# 1AC Same as Round 2

# 2AC

## T

### GSPEC 2AC

#### Cross-x checks – they couldve asked grounds

#### Counter-interpretation –

#### Judicial restriction means to reduce the scope of

Newman 8 (Pauline, Judge @ UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT, 545 F.3d 943; 2008 U.S. App. LEXIS 22479; 88 U.S.P.Q.2D (BNA) 1385; 2008-2 U.S. Tax Cas. (CCH) P50,621, IN RE BERNARD L. BILSKI and RAND A. WARSAW, lexis)

Id. at 315 (quoting U.S. Const., art. I, §8). The Court referred to the use of "any" in Section 101 ("Whoever invents or discovers any new and useful process . . . or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title"), and reiterated that the statutory language shows that Congress "plainly contemplated that the patent laws would be given wide scope." Id. at 308. The Court referred to the legislative intent to include within the scope of Section 101 "anything under the sun that is made by man," id. at 309 (citing S. Rep. 82-1979, at 5; H.R. Rep. 82-1923, at 6 (1952)), and stated that the unforeseeable future should not be inhibited by judicial restriction of the "broad general language" of Section 101: A rule that unanticipated inventions are without protection would conflict with the core concept of the patent law that anticipation undermines patentability. Mr. Justice Douglas reminded that the [\*981] inventions most benefiting mankind are those that push back the frontiers of chemistry, physics, and the like. Congress employed broad general language in [\*\*103] drafting §101 precisely because such inventions are often unforeseeable.

#### Aff is an example of a judicial restriction – we resitrict presidential war powers over detention policy – no reason we have to cite grounds

#### Infinitely regressive – there is no resolutional basis – it only says judicial restriction – no reason we have to specify – that’s unpredictable

#### No ground loss – structural disads linked to restrictions or plan topic area provide ground

#### Not a voting issue – if they win this it just means we should be forced to specify.

#### A2: Conditional

#### Plan isn’t conditional – we’ll always defend it gets implemented

#### A2: No Solvency

#### Doesn’t implicate solvency – plan solvency is based on review occurring, this still happens

## Terror

### Acquisition/Motivation

Group acquisition and motivation

#### Al qaeda is opportunistic – they have motivation and will aquire weapons through Syria – that’s Hoffman

#### Even if acquisition is unlikely they will jump at the chance – retaliation means you need to treat any risk as absolute

### A2: Alt cause (Drones, etc)

#### Alt causes are irrelevant – our evidence indicates that overturning indefinite detention is SUFFICIENT to spark judicial independence movements – its seen as changing the deference trend – that’s Martin and Reinhardt

### Court Stripping

#### No terminal impact…

#### Many barriers to Congressional roll-back

Shipan 97 (Charles R., Assistant Professor of Political Science – University of Iowa, Designing Judicial Review, p. 9)

In the final stage of the policy process, political actors may attempt to overcome court actions—for example, Congress may write a law that overturns a court decision. However, members of Congress will not want to rely on such actions as the only means of dealing with the courts. To begin with, Congress is not always successful in its attempts to overturn court decisions. Part of any lack of success undoubtedly stems from the inherent difficulties involved in passing legislation. For example, even when a majority in Congress prefers to overturn a court decision, this majority may be so hampered by institutional features of Congress that it is unable to achieve its goals (Marks 1988). Another contributing factor is that members of Congress often defer to judicial judgments. This norm of congressional deference to the courts is especially strong for the Judiciary Committee (Miller 1990, 1992). An additional factor is that most members of Congress are often just plain unaware of court decisions, especially if the decision was issued by a lower court (Katzmann 1988, 1992)

#### 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.

#### B. costs deter stripping

**Devins 6** (Neal, Professor of Law and Government – College of William & Mary,  May, 90 Minn. L. Rev. 1337, Lexis)
Indeed, even if the social conservative agenda becomes the dominant agenda in Congress and the White House, there is good reason to think that elected officials would steer away from jurisdiction-stripping measures. [119](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n119) First, median voters  [\*1359]  have historically backed judicial independence. For example, although most Americans are disappointed with individual Supreme Court decisions, there is a "reservoir of support" for the power of the Court to independently interpret the Constitution. [120](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n120) Consequently, even though some Supreme Court decisions trigger a backlash by those who disagree with the Court's rulings, the American people nonetheless support judicial review and an independent judiciary. [121](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n121) Indeed, even President George W. Bush and Senate majority leader Bill Frist backed "judicial independence" after the federal courts refused to challenge state court factfinding in the Terri Schiavo case. [122](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n122) Second, there is an additional cost to lawmakers who want to countermand the courts through coercive court-curbing measures. Specifically, powerful interest groups sometimes see an independent judiciary as a way to protect the legislative deals they make. [123](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n123) In particular, interest groups who invest in the legislative process by securing legislation that favors their preferences may be at odds with the current legislature or executive (who may prefer judicial interpretations that undermine the original intent of the law). Court-curbing measures "that impair the functioning of the judiciary" are therefore disfavored because they "impose costs on all who use the courts, including various politically effective groups and indeed the beneficiaries of whatever legislation the current legislature has enacted." [124](http://www.lexis.com/research/retrieve?_m=4f4be9901ca853c7bdcbd97bc82eda2f&docnum=1&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAB&_md5=9fc665c44d8df004f229f74a4b1ff081&focBudTerms=&focBudSel=all#n124)

## JI

### A2: no impact to disease

#### Disease pandemics will cause mass deaths – the black plague, ebola, new mutations could END CIVILIZATION – their evidence doesn’t account for new pathogens and biological agents

### A2: African wars don’t escalate

#### Wars will escalate – all of the superpowers have major stakes in Africa which will incentivize them to get involved

### A2: environment resilient

#### Make them read specific evidence – we’re not talking about one species dying off, the sites and boukongou evidence speak to destruction of the congo river basin – this is has more than half of the worlds wildlife and vegetable species – it’s the LEFT LUNG of the earth and its necessary for larger questions of biodiversity – their resiliency evidence speaks to smaller, natural die-offs

### Congo Brink Ev

#### Congo rainforests are on the brink now

CNN 8/28 (2013, Vava Tampa, Special to CNN, founding director of Save the Congo -a not-for-profit and non-political global campaigning organization, “Congo, beyond the conflict: Six reasons why it matters” http://www.cnn.com/2013/08/28/opinion/congo-beyond-the-conflict/index.html)

The Congo Basin rainforest, one of the natural wonders of the world, is sometimes described as one of the Earth's lungs -- the other being South America's Amazon. Home to 10,000 species of plants (of which 3,000 are found nowhere else), it features mesmerizing scenery, restless landscapes, waterfalls, a mosaic of savannahs, swamp forests and some of the most spectacular and endangered wildlife in the world. The forest plays a crucial role in regulating climate, both locally and globally, but recent industrial logging, resource extraction and proxy wars are threatening this fragile ecosystem. Kinshasa violin performance Bourdain travels in Congo As things stand, there are 20 million hectares of logging titles in Congo -- an area the size of Ghana. For more than half of Congo's population who rely on the forest for food, medicine, fresh water, shelter and customary tradition, this is humanitarian havoc in slow motion. For the global climate, it could be a catastrophe.

