concurrence by Justice Jackson, an opinion primarily celebrated for its rather less-than-definitive announcement that much of presidential power exists in a “zone of twilight.”29 Accordingly, the question whether a President has exceeded her authority is seldom immediately obvious because the powers of the office are so openended.30 This fluidity in definition, in turn, allows presidential power to readily expand when factors such as national crisis, military action, or other matters of expedience call for its exercise.31 Additionally, such fluidity allows political expectations to affect public perceptions of the presidential office in a manner that can lead to expanded notions of the office’s power.32 This perception of expanded powers, in turn, can then lead to the perceived legitimacy of the President actually exercising those powers. Without direct prohibitions to the contrary, expectations easily translate into political reality.33

#### 4. Even if they win that the aff spills over to broader authority, it would not wreck flex

Andrew McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

#### 6. **Rules during crises don’t hurt flexibility**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

### War Powers DA

#### 1. No spillover – president will still do whatever is necessary to solve the DA

Marshall 08

[William, Kenan Professor of Law, University of North Carolina, Eleven Reasons Presidential Power Inevitably Expands and Why It Matters, 2008,

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#### First – their Li evidence indicates any slow down in decisionmaking kill warfighting – that’s the status quo

Rothkopf 13

[David, CEO and editor at large of Foreign Policy, The Gamble, 8/31/13, <http://www.foreignpolicy.com/articles/2013/08/31/the_gamble?page=0,1>]

Whatever happens with regard to Syria, the larger consequence of the president's action will resonate for years. The president has made it highly unlikely that at any time during the remainder of his term he will be able to initiate military action without seeking congressional approval. It is understandable that many who have opposed actions (see: Libya) taken by the president without congressional approval under the War Powers Act would welcome Obama's newly consultative approach. It certainly appears to be more in keeping with the kind of executive-legislative collaboration envisioned in the Constitution. While America hasn't actually required a congressional declaration of war to use military force since the World War II era, the bad decisions of past presidents make Obama's move appealing to the war-weary and the war-wary. But whether you agree with the move or not, it must be acknowledged that now that Obama has set this kind of precedent -- and for a military action that is exceptionally limited by any standard (a couple of days, no boots on the ground, perhaps 100 cruise missiles fired against a limited number of military targets) -- it will be very hard for him to do anything comparable or greater without again returning to the Congress for support. And that's true whether or not the upcoming vote goes his way. 4. This president just dialed back the power of his own office. Obama has reversed decades of precedent regarding the nature of presidential war powers -- and whether you prefer this change in the balance of power or not, as a matter of quantifiable fact he is transferring greater responsibility for U.S. foreign policy to a Congress that is more divided, more incapable of reasoned debate or action, and more dysfunctional than any in modern American history. Just wait for the Rand Paul filibuster or similar congressional gamesmanship. The president's own action in Libya was undertaken without such approval. So, too, was his expansion of America's drone and cyber programs. Will future offensive actions require Congress to weigh in? How will Congress react if the president tries to pick and choose when this precedent should be applied? At best, the door is open to further acrimony. At worst, the paralysis of the U.S. Congress that has given us the current budget crisis and almost no meaningful recent legislation will soon be coming to a foreign policy decision near you. Consider that John Boehner was instantly more clear about setting the timing for any potential action against Syria with his statement that Congress will not reconvene before its scheduled September 9 return to Washington than anyone in the administration has been thus far. Perhaps more importantly, what will future Congresses expect of future presidents? If Obama abides by this new approach for the next three years, will his successors lack the ability to act quickly and on their own? While past presidents have no doubt abused their War Powers authority to take action and ask for congressional approval within 60 days, we live in a volatile world; sometimes security requires swift action. The president still legally has that right, but Obama's decision may have done more -- for better or worse -- to **dial back the imperial presidency than anything his predecessors or Congress have done for decades.**

#### Even if there is spillover – status quo thumps

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

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#### 3. No Flex internal link

#### **A) Rules don’t hurt flexibility and flexibility not key to warfighting**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. § Marked 18:59 § Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### B) Rules allow better decisionmaking

