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#### The court will strike down aggregate contribution limits to political parties now – it’ll be close

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For almost forty years, since Buckley v. Valeo in 1976, campaign finance law has been based on the distinction between contribution limits and expenditure limits. In Buckley, the Court held that contribution limits – restrictions on the amount that a person gives to a candidate or a committee – are generally constitutional. But expenditure limits – restrictions on what a person spends overall – are unconstitutional. Citizens United v. Federal Elections Commission in 2010 applied this distinction and held that limits on independent expenditures by corporations violate the First Amendment.¶ McCutcheon v. Federal Election Commission provides the Supreme Court with an occasion to reconsider this distinction. The issue in McCutcheon is whether aggregate limits on contributions are constitutional. Specifically, the plaintiffs are challenging the Bipartisan Campaign Reform Act’s $74,600 two-year ceiling on contributions to non-candidate committees and the $48,600 two-year ceiling on donations to candidate organizations.¶ Options: The Court could say . . .¶ The Court certainly could rule on this, even declaring it unconstitutional, without calling into question the constitutionality of all contribution limits. In fact, in Randall v. Sorrell (2006), the Court found Vermont’s limits on contributions to be so restrictive as to violate the First Amendment without reconsidering the basic distinction between limits on contributions and limits on expenditures. Vermont law restricted contributions so that the amount that any single individual could contribute to the campaign of a candidate for state office during a “two-year general election cycle” was $400 for governor, lieutenant governor, and other statewide offices; $300 for state senator; and $200 for state representative. The Court noted that the contribution limits in the Vermont law were lower than those upheld in Buckley or in any other Supreme Court decision, that they were the lowest in the country, and that they were not indexed to keep pace with inflation.¶ The aggregate contribution limits being challenged in McCutcheon are much higher and the Court therefore could distinguish Randall, follow Buckley, and uphold them. Or the Court could strike them down, invalidating aggregate limits as a violation of the First Amendment, but without calling into question all contribution limits. Buckley was based, in part, on the view that large contributions to candidates risk corruption and the appearance of corruption. The Court explained that “[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined. . . . Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.’’¶ The Court in McCutcheon could say that aggregate limits on the amount that can be contributed do not help to prevent such corruption or appearance of corruption. The Court could say that aggregate limits on contributions are really much more akin to expenditure limits and therefore unconstitutional. The Court could say that the real purpose of aggregate limits is to equalize political influence, a justification for campaign finance laws that the Court expressly rejected in Citizens United. Or the Court could distinguish aggregate limits to candidate committees from those to non-candidate committees, such as political parties.¶ Five votes to reconsider Buckley?¶ Underlying McCutcheon, though, is the question of whether the five conservative Justices want to reconsider Buckley’s holding that contribution limits are generally constitutional. In assessing this, it is important to note that three of these Justices – Antonin Scalia, Anthony Kennedy, and Clarence Thomas – have already called for the distinction between contribution and expenditure limits to be overruled. In his separate opinion in Colorado Republican Federal Campaign Committee v. Federal Election Commission, Justice Thomas declared: “I would reject the framework established by Buckley v. Valeo. . . . Instead, I begin with the premise that there is no constitutionally significant difference between campaign contributions and expenditures: both forms of speech are central to the First Amendment.’’¶ In Nixon v. Shrink Missouri Government PAC (2000), the Supreme Court reaffirmed Buckley’s distinction between contributions and expenditures, but four Justices sharply disagreed. Three Justices – Kennedy, Scalia, and Thomas – expressly declared their desire to overrule Buckley’s approval of contribution limits. Justice Kennedy wrote a strong dissent in which he lamented that ‘‘[t]he Court’s decision has lasting consequences for political speech in the course of elections, the speech upon which democracy depends.’’ He accused the Court of being “almost indifferent’’ to freedom of speech and said that he would overrule Buckley. Justice Thomas, joined by Justice Scalia, wrote a lengthier dissent, which began by declaring: “In the process of ratifying Missouri’s sweeping repression of political speech, the Court today adopts the analytical fallacies of our flawed decision in Buckley v. Valeo….Under the guise of applying Buckley, the Court proceeds to weaken the already enfeebled constitutional protection that Buckley afforded campaign contributions. As I indicated [previously], our decision in Buckley was in error, and I would overrule it.”¶ Therefore, it is likely that Justices Scalia, Kennedy, and Thomas are votes to strike down the aggregate contribution limits in McCutcheon and more generally to find contribution limits to violate the First Amendment. The crucial question in McCutcheon will be whether Chief Justice John Roberts and Justice Samuel Alito will join them and how far they are willing to go in reconsidering the distinction between contributions and expenditures.¶ The Chief Justice and Justice Alito were with Justices Scalia, Kennedy, and Thomas in Citizens United in its strong endorsement of the view that spending of money in election campaigns is political speech protected by the First Amendment and in invalidating limits on independent corporate political expenditures. Roberts and Alito also were with Scalia, Kennedy, and Thomas in Davis v. Federal Election Commission (2008), in declaring unconstitutional the “millionaire’s provision” of the Bipartisan Campaign Finance Reform Act unconstitutional. This provision increased contribution limits for opponents of a candidate who spent more than $350,000 of his or her personal funds. Most recently, in Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett (2011), these five Justices were in the majority to declare unconstitutional a public funding system that increased the contribution and spending limits for those not taking public money based on the amount spent by opponents.¶ By contrast, Justices Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor strongly dissented in Citizens United, and Justice Elena Kagan, who as Solicitor General argued for the constitutionality of the law in Citizens United, wrote the dissent in Arizona Free Enterprise Club. They are obviously much more likely to uphold the challenged provisions in McCutcheon and to adhere to Buckley’s distinction between contributions and expenditures.¶ What seems absent on the current Court is any Justice who takes the position espoused by Justice John Paul Stevens, that there is no meaningful distinction between contribution and expenditure limits and that expenditure limits should be constitutional. This long has been my view. Elected officials can be influenced by who spends money on their behalf, just as they can be influenced by who directly contributes money to them. The perception of corruption might be generated by large expenditures for a candidate, just as it can be caused by large contributions. Moreover, I agree with Justice Stevens’s statement in his concurrence in Nixon v. Shrink that “[m]oney is property; it is not speech. . . . These property rights are not entitled to the same protection as the right to say what one pleases.’’¶ Prediction¶ Predicting Supreme Court decisions is always tempting and always dangerous. But for what it’s worth, my prediction is that the Court will vote five-four to strike down the aggregate contribution limits being challenged in McCutcheon and that it will do so without overruling the distinction between contributions and expenditures that is at the core of Buckley. When faced to confront the question in some future case, I fear that the Chief Justice and Justice Alito will join Justices Scalia, Kennedy, and Thomas in rejecting this distinction and they well might signal this in McCutcheon.