### A2: JI High

#### It’s low now – supreme court justice kagan says that there are currnelty BUMPS IN THE ROAD and that there is more to be done to establish an IJ – that’s radio free Europe – and failure to rule on detention is decreasing independence now – that’s McCormack

### A2: No Global Modeling

#### US is modeled globally – our CJA evidence says rulers are JUSTIFYING THEIR ABUSES by citing US detention policy – and we read evidence specific to latin America and Africa about modeling – threshold analysis – only evaluate regionally specific evidence

#### Correlational studies prove - US judicial independence is modeled globally

Goldbach, Brake and Katzenstein 13 (Toby, Benjamin, and Peter, Doctor of the Science of Law (J.S.D.) at Cornell University Law School and was the Rudolf B. Schlesinger Research Fellow for 2011-2012 + foreign affairs officer at the U.S. Department of State, Walter S. Carpenter, Jr. Professor of International Studies at Cornell University, "The Movement of U.S. Criminal and Administrative Law: Processes of Transplanting and Translating," 20 Ind. J. Global Leg. Stud. 141, lexis)

The transplanting of foreign laws by some countries, however, reveals a transplant bias, whereby importing state actors operate with an unthinking receptivity to foreign law because of social conditions such as the general prestige, linguistic accessibility, and the training and experience of local lawyers. n39 Many of these factors have helped the transnational movement of U.S. law. Academic writers typically are most susceptible to the sway of grand foreign theories, whereas those following legal precedents are sometimes more resistant. Judges borrowing foreign rules will carefully weigh the pros and cons, while academics are more likely to be swept away by the logic of an elegant or innovative argument. n40 Economic factors can also play an important role. Economic efficiency has proven to be a powerful engine driving the process of transplanting law in legal domains such as competition and estate law. n41¶ The process of transplanting law emphasizes domestic differences, especially between adversarial common law systems and their inquisitorial civil law counterparts. As David Sklansky observed, "if scholars of comparative law agree on anything, it is the hazards of legal [\*151] transplants," most especially between civil and common-law systems. n42 Thus, the origin of a transplanted rule is one condition that can affect the process of legal transplanting. In general, transplants occur more readily within, rather than across, legal families. n43 The institutionalization of different legal cultures accounts for the persistence of legal families over time. n44 The closer states' legal systems are in terms of cost structure and constitutive rules, the more likely those states are to look to each other for legal innovations. n45 For example, though they lack an analysis of causal mechanisms specifying how transplants occur, correlational studies have shown a persistent relationship between legal family and observable phenomena such as financial development, n46 government ownership of banks, n47 burden of entry regulations, n48 incidence of military conscription, n49 government [\*152] ownership of the media, n50 formalism of judicial procedures, n51 and judicial independence. n52

### A2: China [Long] \*\*

#### This argument is a joke – your evidence is making claims that judicial independence movements cannot –begin- in china unless the CCP has already collapsed – it does NOT say that attempts at independence will CAUSE CCP collapse

#### No regime collapse.

**Platt ’12** (8/30 [STEPHEN PLATT & JEFFREY WASSERSTROM - Stephen Platt is the author of Autumn in the Heavenly Kingdom: China, the West, and the Epic Story of the Taiping Civil War. Jeffrey Wasserstrom is the author of China in the 21st Century and co-editor of Chinese Characters: Profiles of Fast-Changing Lives in a Fast-Changing Land. AUG 30 2012, 12:14 PM ET http://www.theatlantic.com/international/archive/2012/08/chinas-long-history-of-defying-the-doomsayers/261783/]

Still, not all of the CCP's efforts have been so defensive in nature. The Party has also made some positive changes, such as loosening controls on private life, helping boost living standards, and raising China's global influence, all of which have likely made it easier for Chinese citizens to tolerate or even support the Party's rule. The Party is talented at adapting incrementally, changing course a bit at a time. This can work for a while, even a long while, but that doesn't mean it can go on indefinitely. Both of the CCP's two most recent predecessors, struggling to maintain their legitimacy, eventually attempted their own complete reinvention. In the early 1900s, the Qing dynasty, in a failed bid to outrun the forces of revolution from within, abolished the Confucian examinations that legitimized it for more than two centuries and tried to reinvent itself as a constitutional monarchy. Taiwan, under Nationalist control from the late 1940s on, began its transformation into a thriving democracy under the watch of Chiang Kai-shek's son. Today, a Party president rules Taiwan not as a dictator but as an elected official. China's military is presently powerful enough and its diplomacy stable enough that the Communist Party faces no realistic threats from outside. Internally, its control over society is effective enough that, while unrest and discontent may be widespread, there are neither well-organized opposition parties nor rebellious armies that might seriously challenge the central government. For now, the Communist Party finds itself in a position that would be enviable to the officials of the late Qing. It could, if it wished, reinvent itself with a new legitimizing narrative, or even open the way to a new multiparty political structure as the Nationalists did in Taiwan, likely without fear of being overthrown in the process. If it does not make such changes, however, then it seems likely that the corruption and internal dissent of today will continue to mount. If that happens, then it is likely only a matter of time until that dissent and corruption reach a critical mass necessary to end the regime. But, as the world learned from the late Lord Macartney's failed prediction, those processes can take many generations longer than we might expect. Even if the Communist Party's legitimacy does weaken enough for the party to fall, it might not be in any of our lifetimes.

#### Even if, no escalation

Copley 7 – Award-winning historian and global strategist; founding Director of Future Directions International Pty. Ltd. and its Acting Chief Executive; Editor, GIS

#### (Gregory, 3/30. "Avoiding an Economic Pandemic: The Critical Global Significance of the Health of the PRC Economy," Defense & Foreign Affairs Special Analysis, Lexis.)

There is scope or flexibility for the PRC to somewhat transform its energy demands in the global marketplace. Amb. Freeman makes the point that domestic and international pressures seem likely to cause the PRC to improve its energy efficiency through internal innovation. He noted that despite the PRC's "very low rates of per capita energy consumption (which are only about 14 percent of US per capita consumption), China consumes between seven and 111/2 times more energy than Japan to produce one dollar of gross domestic product (GDP), and it's about 41/2 times less efficient than is the United States". And many of the innovations which the PRC is exploring are in the area of clean coal and nuclear energy. It seems clear that it is in the interests of the international community to help the PRC stabilize its energy situation, and to improve energy usage efficiency, in order to minimize risks to the global security framework, within the framework of competing energy needs. The only alternative, from the standpoint of external powers, to assisting in the process of stabilizing the PRC's energy supply, currency credibility, and population unrest is to plan for the containment of any implosion of political stability within the PRC should its transition during the next two decades to entrenched power status be interrupted.