**Wells 04** (Christina, Prof of law @ U of Missouri – Columbia, Missouri Law Review, Fall)

Thus, the threat of judicial review is still a necessary component of making executive actors accountable.  Second, one could argue that judicial review unreasonably burdens the executive's ability to act quickly and decisively in response to an emergent situation. [**238**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n238) National security emergencies are presumably the last instance in which we want such burdens on executive decision making. [**239**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n239) While this argument is reasonable as it pertains to executive decisions regarding the actual prosecution of a war -- i.e., decisions to invade a country, troop movements -- the historic patterns described above never involved such decisions. Rather, they involved decisions to pursue groups or individuals via domestic criminal or administrative measures, decisions made over long periods of time. Such actions taken in the name of national security rarely require quick and decisive action. [**240**](http://www.lexis.com/research/retrieve?_m=de0216e9953095373f699f9d14bbb843&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVlz-zSkAV&_md5=9a947f66e07ba5718a84bf5f543141da#n240) The argument for executive flexibility thus carries less weight in this context than when military decisions are involved. Furthermore, given what we know of past skewed decision making, we may actually want to slow down that decision-making process when restricting civil liberties.

#### 4. Plan doesn’t hurt warfighting

Dycus 05

[Stephen, Professor, Vermont Law School, Osama's Submarine: National Security and

Environmental Protection After 9/11, William & Mary Environmental Law and Policy Review, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1112&context=wmelpr>]

The evidence that compliance with environmental laws has seriously impaired U.S. preparations for war is, however, far from conclusive. After all, the U.S. military's successes in Afghanistan and Iraq were achieved using troops trained and weapons tested under **pre-September 11th environmental statutes** and regulations. A Navy Admiral, testifying before Congress in support of RRPI in 2003, declared that "the readiness of the Navy is excellent. 32 According to a General Accounting Office report in 2002, "[d]espite the loss of some capabilities, service readiness data do not indicate the extent to which encroachment has significantly affected reported training readiness.” 33 In fact, the report concluded, "Training readiness, as reported in official readiness reports, remains high for most units.,34 Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman went further in early 2003, stating, "**I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation**."35 A more recent study by the Congressional Research Service noted that "[a]lthough DOD has cited some examples of training restrictions or delays at certain installations and has used these as the basis for seeking legislative remedies, the department does not have a system in place to comprehensively track these cases and determine their impact on readiness.' "36 Some have taken a dimmer view of DOD's protests. EPA complained that the definition of "military readiness activities" in the DOD proposal was "broad and unclear and could be read to encompass more than the Department intends."37 Congressman John Dingell, a Democrat from Michigan, was much more emphatic: "I have dealt with the military for years and they constantly seek to get out from under environmental laws. But using the threat of 9-11 and al Qaeda to get unprecedented environmental immunity is despicable. 38

### Deference DA

#### 1. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### 3. **Doesn’t hurt readiness- will still be able to respond to crisis**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### 4. Judges can handle genuine secrets discreetly

Yakamoto 5 (Eric, Prof of Law @ Harvard, Law and Contemporary Problems, V. 68, Spring)

In this light, the fourth task is for the court to carefully and openly scrutinize executive actions with dual goals in mind: to afford the executive broad leeway in most of its effort to protect the nation's people, and simultaneously to call the executive to account publicly for apparent transgressions. And, as Judge Doumars observed in *Hamdi* and as the Second Circuit echoed in *Padilla*, when those transgressions curtail fundamental liberties under the possibly false mantle of national security, the call for an accounting requires the executive to proffer bona fide evidence of the danger posed by those targeted and the appropriateness of the government's restrictions. **Genuine secrets**, of course, **can be handled discreetly** -- for example, through in-camera review and under seal. But an executive's bald claims of "confidentiality" or "security risk" should not trigger a hands-off judicial posture.

#### 6. Training irrelevant – the mere perception of basing is sufficient

**Cooley 2008** (Alexander – Tow Professor of Political Science at Barnard College and Faculty Member of Columbia University’s Harriman Institute, Base Politics: Democratic Change and the U.S. Military Overseas, p. 4-8)