#### Capital key to strike down aggregate limits --- Citizens United proves

Gora 13 (Joel, professor of law at Brooklyn Law School, “Symposium: McCutcheon v. FEC and the fork in the road,” http://www.scotusblog.com/2013/08/symposium-mccutcheon-v-fec-and-the-fork-in-the-road/#more-168568)

The future of Buckley? Will the McCutcheon case disturb that Buckley equilibrium and call into question the continued validity of contribution limits in general, as some fear? The challengers say it is not necessary to reach that question because, even viewed as contribution limits under the Buckley framework (which they contend requires a much more probing analysis than commonly thought), the aggregate limits are clearly unconstitutional. The aggregate candidate limits are not required to prevent quid pro quo corruption because every separate contribution to a candidate is within the legal base limit. And the aggregate committee caps, claimed to be anti-circumvention safeguards, are constitutionally unnecessary and defective because of all the other statutory and regulatory safeguards in place to insure that the base contribution amount that any one contributor can give to any one party committee cannot be used as a conduit for corruption.¶ But the challengers also contend that the aggregate limits really operate like expenditure limits – i.e., limiting the donor’s overall ability to support a message they endorse, and controlling not just how much can be contributed, but how many candidates and committees the contributor can express support for. Given that, strict scrutiny is the standard of review. To the extent that some of the briefs supporting the law fret that eliminating those aggregate limits will give the wealthy too much political influence and sway, they seem to underscore that these can be viewed as questionable expenditure limits designed to “level the playing field” – the kiss of death for any campaign finance law. Either way, the challengers say, whether viewed as contribution controls or expenditure limits, a careful analysis of the interlocking statutory protections against corruption will show that the aggregate limits fail strict or even close scrutiny and must be struck down.¶ Enter the Roberts Court Of course, the $64,000 question is how the Roberts Court is likely to view these issues. The Court has certainly developed a decided track record on campaign finance issues. Five cases, five decisions striking down various campaign finance mechanisms as violating the First Amendment. Pervading these cases is the application of real strict scrutiny to campaign finance laws, measuring the burdens they impose on candidates, parties and groups, carefully probing in great detail the weight of the justifications offered for the mechanism at issue and showing a deep distrust and a severe skepticism of those justifications. Chief Justice John Roberts wrote a very muscular decision in the Arizona public financing case striking down a scheme that merely gave publicly funded candidates more government financing to counter spending by privately funded candidates. Even that was too much of a burden on the right of the privately funded candidate to spend their own money on their campaign. Here the restrictions are direct and potent and tell the contributor: You’ve expressed enough support for the candidates and party of your choice.¶ As is so often the case, the disposition may come down to Justice Anthony Kennedy. He, of course, is the author of the notorious Citizens United v. Federal Elections Commission (2010) decision, for which, despite its support in some quarters as a proper vindication of core First Amendment rights of all groups and individuals, the Court has taken a brutal battering in the court of public opinion.¶ Many are already raising the specter of the McCutcheon case being another Citizens United, this time dramatically changing the basic law on contribution limits. But McCutcheon and the RNC are not making that argument and are not challenging the validity of the base limits on contributions to candidates or parties. They think they can win within the traditional Buckley framework that permits contribution regulation, but only if properly justified. And Justice Kennedy in Citizens United went out of the way to say that the case involved independent expenditures only, with no direct impact on the validity of contribution limits. But one of the linchpins of his decision was that the only compelling interest that justifies campaign finance limitations is preventing direct quid pro quo corruption. To the extent the supporters of the law seem to be claiming that contributors like McCutcheon might have greater access to and influence on Republican elected officials, these days that does not seem to be much of a winning argument in the Supreme Court.¶ Finally, a win for McCutcheon and the RNC would have one other positive effect. It might give parties and candidates more financial wherewithal to counter the recent rise of “super PACs,” as exaggerated as their electoral impact seemed to be.

#### The plan forces a trade off --- massively spends court capital

McGinnis and Rappaport ’02 (John O., Prof of Law @ Cardozo Law, and Michael B., Prof of Law @ University of San Diego Law, “Our Supermajoritarian Constitution,” 80 Tex. L. Rev. 703)

Significantly, the Supreme Court has not declared these substitutions unconstitutional. In fact, the Court has upheld certain exercises of presidential authority to conclude international agreements that had binding effect [\*768] under domestic law. n276 While the causes of the Court's behavior are complex, the most important reason of the Court's failure to police the treaty clause appears to be its historic deference to the other branches regarding foreign affairs. n277 The consequences of the Court's failure thus underscore that supermajority rules, like other constitutional restraints, often require judicial enforcement.¶ Nevertheless, judicial enforcement of supermajority rules in this area would bump up against the strong institutional reasons that lead courts to defer in foreign affairs. A decision, even if correct as a matter of law, may have dramatically unfortunate consequences that could erode the Court's prestige. n278 For this reason, one may suspect that a Court with many other duties it finds more palatable, like protecting individual rights, might be reluctant to enforce strictly supermajority rules in this area even if clearly given the responsibility to do so. n279 Thus, the enforcement of a supermajority rule in foreign affairs may be more difficult than in the domestic arena, because of the nature of the subject matter.¶ n278. See John O. McGinnis, Constitutional Review by the Executive in Foreign Affairs and War Powers: A Consequence of Rational Choice in the Separation of Powers, 56 Law & Contemp. Probs., Autumn 1993, at 293, 306-07 (contemplating that judicial decisions concerning foreign affairs would jeopardize the political capital of the Court).