#### No lashout- CCP would fear retaliation AND even if the order was issued the PLA would not obey

**Gilley 5** (Bruce, Professor of International Affairs @ New School University and Former Contributing Editor @ the Far Eastern Economic Review, “China’s Democratic Future,” mss)

More ominous as a piece of "last ditchism" would be an attack on Taiwan. U.S. officials and many overseas democrats believe that there is a significant chance of an attack on Taiwan if the CCP is embattled at home. Indeed, China's strategic journals make frequent reference to this contingency: "The need for military preparations against Taiwan is all the more pressing in light of China's growing social tensions and unstable factors which some people, including the U.S. might take advantage of under the flag of 'humanism' to paralyze the Chinese government," one wrote. Such a move would allow the government to impose martial law on the country as part of war preparations, making the crushing of protest easier. It would also offer the possibility, if successful, of CCP survival through enhanced nationalist legitimacy. Yet the risks, even to a dying regime, may be too high. An unprovoked attack on Taiwan would almost certainly bring the U.S. and its allies to the island's rescue. Those forces would not stop at Taiwan but might march on Beijing and oust the CCP, or attempt to do so through stiff sanctions, calling it a threat to regional and world peace. Such an attack might also face the opposition of the peoples of Fujian, who would be expected to provide logistical support and possibly bear the worst burdens of war. They, like much of coastal China, look to Taiwan for investment and culture and have a close affinity with the island. As a result, there are doubts about whether such a plan could be put into action. A failed war would prompt a Taiwan declaration of independence and a further backlash against the CCP at home, just as the May Fourth students of 1919 berated the Republican government for weakness in the face of foreign powers. Failed wars brought down authoritarian regimes in Greece and Portugal in 1974 and in Argentina in 1983. Even if CCP leaders wanted war, it is unlikely that the PLA would oblige. Top officers would see the disastrous implications of attacking Taiwan. Military caution would also guard against the even wilder scenario of the use of nuclear weapons against Japan or the U. S. At the height of the Tiananmen protests it appears there was consideration given to the use of nuclear weapons in case the battle to suppress the protestors drew in outside Countries .41 But even then, the threats did not appear to gain even minimal support. In an atmosphere in which the military is thinking about its future, the resort to nuclear confrontation would not make sense.

## Off

### Executive CP – 2AC

#### Perm – do both

#### No solvency – this isn’t an XO, it says the president should declare it

#### Court action is key –

#### Interrogation techniques benefit from judicial oversight – it’s a strategic benefit to the war on terror – that’s Hathaway

#### AND *Judicial* restrictions are key to effective counterterrorism

Guiora 11 (Amos, Prof of Law @ Univ. of Utah, "Indeﬁnite Detention of Megaterrorists: A Road We Must Not Travel," April, http://johnjayresearch.org/cje/files/2012/10/GUIORA-out.pdf)

Offering modifications or alternatives, such as indefinite detention, to¶ replace existing legal structures\*in¶ whole or in part\*raises a fundamental question: have sufficient controls been created? Although creating¶ alternatives, even if justifiable, is¶ risky, any expansion of executive¶

power\*the net result of Scheid’s¶ proposal\*must be tempered by¶ both independent judicial review¶ and robust congressional oversight.¶ Restraining the executive branch is¶ essential, especially when alternatives are created.¶ When Scheid asked if I would¶ consider commenting on his paper¶ (before I had a chance to read it) I instinctively agreed. My reasons were¶ simple. I first met Scheid when he¶ graciously attended a public lecture I¶ gave at the William Mitchell Law¶ School (hosted by my good friend¶ and colleague, John Radson). His questions were particularly engaging and¶ our subsequent communications\*including Scheid’s insightful and critical¶ blog postings in response to my¶ writings\*have invariably been interesting and thought-provoking.¶ When Scheid explained the article’s thesis I was intrigued, largely¶ because of my own efforts to grapple¶ with how to create alternative legal¶ infrastructures relevant to the post 9/¶ 11 world. As a consistent advocate¶ for the creation of a National Security¶ Court,1¶ I have probed the limits of¶ many of the issues Scheid addresses.¶ Friends and colleagues have criticized various aspects of my proposal;¶ similarly, members of the U.S. Senate¶ Judiciary Committee were skeptical¶ of my proposal when I testified¶ before the committee.¶ Precisely for the above reasons, I¶ feel well suited to respond to Scheid’s¶ proposal. Perhaps I have an insider’s¶ perspective of proposing an alternative and then responding to the inevitable criticism. Experience has¶ taught me that any alternative that¶ involves an expansion of executive¶ powers is only as good as the limits¶ it also imposes.¶ Scheid’s proposal does not conjure up images of President Bush’s¶ ‘‘by all means necessary’’ approach¶ to counterterrorism because it wisely¶ includes independent judicial review¶ in accordance with constitutional¶ principles of checks and balances¶ and separation of powers. The key¶ question, however, is: ‘‘how much¶ judicial review’’? Not enough to ensure effective external restraints on¶ the executive. Although Scheid¶ clearly incorporates some control¶ measures, the overall sense is of¶ insufficient restraint.¶ To push the issue: we must ask¶ whether there are controls, whether¶ they are sufficiently defined, and¶ whether they can be implemented.¶ Simply put, suggesting an alternative¶ alone is not sufficient, particularly¶ when its intended purpose is to¶ create an infrastructure specifically¶ designed to limit rights rather than¶ protect them.

#### only court action solves the independent judiciary advantage – turns the counterplan – deference sets a model which causes global instability – that’s Mirow and CJA – and indefinite detention policy is uniquely important – that’s McCormack

#### 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.

#### The executive has openly defended a right to indefinite detention *without judicial review* – review is critical to check dictatorialexecutive power – that’s Martin

#### 6. Perm do the CP – it’s an example of the president complying with judicial oversight

#### 7. Counterplan is a voter

#### A) Topic education – shifts the focus of the debate from whether the president should have the authority and to whether the president should be the person to stop it – causes stale debate about process

#### B) Fairness- steals the entirety off the aff and makes it impossible to generate offense

#### C) Object fiat – fiats the object of the resolution which makes clash impossible- no way to have a stable source of aff offense

#### 8. Court action is critical to ensure rights and prevent executive tyranny

Simpson 13 (Mike Simpson, May 16, writer and teacher on topics related to government and politics, Tutor2u, online learning resource of the year via BETT, the world’s leading educational show, “Revision Update: US / UK Politics: Exemplar Answer: A Bill of Rights?” <http://www.tutor2u.net/blog/index.php/politics/print/revision-update-us-uk-politics-exemplar-answer-a-bill-of-rights>)

The concept of “paper rights” would suggest that rights exist on paper (in a bill of rights) but that they are not enforced in practice. This would suggest that the judiciary need to play an active role in the defence of rights and liberties. The role of an independent judiciary in enforcing the “rule of law” allows them to stand up to the arbitrary exercise of power by executives and legislatures which might see the tyranny of the majority override minority and individual rights. The record of the Supreme Court in this regard might be regarded as inadequate in this regard. The Roberts Court has failed to protect rights as outlined in the Bill of Rights. The composition of the court has a conservative bias. The Bush appointment of Alito was critical in this regard as the departure of Justice O’Connor allowed GW Bush to replace a centrist with a conservative. The above ruling and others such as Florence v Board of Chosen Freeholders 2012 allowing strip searches for any offence contrary to privacy rights established under the fourth amendment; Wal-mart v Dukes 2011 which prevented a case to prove sex discrimination contrary to equal protection 14th amendment rights; and Baze v Rees which allowed lethal injection contrary to 8th amendment rights which prevent “cruel and unusual” punishments. The Supreme Court has not ruled on the constitutionality of the Patriot Act. In Russia, the courts upheld the decision to punish the members of “Pussy Riot” which illustrates the need for a judiciary to be independent in order to enforce a bill of rights.