The Enduring Significance of U.S. Bases At first glance, the topic of base politics itself may seem anachronistic, for the term "overseas bases" conjures images of superpowers during the cold war maneuvering across the third world to secure geopolitical access and advantage.' But securing overseas basing access remains a critical aspect of current U.S. defense policy and the global war on terrorism, especially as U.S. planners reconfigure the force structure and basing pos-ture to cope with more regionally based threats.6 Moreover, for host coun-tries, base issues can still dominate bilateral relations with the United States—a fact that is not always shared or sufficiently appreciated by U.S. officials—and the manner in which base-related issues are managed (or mismanaged) can symbolize the broader relationship between the base host and the United States. Finally, studying the politics of bases reveals some unexpected aspects of how U.S. allies and military clients engage with American unipolarism or the "American Empire." Most important, this account of base politics reveals an emerging, if unexpected, tension inherent in the current U.S. strategy of promoting democracy abroad while maintaining an extensive global basing presence—the pursuit of one may actually undermine the viability of the other in any given base host. Projecting American Power U.S. overseas bases and access rights are the linchpin of American global power **and its military supremacy of the global commons**.7 Overseas bases in countries such as Spain and Uzbekistan act as "force multipliers" and enable U.S. planners to rapidly project power § Marked 19:00 § both within and across regions.' Securing overseas bases and access agreements with a number of countries was critical for the recent U.S.-led military campaigns in Afghanistan and Iraq.' For example, the K2 base in Uzbekistan was stag-ing facility for the OIF mission, whereas facilities in Spain were used for both the Afghanistan and Iraq campaigns. Even when not used for combat purposes, bases are significant when they guarantee U.S. access to neigh-boring assets, territories, or resources that are of critical importance.10 Beyond their military roles and strategic functions, bases also provide service and repair facilities, storage, training facilities, and logistical stag-ing posts. Bases can also be used to conduct surveillance, coordinate tasks, collect intelligence, and facilitate command, control, and communications (C3)." As it turns out, overseas bases such as K2 have been used to trans-port enemy combatants and terror suspects as part of the CIA's program of extraordinary rendition and may even have been used as sites to detain and interrogate some suspects.12 The sheer number of U.S. overseas bases is staggering (see table 1.1). According to the Department of Defense's 2006 Base Structure Report, the United States officially maintains 766 military installations overseas and another 77 in noncontinental U.S. territories. Fifteen of these facilities were estimated to be worth more than $1.6 billion each, whereas an additional 19 were valued at between $862 million and $1.6 billion.13 Of course, such official figures do not include the numerous secret installations and jointly operated bases and / or tacit governance arrangements that are scattered overseas.14 Not surprisingly, some commentators refer to this vast over-seas network of bases and troop deployments as the U.S. Empire and com-pare it to the peripheral holdings of previous imperial powers." The structure of this global basing network is also changing. The Pen-tagon's current Global Defense Posture Review (GDPR) marks the first fundamental transformation of U.S. basing posture since World War II as U.S. defense planners adjust to new strategic imperatives such as the global war on terror." The GDPR will reduce U.S. forces in several major cold war base hosts—especially Germany, Korea, and Japan—and will estab-lish a global network of smaller, more flexible facilities. These new-style bases or "lily pads" will be located in several regions where the United States has not traditionally maintained a presence, including Africa, Central Asia, and the Black Sea. As a result, the United States seems set to abandon its traditional role as an "offshore balancer" and, using its new basing posture, to more directly engage regional threats such as terrorists and insurgents." One explicitly political goal of the GDPR is to reduce the footprint and local friction caused by a large U.S. military presence and establish smaller facilities of a less permanent nature that will be less politically controversial and socially intrusive within host countries. Bases as Diplomatic Symbols Overseas bases, however, are not merely installations that serve a military purpose. For host governments and citizens, U.S. bases are also concrete institutions and embodiments of U.S. power, identity, and diplomacy. The physical presence of overseas U.S. troops and installations—from the large garrison towns in Germany that look like imported American counties to the small but restricted sites in Central Asia—serves as a daily reminder of the scope of U.S. global influence and signifies that the host country has sacrificed some of its domestic sovereignty." Negotiations over bases and their governing agreements can become the most pressing bilateral issue that host countries face with the United States, as they were in Spain in the mid-1980s and Uzbekistan from 2001 to 2005, and displace all other political and security concerns.19 Moreover, host countries often view the basing relationship as a symbol of the broader state of U.S.-host relations. Hence, Korean antibase activists campaign for a more "equal relation-ship" between U.S. forces and Korean sovereignty, whereas Romanian politicians proudly refer to the new U.S. bases on the Black Sea as symbols of the country's new status as a strong partner in the U.S.-led Western security system. Politically, bases are the most immediate issue through which a host country's politicians and its public experience, debate, and even contest U.S. global power. Often, basing agreements may even signal political and social commit-ments that U.S. officials did not necessarily intend to make. For example, America's western European allies strongly opposed the U.S.-Spain 1953 Madrid Pact and argued that the deal bestowed international legitimacy on the autocrat General Francisco Franco when he was otherwise ostracized from the international community. Similarly, although the basing agree-ment with Uzbekistan focused on fighting common terrorist elements in the Central Asian region, other states and publics across Central Asia saw the deal as a U.S. endorsement of the Uzbek regime's repressive policies and undemocratic tendencies. Historically, U.S. officials have found it dif-ficult to limit basing agreements from being perceived as broader political endorsements of host-country regimes and their domestic political and social practices.20