#### Key to domestic political moderation – stops the Tea Party

Sides 10/16 (John, Associate Professor of Political Science – George Washington University, “Why striking down campaign contribution limits might make politics better,” Washington Post, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/10/16/why-striking-down-campaign-contribution-limits-might-make-politics-better/>)

Finally, I want to say more about why striking down aggregate contribution limits might actually attenuate ideological extremism (assuming I’m mostly wrong on my first point that people will not try to circumvent contribution limits!). The current campaign finance system – with its emphasis on interest group spending — favors highly ideological factions that have the means and motive to run independent campaigns. Rules that channel more money through party organizations and candidates might dampen the power of groups like the Tea Party. Against this claim, Bob suggests that political parties ran ads in 2012 that were just as “aggressive” and negative as interest groups. Research by the Wesleyan Media Project indicates that this is not true. But this finding is not relevant to my argument. My point about moderation is not about the tone or content of political ads, but is tied to the nomination process where party factions fight their ideological battles. A generation ago, such battles were waged internally in the proverbial smoke-filled rooms. Today they might be hashed out in the open through primary elections. The advantage goes to the interest group that can raise a lot of money and mobilize its partisan faction of voters. Ideological moderation seems more plausible when political resources are controlled primarily by party leaders whose chief incentive is to win elections rather than take positions. Like Bob, I support reasonable contribution limits, but I do not think the retention of aggregate limits on party committees and candidates improves the current campaign finance system. I certainly do not think, as Bob suggests, that a favorable ruling for McCutcheon will encourage “more money from fewer sources to flow more freely.” That dynamic was partially spurred by Citizens United. If anything removing the aggregate limits could make the system more accountable by channeling funds to political committees that are transparent, particularly party and candidate committees, which must face the voters at the ballot box.

#### That will result in protectionism

Lighthizer 10 (Robert, deputy trade representative in the Reagan administration, “Throwing Free Trade Overboard,” November 12, <http://www.nytimes.com/2010/11/13/opinion/13lighthizer.html>)