#### 9. Perm do the counterplan then the plan – shields the link to the net benefit because it looks like the court enforcing the XO

### Condo

#### Conditionality is a voter-

#### A – it results in argument irresponsibility because it encourages contradictory positions

#### B – creates time and strat skews by making the neg a moving target

#### no cost options in the 1nc make the 2ac impossible- one condo advocacy/ dispo solves your offense

#### Uniquely worse with multiple worlds – forces us into strategic double binds and tradeoffs

### Deference DA

#### Syria non-uniques the DA

Beecher 13 (9/3, William, Pulitzer Prize-winning former Washington correspondent for the Boston Globe, WSJ, NYT. Served as an Assistant Secretary of Defense, “Obama, the Cowardly Lion”, http://www.worldpolicy.org/blog/2013/09/03/obama-cowardly-lion)

It’s one thing to be a reluctant warrior. Given President Obama’s natural instincts and the American public’s war-weariness, that’s understandable under the circumstances. But, after checking with Congressional leadership in both parties, and being told there may well not be sufficient support for military action against the Syrian government’s horrific use of nerve gas, and then going ahead and daring Congress to take the Commander-in-Chief’s war powers out of his hands, that’s not leadership. That’s sophistry. President Barack Obama, in withholding military action at the eleventh hour and shocking his own closest aides in the process, is risking telling the American body politic and an amazed world of friend and foe, that he does not have the inner strength to be a leader in crisis. He gives a new meaning to the expression “red line.” If you dare cross it, who knows what might befall you? If anything. Putting aside the reaction at home for the moment, how do you think the ayatollahs in Iran will react to his repeated threats not to allow Tehran to possess nuclear weapons? How will Vladimir Putin react to the warnings that Obama will make Russia pay a price for harboring Edward Snowden and not cooperating in US efforts in Syria and Iran? How will the leaders of France, who deployed warships alongside those of the U.S. navy offshore Syria, react to the appearance that Obama has lost his courage? In point of fact, it was shaping up as merely a military slap on Bashar Assad’s wrist – in the President’s words, “a shot across the bow” not aimed at weakening his hold on power. How will Israeli planners, who wanted to believe that Obama was not bluffing when he warned Iran that “all options” are on the table if it proceeds to build nuclear weapons, react? Will the Israelis, who have existential worries, decide to go it alone—and soon? Is this how the Leader of the Free World exercises his leadership? Or, is this the personification of the cowardly lion in the Wizard of Oz?

#### Their Hudson evidence is 1) hella old and 2) about courts not having expterise – that’s wrong

#### Court expertise is sufficient—their link is blown out of proportion [highlight this less]

Knowles 9 [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

A common justification for deference is that the President possesses superior competence due to expertise, information gathering, and political savvy in foreign affairs. These conclusions flow from the realist tenet that the external context is fundamentally distinct from the domestic context. The domestic realm is hierarchical and legal; the outside world is anarchical and political. The international realm is thus far more complex and fluid than the domestic realm. The executive is a political branch, popularly-elected and far more attuned to politics than are the courts. n258 Judges are, for the most part, generalists who possess no special expertise in foreign affairs. n259 Courts can only receive the information presented to them and cannot look beyond the record. n260 The President has a vast foreign relations bureaucracy to obtain and process information from around the world. Executive agencies such as the State Department and the military better understand the nature of foreign countries - their institutions and culture - and can predict responses in ways that courts cannot. n261 In the context of the political question doctrine, this rationale often appears when courts conclude that an issue lacks "judicially discoverable and manageable standards." n262 A stronger, related rationale is that the political branches are better suited for tracking dynamic and evolving norms in the anarchic international environment. n263 The meaning of international law changes over time and nations do not agree today on its meaning. Moreover, the relationships among nations in many instances will be governed by informal norms that do not correspond to international law. n264 In addition, many foreign affairs provisions in the Constitution had fixed meanings under international law in the Eighteenth Century - what it meant, for example, to "declare war" or to issue "letters of marquee and [\*129] reprisal" - but subsequent practice has substantially altered their meaning or rendered them irrelevant. n265 Courts are not adept at tracking these shifts. As many critics have observed, the "lack of judicially-manageable standards" argument is weak. Courts create rules to govern disputes regarding vague constitutional provisions such as the Due Process Clause. n266 Furthermore, if courts were to adjudicate foreign affairs disputes more often, they would have the opportunity to create clearer standards, making them more manageable. n267 Thus the lack-of-standards argument does not alone explain why foreign affairs should be off-limits. The argument regarding courts' limited access to information and lack of expertise seem persuasive at first, but it loses its force upon deeper inspection. For instance, expertise is also a rationale for Chevron deference in the domestic context. n268 Generalist judges handle cases involving highly complex and obscure non-foreign affairs issues while giving appropriate deference to interpretations of agencies charged with administering statutory schemes. n269 What makes foreign affairs issues so different that they justify even greater deference? n270 Perhaps foreign affairs issues are just an order of magnitude more complex than even the most complex domestic issues. However, this line of thinking very quickly leads to boundary problems. Economic globalization, rapid global information flow, and increased transborder movement have "radically increased the number of cases that directly implicate foreign relations" and have made foreign parties and conduct, as well as international law questions, increasingly [\*130] common in U.S. litigation. n271 If courts were to cabin off all matters touching on foreign relations as beyond their expertise, it would result in an ever-increasing abdication of their role. The political norm-tracking argument reveals the second major problem with using anarchy as a basis for special deference: it fails to account for the degree of deference that should be afforded to the President. Under the anarchy-based argument, the meaning of treaties and other concepts in foreign affairs depend entirely on politics and power dynamics, which the President is especially competent (and the courts especially incompetent) in tracking. If this is so, the courts must give total deference to the executive branch. If one does not wish to take the position that the courts should butt out altogether in foreign affairs, there must be other reasons for the courts' involvement. Even proponents of special deference generally acknowledge that some of the courts' strengths lie in protecting individual rights and "democracy-forcing." n272 But what is the correct balance to strike between competing functional goals of the separation of powers?