### Circumvention DA

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### Obama supports NEPA agency review

Goad & Kroh 13 -- \*Manager of Research and Outreach for American Progress’ Public Lands Project AND\*\* Deputy Editor of ClimateProgress, worked on the Energy policy team at American Progress as the Associate Director for Ocean Communications (Jessica and Kiley, 4/25/2013, "Using Executive Authority to Account for the Greenhouse-Gas Emissions of Federal Projects," http://www.americanprogress.org/issues/green/report/2013/04/25/61446/using-executive-authority-to-account-for-the-greenhouse-gas-emissions-of-federal-projects/)

While Congress has shown no signs that it will take action to address the growing threat of climate change, there are a **number of executive authorities** under existing laws to address the crisis. The National Environmental Policy Act, which requires analyses of the environmental impacts of federal activities, is frequently overlooked in this context but could be an important tool for assessing the potential climate impacts from a proposed project—a key first step in shaping informed decisions. The Council on Environmental Quality should finalize its draft guidance for federal agencies to include carbon pollution in NEPA analyses, and the president should issue an executive order on this subject to give it more clarity and permanence. Additionally, CEQ must be certain to include federal resource-management agencies in its final guidance. Burning the oil, coal, and natural gas that come from our public lands and waters accounts for nearly a quarter of all U.S. greenhouse-gas emissions. Ignoring the federal mineral estate in the guidance is leaving out a large portion of the federal governments’ activities related to climate change. As President **Obama made clear** in his 2013 State of the Union address: **I will direct my cabinet to come up with executive actions we can take**, now and in the future, to **reduce pollution**, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy. Ensuring that federal agencies—especially the land- and ocean-management agencies—assess greenhouse-gas pollution generated by proposed federal actions when reviewing their impacts is an important step in making this promise a reality.

#### The military will comply

Gillespie 12 -- Prof @ Univ of Waikato, has advised the Ministry of Foreign Affairs and Trade and the Department of Conservation, provides commissioned work for the United Nations and the Commonwealth Secretariat, has been awarded a Rotary International Scholarship, a Fulbright Fellowship, a Rockefeller Fellowship (Alexander, Winter 2012, "ARTICLE: The Limits of International Environmental Law: Military Necessity v. Conservation," 23 COLO. J. INT'L ENVTL. L. & POL'Y 1, L/N)

Generally, the answer is that **the military can be made to comply** with laws that seek to resolve internationally significant environmental problems. In some instances, such as where they are main culprits in the causation of the problem, **they can be the subject** of particular treaties. This was the case with the testing of nuclear weapons in the atmosphere. In other instances, **obligations can be placed upon them to control their pollutants**, just as all other sectors within a country may be obligated to comply with agreed international rules. This is true with climate change, ozone depletion, and some persistent organic pollutants. Nonetheless, in some instances, the ability for the military to be granted exceptions exists, although they are rarely used. Rather, militaries have learned to adapt and comply with international standards.

## 2AC Stuff – Impact D

### Heg

#### No relationship between US capabilities and peace

Fettweis 10 – Professor of national security affairs @ U.S. Naval War College. [Christopher J. Fettweis, “Threat and Anxiety in US Foreign Policy,” Survival, Volume 52,

Issue 2 April 2010 , pages 59 – 82//informaworld]

One potential explanation for the growth of global peace can be dismissed fairly quickly: US actions do not seem to have contributed much. The limited evidence suggests that there is little reason to believe in the stabilising power of the US hegemon, and that there is no relation between the relative level of American activism and international stability. During the 1990s, the United States cut back on its defence spending fairly substantially. By 1998, the United States was spending $100 billion less on defence in real terms than it had in 1990, a 25% reduction.29 To internationalists, defence hawks and other believers in hegemonic stability, this irresponsible 'peace dividend' endangered both national and global security. 'No serious analyst of American military capabilities', argued neo-conservatives William Kristol and Robert Kagan in 1996, 'doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peace'.30 And yet the verdict from the 1990s is fairly plain: the world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable US military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred once the stabilis-ing presence of the US military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in US military capabilities. Most of all, the United States was no less safe. § Marked 12:38 § The incidence and magnitude of global conflict declined while the UnitedStatescut its military spending under President Bill Clinton, and kept declining as the George W. Bush administration ramped the spending back up. Complex statistical analysis is unnecessary to reach the conclusion that world peace and US military expenditure are unrelated.