But those expectations could be upset by an unexpected force: the Tea Party. Strangely, for a movement named after an 18th-century protest against import levies, Tea Partyers are largely skeptical about free trade’s benefits — according to a recent poll by NBC and The Wall Street Journal, 61 percent of Tea Party sympathizers believe it has hurt the United States. The movement has already forced the Republicans to alter their agenda in several policy areas. Should the same thing happen with free trade, America’s stance toward open markets and globalization could shift drastically. At first glance, the Tea Party’s position may seem contradictory: its small-government, pro-business views usually go hand in hand with free trade. But if you consider the dominant themes underlying its agenda, it makes sense that the movement would be wary about free-trade policies. For starters, Tea Partyers are frustrated with Washington, and that includes its failure to make free trade work for America. Our trade deficit in manufactured goods was about $4.3 trillion during the last decade, and the country lost some 5.6 million manufacturing jobs. And while the Tea Party supports market outcomes, its members appear to believe that the rest of the world is stacking the free-trade deck against us. They have a point: most policymakers agree that the Chinese currency is grossly and deliberately undervalued, that China fails to respect intellectual property rights and that it uses government subsidies to protect its own manufacturing base. Meanwhile, the movement says, the United States does virtually nothing in response. The Republican establishment will argue that its trade agenda is consistent with Tea Party ideals, that its goal is to get government out of the way and allow American companies to thrive in competitive markets. But Tea Partyers will ask, what good does it do to reduce the role of our government if foreign governments are free to rig the rules, attack American industries and take American jobs? As a result, the otherwise pro-market Tea Party may find its economic program far more at home with a nationalist trade policy that confronts foreign abuses and fights for American companies. Tea Partyers also have an instinctive aversion to deficits, and they are undoubtedly concerned that our enormous trade imbalances — which require us to sell hundreds of billions of dollars in assets each year — will leave our children dependent on foreign decision makers. Indeed, the value of foreign investments in the United States now exceeds the value of American investments abroad by $2.74 trillion, and China alone has roughly $2.5 trillion in foreign currency reserves, primarily dollars. Deficits, moreover, aren’t just a statistic; they raise serious concerns about America’s global leadership role. The Tea Party will demand to know why, if our trade policy is so successful, so many experts believe that the 21st century will belong to China, not the United States. And the Republican establishment will have to deal with the fact that Tea Party heroes like Alexander Hamilton, Theodore Roosevelt and Ronald Reagan had no problem restricting imports to promote our national interest. Given the Tea Party’s desire to restore America’s greatness, it will push Washington to stand up to China and re-establish American pre-eminence, even at the cost of the country’s free-trade record. Finally, trade is an issue where Tea Party concerns about “elites” thwarting the will of the voters will resonate. In this case, the elites include both Democrats and Republicans. You would need a high-powered microscope to tell the difference between Bill Clinton and George W. Bush on the subject of trade. Even during this slow economic recovery, Mr. Obama is pushing for a new market-opening round of talks at the World Trade Organization. Among Republicans, not one major elected figure expresses the skepticism toward free trade held by over three-fifths of Tea Partyers. In the face of soaring trade deficits and talk of American decline, the Tea Party may ask whether this is yet another area where the establishment has simply gotten it wrong. In short, the apparent contradiction between the Tea Party’s fiscal conservatism and its skepticism about free trade may not be a contradiction at all. If the Tea Party continues to influence the Republican agenda, it may not only spell bad news for the South Korea free trade agreement — it could also mean a fundamental reorientation of our country’s attitude toward trade and globalization.

#### Trade leadership solves war

**Panitchpakdi 4** (DG Supachai, Former Director-General – World Trade Organization, “American Leadership and the World Trade Organization: What is the Alternative?”, National Press Club, 2-26, http://www.wto.org/french/ news\_f/spsp\_f/spsp22\_f.htm)