#### Not spending any more time here, they read impact defense

### Prez Powers DA – 2AC

#### 1 – case outweighs – the judicial independence advantage is five minutes of impact turns to this in the 1AC.

#### 1. No link – plan only affects one issue that is not central to Obama’s presidential powers – make them read a card that says the plan prevents Obama from using executive power in other instances

#### Oversight doesn’t determine flexibility---tech, elusive enemies and personnel outweigh

Stephen Holmes 9, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

Even if the promoters of unfettered executive power were justified in associating legal rules with ineffectiveness during emergencies, their single-minded obsession with circumventing America's allegedly "super-legalistic culture" n33 would need explaining. Let us stipulate, for the sake of argument, that civil liberties, due process, treaty obligations, and constitutional checks and balances make national-security crises somewhat harder to manage. If so, they would still rank quite low among the many factors that render the terrorist threat a serious one. None of them rivals in importance the extraordinary vulnerabilities created by technological advances, especially the proliferation of compact weapons of extraordinary destructiveness, in the context of globalized communication, transportation, and banking. None of them compares to a shadowy, dispersed, and elusive enemy that cannot be effectively deterred. And none of them is as constraining as the scarcity of linguistically and culturally knowledgeable personnel and other vital national-security assets, including satellite coverage of battle zones, which the government must allocate in some rational way in response to an obscure, evolving, multidimensional, and basically immeasurable threat.¶ The curious belief that laws written for normal times are especially important obstacles to defeating the terrorist enemy is based less on evidence and argument than on a hydraulic reading of the liberty-security relationship. One particular implication of the hydraulic model probably explains the psychological appeal of a metaphor that is patently inadequate descriptively: if the main thing preventing us from defeating the enemy is "too much law," then the pathway to national security is easy to find; all we need to do is to discard [\*318] the quaint legalisms that needlessly tie the executive's hands. That this comforting inference is the fruit of wishful thinking is the least that might be said.

#### Judicial Independence outweighs – 1ac had six scenarios -

#### It’s modeled globally – that’s CJA – and key to stability in Latin America – that’s Cooper – this is the only mechanism for solving disease and escalatory war –

#### And it’s key to stability in Africa – this is key to prevent global economic collapse and congo forest destruction that’s Sites and Business Day

#### 3. Plan allows for better executive decision making

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

The psychology of accountability further suggests that opponents of deference are correct to push for more rigorous judicial review. Psychologists describe the phenomenon of accountability as the expectation that one may have to justify one's actions as sufficiently compelling or face negative consequences. Research shows that people who know they will be accountable reach better-reasoned decisions and avoid many of the problems that lead to skewed risk assessment. **Judicial review**, with its requirement that officials explain and justify their infringement of civil liberties, **can serve as a mechanism of accountability**, **thus improving executive branch decision making in times of crisis**. Furthermore, the contextual nature of civil liberties cases suggests that judicial review may be a necessary aspect of executive accountability.

#### 4. The president will do whatever he wants anyway- post-Hamdan Bush proves

#### No internal link - in cases of extreme threats to national security the prez has the ability to make limited exceptions which is probably sufficient to solve

#### -- No escalation

Bush and O’Hanlon 7 (Richard and Michael, Senior Fellows – Brookings Institution, “U.S. Grapples With China’s Rise, Taiwan”, The Daily Yomiuri (Tokyo), 5-3, Lexis)

But most of the issues and frictions that accompany China's rise can be managed. The good news is that China and the United States, not to mention other key regional players like Japan, now have politicians and bureaucracies that are relatively good at preventing serious problems from becoming grounds for war. China will want to flex its military muscle more in the future, but it also wants economic prosperity for the political stability that comes with it. In addition, the United States and its regional partners know how to maintain open dialogue with Beijing while also sustaining vigorous defense alliances. China has enough reason to worry about nuclear weapons and global instability that it will not be totally oblivious to our concerns about proliferating countries such as Iran and North Korea. Conflict with the littoral nations of Japan, the Philippines or Vietnam over disputed seabed resources (like oil in the East China Sea or small islets in the South China Sea) is highly unlikely.

#### 5. Fisa thumps

**WSJ 13**  – Wall Street Journal, “The Absent Commander in Chief”, 6/16/13 <http://online.wsj.com/article/SB10001424127887324188604578545233232040760.html>

Even an effort by Mr. Obama to lead from behind would be better than this abdication. The President's mistake seems to be a combination of moral afflatus—how could anyone possibly imagine that he would abuse government power?—and treating the current furor as a law school seminar. The political danger is a lot greater than that. A real and growing risk is that Congress will move in a way that limits the war powers of the Commander in Chief and endangers national security. To take one example, support seems to be growing for Senate legislation from Democrats Ron Wyden and Jeff Merkley of Oregon and Republican Mike Lee of Utah that would require the declassification of certain legal opinions from the oversight court under the Foreign Intelligence Surveillance Act, or FISA. This infringes on executive power because the President has traditionally defined what is secret, especially in times of war.

#### 6. Limits on prez powers solve global nuclear war

Sloane 08

[Robert, Associate Professor of Law, Boston University School of Law, THE SCOPE OF EXECUTIVE POWER IN THE TWENTYFIRST CENTURY: AN INTRODUCTION, 2008, <http://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/SLOANE.pdf>]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say – with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in preventive wars of self-defense.57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as “rogue states,” such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan.59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a **rogue regime asserting a right to engage in preventive war;** **the deterioration of international human rights norms against practices like torture**, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but **the practical ability of future Presidents to exercise that power** both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### 7. Executive power kills multilat

Posner & Abebe 11 -- Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School (Eric A. & Daniel, 2011, "The Flaws of Foreign Affairs Legalism," Virgina Journal of International Law 51:507, http://www.ericposner.com/THE%20FLAWS%20OF%20FOREIGN%20AFFAIRS%20LEGALISM.pdf)

For example, one of the authors and Cass Sunstein proposed recently that the Chevron deference doctrine should be extended to executive ac- tions touching on foreign affairs. 11 In their criticism of this proposal, Derek Jinks and Neil Katyal display the characteristic legalist suspicion of the executive. 12 They argue that increased judicial deference to exec- utive decision-making will have **negative consequences for international law:** The United Nations, whatever its limitations, now provides a highly legitimated institutional vehicle for global cooperation in an astonishingly wide array of substantive domains — including national security and human rights. International human rights and humanitarian law provide a widely accepted normative framework that defines with increasing precision the constitu- tional principles of the international order. These developments, and many others like them, provide an institutional structure by which, and a normative framework within which, **effective** and principled **international cooperation is possible**. Posner and Sun- stein would set that project back when the United States, and the world, need it the most. 13 Jinks and Katyal believe that deference to the executive in foreign af- fairs harms international cooperation because the **executive is hostile to international law and cooperation**, whereas **the judiciary promotes inter- national law**. 14 Why would the executive be hostile to international law and the judi- ciary favorable to it? Jinks and Katyal’s main argument is that the exec- utive cares about the short term, looking only to the next election. Con- versely, the judiciary, because it enjoys lifetime tenure, takes the longer view, 15 which is one that recognizes the importance of international law for American security and prosperity. The normative implication of the argument is straightforward. Be- cause the judiciary supports international law and the executive rejects it, and because international law is good and necessary, power should be transferred from the executive to the courts. Courts should derive their power either from an interpretation of the Constitution that emphasizes limited executive power and robust judicial review, or from statutes that regulate foreign relations, which Congress should enact. 16 This is the es- sence of foreign affairs legalism.