### Flex – Terror

#### Deference hurts counter-terror intelligence

Moshirnia 13 -- JD @ Harvard Law School; PhD in Informational Technology @ University of Kansas (Andrew V., 2013, "Valuing Speech and Open Source Intelligence in the Face of Judicial Deference," Harvard Nat'l Security Journal, Vol 4, http://harvardnsj.org/wp-content/uploads/2013/05/Vo.4-Moshirnia-Final.pdf)

It would seem, then, that the Court damaged established First Amendment doctrine in order to arrive at a possible military advantage. But this sacrifice of jurisprudential clarity for some imagined military necessity is coun terproductive. The great irony of the majority’s action is that by willfully deviating from strict scrutiny, the Court managed to protect a statute likely to chill OSINT and harm the war effort. The chilling of valuable OSINT will hamper intelligence effor ts.

#### Open-source intel k2 fight al-Qaeda – solves terror & mitigates prolif

Moshirnia 13 -- JD @ Harvard Law School; PhD in Informational Technology @ University of Kansas (Andrew V., 2013, "Valuing Speech and Open Source Intelligence in the Face of Judicial Deference," Harvard Nat'l Security Journal, Vol 4, http://harvardnsj.org/wp-content/uploads/2013/05/Vo.4-Moshirnia-Final.pdf)

While the failure to predict the arrival of a new nuclear power was an embarrassment, intelligence failures take on a much greater urgency when placed in the terr orism context. Intelligence analysts have repeatedly noted that OSINT is vital in the war on terror, primarily due to the diffuse nature of the terrorist threat and America’s reliance on multiple international allies. 40 Stephen Mercado, a CIA analyst, noted that OSINT or overt intelligence, often betters covert intelligence in speed , quantity, quality, clarity, ease of use, and affordability. 41 Furthermore, Mercado “maintain[s] that OSINT often equals or surpasses secrets in addressing such intelligence challenges . . . as proliferation, terrorism, and counterintelligence.” 42 This is especially true as “[i]t is virtually impossible to penetrate a revolutionary terrorist organization, particularly one structured and manned t he way al - Qa`ida is.” 43 Instead, we must rely “on the intelligence community’s overt collectors and analysts.” 44 The use of OSINT in the fight against al - Qaeda is especially important in light of the technological versatility of that organization. The as - S ahab institute, al - Qaeda’s complex multimedia production and Internet - based messaging wing, provides an “example of why open source collection and analysis is so important in today’s technology - driven and globalized world.” 45 Al - Qaeda’s use of I nternet chan nels limits detection by conventional intelligence gathering, allowing it to plot with relative impunity. Furthermore, al - Qaeda’s rapid adoption of new technologies is well known , 46 reinforcing our own need to implement f lexible intelligence strategies, bas ed in large part on open resources. In the words of one intelligence official, “[ o pen source information] is no longer the icing on the cake, it is the cake itself.” 47 It makes little sense to stem the flow of this valuable strategic resource in the name of greater security.

### 4GW

#### Fourth generation warfare theory is trash

Echevarria 5 [Antulio J. II, Director of Research, Director of National Security Affairs, and Acting Chairman of the Regional Strategy and Planning Department at the Strategic Studies Institute, November, “FOURTH-GENERATION WAR AND OTHER MYTHS”, p. 2-5, http://www.strategicstudiesinstitute.army.mil/pdffiles/pub632.pdf]