I can sum up my message today in three sentences: The United States, more than any single country, created the world trading system. The US has never had more riding on the strength of that system. And US leadership — especially in the current Doha trade talks — is indispensable to the system's success. It is true that as the WTO's importance to the world economy increases, so too does the challenge of making it work: there are more countries, more issues, trade is in the spot light as never before. But the fiction that there is an alternative to the WTO — or to US leadership — is both naïve and dangerous. Naïve because it fails to recognize that multilateralism has become more — not less — important to advancing US interests. Dangerous because it risks undermining the very objectives the US seeks — freer trade, stronger rules, a more open and secure world economy. The Doha Round is a crucial test. The core issues — services, agriculture, and industrial tariffs — are obviously directly relevant to the US. America is highly competitive in services — the fastest growing sector of the world economy, and where the scope for liberalization is greatest. In agriculture too the US is competitive across many commodities — but sky-high global barriers and subsidies impede and distort agricultural trade. Industrial tariffs also offer scope for further liberalization — especially in certain markets and sectors. But what is at stake in these talks is more than the economic benefits that would flow from a successful deal. The real issue is the relevance of the multilateral trading system. Its expanded rules, broader membership, and binding dispute mechanism means that the new WTO — created less than ten years ago — is pivotal to international economic relations. But this means that the costs of failure are also higher — with ramifications that can be felt more widely. Advancing the Doha agenda would confirm the WTO as the focal point for global trade negotiations, and as the key forum for international economic cooperation. The credibility of the institution would be greatly enhanced. But if the Doha negotiations stumble, doubts may grow, not just about the WTO's effectiveness, but about the future of multilateralism in trade. This should be a major concern to the US for two reasons: First, the US is now integrated with the world economy as never before. A quarter of US GDP is tied to international trade, up from 10 per cent in 1970 — the largest such increase of any developed economy over this period. A third of US growth since 1990 has been generated by trade. And America's trade is increasingly global in scope — 37 per cent with Canada and Mexico, 23 per cent with Europe, 27 per cent with Asia. Last year alone, exports to China rose by almost 30 per cent. The US has also grown more reliant on the rules of the multilateral system to keep world markets open. Not only has it initiated more WTO dispute proceedings than any other country — some 75 since 1995 — according to USTR it has also won or successfully settled most of the cases it has brought. The point is this: even the US cannot achieve prosperity on its own; it is increasingly dependent on international trade, and the rules-based economic order that underpins it. As the biggest economy, largest trader and one of the most open markets in the world, it is axiomatic that the US has the greatest interest in widening and deepening the multilateral system. Furthermore, expanding international trade through the WTO generates increased global prosperity, in turn creating yet more opportunities for the US economy. The second point is that strengthening the world trading system is essential to America's wider global objectives. Fighting terrorism, reducing poverty, improving health, integrating China and other countries in the global economy — all of these issues are linked, in one way or another, to world trade. This is not to say that trade is the answer to all America's economic concerns; only that meaningful solutions are inconceivable without it. The world trading system is the linchpin of today's global order — underpinning its security as well as its prosperity. A successful WTO is an example of how multilateralism can work. Conversely, if it weakens or fails, much else could fail with it. This is something which the US — at the epicentre of a more interdependent world — cannot afford to ignore. These priorities must continue to guide US policy — as they have done since the Second World War. America has been the main driving force behind eight rounds of multilateral trade negotiations, including the successful conclusion of the Uruguay Round and the creation of the WTO. The US — together with the EU — was instrumental in launching the latest Doha Round two years ago. Likewise, the recent initiative, spearheaded by Ambassador Zoellick, to re-energize the negotiations and move them towards a successful conclusion is yet another example of how essential the US is to the multilateral process — signalling that the US remains committed to further liberalization, that the Round is moving, and that other countries have a tangible reason to get