#### Only multilateral cooperation prevents great power wars that make extinction inevitable.

**Dyer**, 12/30/**2004** (Gwynne – former senior lecturer in war studies at the Royal Military Academy Sandhurt, The End of War, The Toronto Star, p. lexis)

The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation. Add in the huge impending shifts in the great-power system as China and India grow to rival the United States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a **global nuclear war**, but the potential certainly exists for a major die-back of human population. We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on **preserving and extending the multilateral system** that we have been building since the end of World War II. The rising powers must be absorbed into a system that **emphasizes co-operation and makes room for them**, rather than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and **everybody loses**.

### Obama Cred Add On [Taiwan]

#### Detention policies hurt Obama’s credibility internationally

NYT 11 (New York Times, December 15, “Politics Over Principle” http://www.nytimes.com/2011/12/16/opinion/politics-over-principle.html?\_r=1&)

The measures, contained in the annual military budget bill, will strip the F.B.I., federal prosecutors and federal courts of all or most of their power to arrest and prosecute terrorists and hand it off to the military, which has made clear that it doesn’t want the job. The legislation could also give future presidents the authority to throw American citizens into prison for life without charges or a trial. The bill, championed by Republicans in the House and Senate, was attached to the military budget bill to make it harder for Mr. Obama to veto it. Nearly every top American official with knowledge and experience spoke out against the provisions, including the attorney general, the defense secretary, the chief of the F.B.I., the secretary of state, and the leaders of intelligence agencies. And, for weeks, the White House vowed that Mr. Obama would veto the military budget if the provisions were left in. On Wednesday, the White House reversed field, declaring that the bill had been improved enough for the president to sign it now that it had passed the Senate. This is a complete political cave-in, one that reinforces the impression **of a fumbling presidency**. To start with, this bill was utterly unnecessary. Civilian prosecutors and federal courts have jailed hundreds of convicted terrorists, while the tribunals have convicted a half-dozen. And the modifications are nowhere near enough. Mr. Obama, his spokesman said, is prepared to sign this law because it allows the executive to grant a waiver for a particular prisoner to be brought to trial in a civilian court. But the legislation’s ban on spending any money for civilian trials for any accused terrorist would make that waiver largely meaningless. The bill has so many other objectionable aspects that we can’t go into them all. Among the worst: It leaves open the possibility of subjecting American citizens to military detention and trial by a military court. It will make it impossible to shut the prison in Guantánamo Bay, Cuba. And it includes an unneeded expansion of the authorization for the use of military force in Afghanistan to include indefinite detention of anyone suspected of being a member of Al Qaeda or an amorphous group of “associated forces” that could cover just about anyone arrested anywhere in the world. There is no doubt. This bill will make it harder to fight terrorism and do more harm to the country’s international reputation. The White House said that if implementing it jeopardizes the rule of law, it expects Congress to work “quickly and tirelessly” to undo the damage. The White House will have to make that happen. After it abdicated its responsibility this week, we’re not convinced it will.

#### Causes Taiwan invasion

**Hanson 9** (Victor Davis, Senior Fellow in Classics and Military History – Hoover Institution, “Change, Weakness, Disaster, Obama: Answers from Victor Davis Hanson,” Pajamas Media, 12-7, http://pajamasmedia.com/blog/change-weakness-disaster-obama-answers-from-victor-davis-hanson/)

BC: Are we currently sending a message of weakness to our foes and allies? Can anything good result from President Obama’s marked submissiveness before the world? Dr. Hanson: Obama is one bow and one apology away from a circus. The world can understand a kowtow gaffe to some Saudi royals, but not as part of a deliberate pattern. Ditto the mea culpas. Much of diplomacy rests on public perceptions, however trivial. We are now in a great waiting game, as regional hegemons, wishing to redraw the existing landscape — whether China, Venezuela, Iran, North Korea, Pakistan, Syria, etc. — are just waiting to see who’s going to be the first to try Obama — and whether Obama really will be as tenuous as they expect. If he slips once, it will be 1979 redux, when we saw the rise of radical Islam, the Iranian hostage mess, the communist inroads in Central America, the Soviet invasion of Afghanistan, etc. BC: With what country then — Venezuela, Russia, Iran, etc. — do you believe his global repositioning will cause the most damage? Dr. Hanson: I think all three. I would expect, in the next three years, Iran to get the bomb and begin to threaten ever so insidiously its Gulf neighborhood; Venezuela will probably cook up some scheme to do a punitive border raid into Colombia to apprise South America that U.S. friendship and values are liabilities; and Russia will continue its energy bullying of Eastern Europe, while insidiously pressuring autonomous former republics to get back in line with some sort of new Russian autocratic commonwealth. There’s an outside shot that North Korea might do something really stupid near the 38th parallel and China will ratchet up the pressure on Taiwan. India’s borders with both Pakistan and China will heat up. I think we got off the back of the tiger and now no one quite knows whom it will bite or when.

#### Extinction

Straits Times 2k (“No One Gains In War Over Taiwan”, 6-25, Lexis)

THE DOOMSDAY SCENARIO THE high-intensity scenario postulates a cross-strait war escalating into a full-scale war between the US and China. If Washington were to conclude that splitting China would better serve its national interests, then a full-scale war becomes unavoidable. Conflict on such a scale would embroil other countries far and near and -- horror of horrors -- raise the possibility of a nuclear war. Beijing has already told the US and Japan privately that it considers any country providing bases and logistics support to any US forces attacking China as belligerent parties open to its retaliation. In the region, this means South Korea, Japan, the Philippines and, to a lesser extent, Singapore. If China were to retaliate, east Asia will be set on fire. And the conflagration may not end there as opportunistic powers elsewhere may try to overturn the existing world order. With the US distracted, Russia may seek to redefine Europe's political landscape. The balance of power in the Middle East may be similarly upset by the likes of Iraq. In south Asia, hostilities between India and Pakistan, each armed with its own nuclear arsenal, could enter a new and dangerous phase. Will a full-scale Sino-US war lead to a nuclear war? According to General Matthew Ridgeway, commander of the US Eighth Army which fought against the Chinese in the Korean War, the US had at the time thought of using nuclear weapons against China to save the US from military defeat. In his book The Korean War, a personal account of the military and political aspects of the conflict and its implications on future US foreign policy, Gen Ridgeway said that US was confronted with two choices in Korea -- truce or a broadened war, which could have led to the use of nuclear weapons. If the US had to resort to nuclear weaponry to defeat China long before the latter acquired a similar capability, there is little hope of winning a war against China 50 years later, short of using nuclear weapons. The US estimates that China possesses about 20 nuclear warheads that can destroy major American cities. Beijing also seems prepared to go for the nuclear option. A Chinese military officer disclosed recently that Beijing was considering a review of its "non first use" principle regarding nuclear weapons. Major-General Pan Zhangqiang, president of the military-funded Institute for Strategic Studies, told a gathering at the Woodrow Wilson International Centre for Scholars in Washington that although the government still abided by that principle, there were strong pressures from the military to drop it. He said military leaders considered the use of nuclear weapons mandatory if the country risked dismemberment as a result of foreign intervention. Gen Ridgeway said that should that come to pass, we would see the destruction of civilisation. There would be no victors in such a war. While the prospect of a nuclear Armaggedon over Taiwan might seem inconceivable, it cannot be ruled out entirely, for China puts sovereignty above everything else.