The notion of 4GW ﬁrst appeared in the late 1980s as a vague sort of “out of the box” thinking. The idea was itself an open box of sorts into which every conjecture about future warfare was thrown. As its inaugural essay shows, it was nothing more than a series of “what-ifs,” albeit severely limited by a ground-oriented bias. In its earliest stages, 4GW amounted to an accumulation of speculative rhapsodies that blended a maneuver-theorist’s misunderstanding of the nature of terrorism with a futurist’s infatuation with “high technology.”4 The kind of terrorists that 4GW theorists described, for instance, behaved more like German storm troopers of 1918, or Robert Heinlein’s starship troopers of the distant future. Highly intelligent and capable of ﬁghting individually or in small groups, these future terrorists would ﬁrst seek to inﬁltrate a society and then attempt to collapse it from within by means of an ill-deﬁned psychocultural “judo throw” of sorts.5¶ Instead of this fanciful approach, what terrorist groups such as Hamas, Hezbollah, and (to a lesser extent) Al Qaeda actually have done is integrated themselves into the social and political fabric of Muslim societies worldwide. Hamas and Hezbollah, especially, have established themselves as organizations capable of addressing the everyday problems of their constituencies: setting up day cares, kindergartens, schools, medical clinics, youth and women’s centers, sports clubs, social welfare, programs for free meals, and health care.6 Each has also become a powerful political party within their respective governments. In other words, rather than collapsing from within the societies of which they are a part, Hamas and Hezbollah have turned their constituencies into effective weapons by creating strong social, political, and religious ties with them; in short, they have become communal activists for their constituencies, which have, in turn, facilitated the construction and maintenance of substantial ﬁnancial and logistical networks and safe houses.7 This support then aids in the regeneration of the terrorist groups. Hence, attacks by Hamas and Hezbollah are not designed to implode a society, but to change the political will of their opponents through selective—even precise—targeting of innocents. Al Qaeda is somewhat different in that its goal is to spark a global uprising, or intifada, among Muslims, and its attacks have been designed to weaken the United States, other Western powers, and Muslim governments in order to prepare the way for that uprising.8 Pursuant to that goal, it and groups sympathetic to it have launched attacks that in 2004 alone killed about 1,500 and wounded about 4,000 people, not including the many victims of operations in Iraq; one-third of all attacks involved non-Western targets, but the bulk of the victims overall were Muslims.9 Still, even its tactics are not the psychological “judo throw” envisioned by 4GW theorists, but an attempt to inﬂict as many casualties and as much destruction as possible in the hope of provoking a response massive enough to trigger a general uprising by the Islamic community. ¶ Moreover, the types of high-technology that 4GW’s proponents envisioned terrorists using includes such Wunderwaffe as directed energy weapons and robotics, rather than the cell phones and internet that terrorists actually use today. 4GW theorists also failed to account for the fact that many 21st century wars, such as those that unfolded in Rwanda and the Sudan, would be characterized by wholesale butchery with “old-fashioned” weapons such as assault riﬂes and machetes wreaking a terrible toll in lives. Even in the socalled information age, the use of brute force remains an effective tactic in many parts of the world.¶ The theory’s proponents also speculated that the super-terrorists of the future might not have a “traditional” national base or identity, but rather a “non-national or transnational one, such as an ideology or a religion.”10 However, from an historical standpoint, this condition has been the norm rather than the exception. Indeed, it characterizes many, if not most, of the conventional conﬂicts of the past, such as World War II, which was fought along ideological lines and within a transnational framework of opposing global alliances, rather than a simple nation-state structure as is commonly supposed. While states were clearly advancing their own interests, they tended to do so by forming alliances along ideological lines. Nazism was, from its very outset, inimical to Western-style democracy and to Soviet-style socialism. So, even though democracy and socialism are ideologically incompatible, each saw Nazism as the greater threat, and formed a tentative alliance of sorts. To be sure, conventional forces and tactics predominated in this conﬂict, but unconventional means were clearly important as well. The Cold War is another example of a conﬂict fought along ideological lines; it followed in the wake of the defeat of Nazism, as the alliance between Western democracy and Soviet socialism ended and gave way to a subsequent realignment along ideological lines; this war was also fought within a transnational more than a national framework, though most of the violence occurred in peripheral wars or in covert operations. The Arab-Israeli wars and the Vietnam conﬂict, all of which took place within the larger context of the ideological struggle of the Cold War, offer still further examples: they were national struggles on one level, but on another level they served as the means in a larger ideological struggle¶ It is more than a little puzzling, therefore, that the architects of 4GW should have asserted that U.S. military capabilities are “designed to operate within a nation-state framework and have great difﬁculties outside of it.”11 As history shows, the U.S. military actually seems to have handled World War II and the Cold War, two relatively recent global conﬂicts, both of which required it to operate within transnational alliances, quite well. That is not to say that the American way of war or, more precisely, our way of battle, does not have room for improvement.12 Yet, important similarities too often go unnoticed by a facile dismissal of what are often portrayed as conventional conﬂicts. As with Germany and Japan after World War II, for instance, one-time failed states, such as Afghanistan, where terrorist strongholds have developed, still need political and economic reconstruction in order to eliminate, or at least reduce, the conditions that gave rise to inimical ideologies in the ﬁrst place.