on board. The reality is this: when the US leads the system can move forward; when it withdraws, the system drifts. The fact that US leadership is essential, does not mean it is easy. As WTO rules have expanded, so too has as the complexity of the issues the WTO deals with — everything from agriculture and accounting, to tariffs and telecommunication. The WTO is also exerting huge gravitational pull on countries to join — and participate actively — in the system. The WTO now has 146 Members — up from just 23 in 1947 — and this could easily rise to 170 or more within a decade. Emerging powers like China, Brazil, and India rightly demand a greater say in an institution in which they have a growing stake. So too do a rising number of voices outside the system as well. More and more people recognize that the WTO matters. More non-state actors — businesses, unions, environmentalists, development NGOs — want the multilateral system to reflect their causes and concerns. A decade ago, few people had even heard of the GATT. Today the WTO is front page news. A more visible WTO has inevitably become a more politicized WTO. The sound and fury surrounding the WTO's recent Ministerial Meeting in Cancun — let alone Seattle — underline how challenging managing the WTO can be. But these challenges can be exaggerated. They exist precisely because so many countries have embraced a common vision. Countries the world over have turned to open trade — and a rules-based system — as the key to their growth and development. They agreed to the Doha Round because they believed their interests lay in freer trade, stronger rules, a more effective WTO. Even in Cancun the great debate was whether the multilateral trading system was moving fast and far enough — not whether it should be rolled back. Indeed, it is critically important that we draw the right conclusions from Cancun — which are only now becoming clearer. The disappointment was that ministers were unable to reach agreement. The achievement was that they exposed the risks of failure, highlighted the need for North-South collaboration, and — after a period of introspection — acknowledged the inescapable logic of negotiation. Cancun showed that, if the challenges have increased, it is because the stakes are higher. The bigger challenge to American leadership comes from inside — not outside — the United States. In America's current debate about trade, jobs and globalization we have heard a lot about the costs of liberalization. We need to hear more about the opportunities. We need to be reminded of the advantages of America's openness and its trade with the world — about the economic growth tied to exports; the inflation-fighting role of imports, the innovative stimulus of global competition. We need to explain that freer trade works precisely because it involves positive change — better products, better job opportunities, better ways of doing things, better standards of living. While it is true that change can be threatening for people and societies, it is equally true that the vulnerable are not helped by resisting change — by putting up barriers and shutting out competition. They are helped by training, education, new and better opportunities that — with the right support policies — can flow from a globalized economy. The fact is that for every job in the US threatened by imports there is a growing number of high-paid, high skill jobs created by exports. Exports supported 7 million workers a decade ago; that number is approaching around 12 million today. And these new jobs — in aerospace, finance, information technology — pay 10 per cent more than the average American wage. We especially need to inject some clarity — and facts — into the current debate over the outsourcing of services jobs. Over the next decade, the US is projected to create an average of more than 2 million new services jobs a year — compared to roughly 200,000 services jobs that will be outsourced. I am well aware that this issue is the source of much anxiety in America today. Many Americans worry about the potential job losses that might arise from foreign competition in services sectors. But it’s worth remembering that concerns about the impact of foreign competition are not new. Many of the reservations people are expressing today are echoes of what we heard in the 1970s and 1980s. But people at that time didn’t fully appreciate the power of American ingenuity. Remarkable advances in technology and productivity laid the foundation for unprecedented job creation in the 1990s and there is no reason to doubt that this country, which has shown time and again such remarkable potential for competing in the global economy, will not soon embark again on such a burst of job-creation. America's openness to service-sector trade — combined with the high skills of its workforce — will lead to more growth, stronger industries, and a shift towards higher value-added, higher-paying employment. Conversely, closing the door to service trade is a strategy for killing jobs, not saving them. Americans have never run from a challenge and have never been defeatist in the face of strong competition.