### 2AC – Debt Ceiling

#### We access the economy better – Africa is key because of resources

#### Won’t pass

Sherman and Bresnahan 9/18/13 (Jake and John, Politico, "Shutdown sparring a warm-up for debt fight," http://dyn.politico.com/printstory.cfm?uuid=73BF536B-7628-4040-BF19-E247BD75BDC9)

Asked to explain how the debt ceiling will get resolved, House Republican aides say that Obama’s refusal to negotiate on the debt ceiling is “untenable.”¶ They might be right. Senate Democratic leadership isn’t even sure Obama’s position that there must be a clean debt ceiling bill can pass Reid’s chamber.¶ “I am hopeful that our Republican colleagues who have stepped up to the plate in the past, mainstream Republican colleagues, will realize this is playing with fire,” Sen. Chuck Schumer (D-N.Y.) said Wednesday when asked about the prospect of passing a clean debt ceiling. “But you can never underestimate the power of the hard right in the Republican Party these days.”¶ The Republican plan on the debt ceiling is skewed so far to the right that it’s likely to get little — if any — Democratic support. Boehner and his top lieutenants will have to come up with 217 GOP votes for their opening offer.¶ The plan appears designed for that. Just look at the conservative favorites in the mix for a debt ceiling package: construction of the Keystone XL pipeline, where Obama has demonstrated over the past few years he won’t get pushed around; tax reform, where Republicans refuse to increase revenue and Democrats refuse revenue neutrality; and a one-year delay of Obamacare, which the White House has flatly rejected.¶ If Boehner fails to get to 217 on what GOP aides call his “kitchen sink approach” to the debt ceiling hike, he will have to start over and seek Democratic backing. If successful, the battle shifts across the Capitol.¶ At that point, Reid and Senate Democratic leaders would face a difficult choice: Do they ignore the House GOP bill and raise the specter of catastrophic default on the $16.7 trillion U.S. debt? Or do they try to amend the bill, which means dealing with another round of votes on Obamacare and fiscal reform. Top Senate Democrats say they haven’t yet made up their minds about how to handle that.¶ And like the CR, Reid will need some Republicans to get any debt ceiling bill out of the Senate in the face of a likely Republican filibuster.¶ “I think it’s 50-50 on a government shutdown, but I can see a path how we avoid it,” said a senior Democratic aide. “It’s worse, maybe way worse, on the debt ceiling. And I don’t see any path there right now.”

#### Case outweighs –

#### You’ve read the link the wrong way – Obama wouldn’t get any blame for the plan – the court would rule against Obama in a case so congress would know he was against it

#### Courts shield

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

[CONTINUES]

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Plan’s announced in June

Ward 10 (Jake, “Bilski Decision Tomorrow (Thursday, June 17th)? Maybe?”, Anticipate This! (Patent and Trademark Law Blog), 6-17, http://anticipatethis.wordpress.com/2010/06/16/bilski-decision-tomorrow-thursday-june-17th-maybe/)

In mid-May until the end of June, the Supreme Court of the United States (SCOTUS) releases orders and opinions.  SCOTUS has yet to issue a number of decisions this term, however, and it is rapidly moving toward summer recess.  Most notable from a patent law perspective is that the decision in [Bilski v. Kappos](http://anticipatethis.wordpress.com/?s=bilski), which was argued in November 2009, has yet to be decided.

#### He won’t spend PC – Obama pledged he wouldn’t negotiate.

#### PC low and fails for fiscal fights

Greg Sargent 9-12, September 12th, 2013, "The Morning Plum: Senate conservatives stick the knife in House GOP leaders," Washington Post, factiva

All of this underscores a basic fact about this fall's fiscal fights: Far and away the dominant factor shaping how they play out will be the divisions among Republicans. There's a great deal of chatter (see Senator Bob Corker for one of the most absurd examples yet) to the effect that Obama's mishandling of Syria has diminished his standing on Capitol Hill and will weaken him in coming fights. But those battles at bottom will be about whether the Republican Party can resolve its internal differences. Obama's "standing" with Republicans -- if it even could sink any lower -- is utterly irrelevant to that question.¶ The bottom line is that, when it comes to how aggressively to prosecute the war against Obamacare, internal GOP differences may be unbridgeable. Conservatives have adopted a deliberate strategy of deceiving untold numbers of base voters into believing Obamacare will be stopped outside normal electoral channels. Central to maintaining this fantasy is the idea that any Republican leader who breaks with this sacred mission can only be doing so because he or she is too weak and cowardly to endure the slings and arrows that persevering against the law must entail. GOP leaders, having themselves spent years feeding the base all sorts of lies and distortions about the law, are now desperately trying to inject a does of reality into the debate by pointing out that the defund-Obamacare crusade is, in political and practical terms alike, insane. But it may be too late. The time for injecting reality into the debate has long since passed.

#### Corcoran 11 evidence is terrible – who is this nimby backlash against and are they marching on the supreme court? Read a court link or a better DA

#### Fights now already effect markets – means it’s non-unique

#### Tea Party will hold debt ceiling hostage inevitably – enough to trigger the impact

Jones, 9-13-’13 (Sarah, “Another Obama Success That Republicans Can’t Handle As Deficit Shrinks to 5 Year Low” Politics USA, http://www.politicususa.com/2013/09/13/republicans-threaten-raise-debt-ceiling-deficit-smallest-years.html)

Republicans are threatening not to raise the debt ceiling unless funding for Obamacare is delayed. The thing is, the Tea Party was none-too-pleased with this debt ceiling appeasement because it was only a trick. You see, Republicans were going to crash the economy just to appease the Tea Party and conservative donors who want Obamacare destroyed. But Republicans knew that they could not destroy ObamaCare — thus, **they are going to destroy the economy just to save their own face**. Yes, even talking about not raising the debt ceiling creates instability and chaos, neither of which are good for the market. But the last time Republicans did this, it cost us an estimated 18.9 billion dollars. So their argument is that they are going to hold the debt ceiling hostage at a time when the deficit is at a five year low, because they lack the courage to explain to their base and their funders that the ObamaCare fight is over.

####  Debt ceiling doesn’t collapse the economy---empirics

Michael Tanner 11, National Review, “No Surrender on Debt Ceiling”, Jan 19, <http://www.nationalreview.com/articles/257433/no-surrender-debt-ceiling-michael-tanner>

Of course the Obama administration is already warning of Armageddon if Congress doesn’t raise the debt ceiling. Certainly it would be a shock to the economic system. The bond market could crash. The impact would be felt at home and abroad. But would it necessarily be worse than the alternative? While Congress has never before refused to raise the debt ceiling, it has in fact frequently taken its time about doing so. In 1985, for example, Congress waited nearly three months after the debt limit was reached before it authorized a permanent increase. In 1995, four and a half months passed between the time that the government hit its statutory limit and the time Congress acted. And in 2002, Congress delayed raising the debt ceiling for three months. It took three months to raise the debt limit back in 1985 as well. In none of those cases did the world end. More important, what will be the consequences if the U.S. government fails to reduce government spending? What happens if we raise the debt ceiling then continue merrily on our way spending more and running up ever more debt? Already Moody’s and Standard & Poor’s have warned that our credit rating might be reduced unless we get a handle on our national debt. We’ve heard a lot recently about the European debt crisis, but, as one senior Chinese banking official recently noted, in some ways the U.S. financial position is more perilous than Europe’s. “We should be clear in our minds that the fiscal situation in the United States is much worse than in Europe,” he recently told reporters. “In one or two years, when the European debt situation stabilizes, [the] attention of financial markets will definitely shift to the United States. At that time, U.S. Treasury bonds and the dollar will experience considerable declines.” Moreover, unless we do something, federal spending is on course to consume 43 percent of GDP by the middle of the century. Throw in state and local spending, and government at all levels will take 60 cents out of every dollar produced in this country. Our economy will not long survive government spending at those levels.

#### No link – Obama isn’t going to push actions that *limit* his powers

# 1AR

### Won’t Pass

#### 2ac card = extend

amacare and fiscal reform. Top Senate Democrats say they haven’t yet made up their minds about how to handle that.¶ And like the CR, Reid will need some Republicans to get any debt ceiling bill out of the Senate in the face of a likely Republican filibuster.¶ “I think it’s 50-50 on a government shutdown, but I can see a path how we avoid it,” said a senior Democratic aide. “It’s worse, maybe way worse, on the debt ceiling. And I don’t see any path there right now.”

#### Won’t pass---no compromise

Jim Kuhnhenn 9-15, September 15th, 2013, "Obama to use Lehman anniversary to cite progress," www.usatoday.com/story/money/business/2013/09/14/obama-lehman-anniversary/2813687/

Obama and Republicans are at a stalemate, however.¶ Obama has proposed some changes that would reduce spending on Social Security and Medicare, including an adjustment that would lower cost-of-living adjustments. But he has insisted on more tax revenue by closing what he says are loopholes for the rich, a step Republicans won't take.¶ The impasse has revived threats of a government shutdown after the current budget year ends Sept. 30 and, more economically damaging, a default if Congress can't agree to raise the debt ceiling later in October.¶ Some conservative Republicans say they will only extend current spending levels or increase the debt ceiling if Obama delays putting in place his health care law, a condition Obama has flatly rejected.¶ House Speaker John Boehner, R-Ohio, has tried to keep the focus on spending reductions, even as some on his right insist on defunding or delaying the health care law.¶ "This year the federal government will bring in more revenue than any year in the history of our government, and yet we will still have nearly a $700 billion budget deficit," he said. "We have a spending problem. It must be addressed, period."

#### Won’t pass---Obamacare impasse

Denver Post 9-14, September 14th, 2013, "Political games on the debt ceiling and Obamacare," www.denverpost.com/politics/ci\_24082710/political-games-debt-ceiling-and-obamacare

In an ominous sign, Republican leaders in the U.S. House last week had to delay a vote to keep the government running through mid-December because they didn't have enough support. Once again, unfortunately, budget hard-liners in the GOP caucus are threatening to shut down the government in order to extract spending concessions.¶ In this case, however, the desired concession — defunding the Affordable Care Act, aka Obamacare — is beyond unlikely. It has essentially no chance of occurring without a major change in the political landscape in Washington.¶ So long as President Obama resides in the White House and the Senate is controlled by Democrats, Obamacare is not going away.¶ In contrast with some of their backbenchers, House Republican leaders had proposed — and hope to revive this week — a plan to continue funding the government through mid-December that includes the same level of sequester cuts. Meanwhile, they'd float a separate measure to defund Obamacare.¶ That second measure would, of course, be ignored in the Senate, but that is the sort of thing that happens in a divided Congress. Each side is often able to check the other.¶ It's not as if the GOP leadership is squishy on Obamacare. As The New York Times reported last week, those leaders have signaled that "Republicans would support an essential increase in the nation's debt limit in mid-October only if President Obama and Democrats agree to delay putting his health insurance program into full effect."

### Link

#### Obama can deflect controversy to the Court

Spann 00 (Giradeau, Professor of Law – Georgetown University, “The Constitution Under Clinton: A Critical Assessment: Writing Off Race”, Law and Contemporary Problems, Winter / Spring, 63 Law & Contemp. Prob. 467, Lexis)
What President Clinton has failed to do is to assert the full scope of his constitutional authority to formulate race relations policy for the nation that elected him to be its political leader. In so doing, he has aligned himself with past Presidents who were passive rather than active in the formulation of constitutional policy. It is often convenient for a President to deflect political controversy to the Supreme Court. A President can appease political allies with rhetoric that endorses more than the Court will allow, and can appease political opponents by acquiescing in Court-ordered results that fall short of presidential rhetoric. That is rational behavior for a politician - particularly in the contemporary environment of designer politics, where rhetorical labels seem to matter at least as much substantive outcomes. It is rational, but it may also be unconstitutional.

#### Shifts blame

Perine 8 (Katherine, Staff – CQ Politics, “Congress Unlikely to Try to Counter Supreme Court Detainee Ruling”, 6-12, http://www.cqpolitics.com/wmspage.cfm?docID=news-000002896528&cpage=2)

Thursday’s decision, from a Supreme Court dominated by Republican appointees, gives Democrats further cover against GOP sniping. “This is something that the court has decided, and very often the court gives political cover to Congress,” said Ross K. Baker, a Rutgers Universitiy political science professor. “You can simply point to a Supreme Court decision and say, ‘The devil made me do it.’”

#### Courts shield the link

Rosenberg 91 (Gerald, Assistant Professor of Political Science – University of Chicago, The Hollow Hope, p. 34-35)

Finally, court orders can simply provide a shield or cover for administrators fearful of political reaction. This is particularly helpful for elected officials who can implement required reforms and protest against them at the same time. This pattern is often seen in the school desegregation area. Writing in 1967, one author noted that “a court order is useful in that it leaves the official no choice and a perfect excuse” (Note 1967, 361). While the history of court-ordered desegregation unfortunately shows that officials often had many choices other than implementing court orders, a review of school desegregation cases did find that “many school boards pursue from the outset a course designed to shift the entire political burden of desegregation on the courts (Kalodner 1978, 3). This was also the case in the Alabama mental health litigation where “the mental health administrators wanted [Judgel Johnson to take all the political heat associated with specific orders while they enjoyed the benefits of his action” (Cooper 1988, 186). Thus, Condition IV: Courts may effectively produce significant social reform by providing leverage, or a shield, cover, or excuse, for persons crucial to implementation who are *willing to act.*