Part of this challenge is to create the conditions for global growth and job creation here and around the world. I believe Americans realize what is at stake. The process of opening to global trade can be disruptive, but they recognize that the US economy cannot grow and prosper any other way. They recognize the importance of finding global solutions to shared global problems. Besides, what is the alternative to the WTO? Some argue that the world's only superpower need not be tied down by the constraints of the multilateral system. They claim that US sovereignty is compromised by international rules, and that multilateral institutions limit rather than expand US influence. Americans should be deeply sceptical about these claims. Almost none of the trade issues facing the US today are any easier to solve unilaterally, bilaterally or regionally. The reality is probably just the opposite. What sense does it make — for example — to negotiate e-commerce rules bilaterally? Who would be interested in disciplining agricultural subsidies in a regional agreement but not globally? How can bilateral deals — even dozens of them — come close to matching the economic impact of agreeing to global free trade among 146 countries? Bilateral and regional deals can sometimes be a complement to the multilateral system, but they can never be a substitute. There is a bigger danger. By treating some countries preferentially, bilateral and regional deals exclude others — fragmenting global trade and distorting the world economy. Instead of liberalizing trade — and widening growth — they carve it up. Worse, they have a domino effect: bilateral deals inevitably beget more bilateral deals, as countries left outside are forced to seek their own preferential arrangements, or risk further marginalization. This is precisely what we see happening today. There are already over two hundred bilateral and regional agreements in existence, and each month we hear of a new or expanded deal. There is a basic contradiction in the assumption that bilateral approaches serve to strengthen the multilateral, rules-based system. Even when intended to spur free trade, they can ultimately risk undermining it. This is in no one's interest, least of all the United States. America led in the creation of the multilateral system after 1945 precisely to avoid a return to hostile blocs — blocs that had done so much to fuel interwar instability and conflict. America's vision, in the words of Cordell Hull, was that “enduring peace and the welfare of nations was indissolubly connected with the friendliness, fairness and freedom of world trade”. Trade would bind nations together, making another war unthinkable. Non-discriminatory rules would prevent a return to preferential deals and closed alliances. A network of multilateral initiatives and organizations — the Marshal Plan, the IMF, the World Bank, and the GATT, now the WTO — would provide the institutional bedrock for the international rule of law, not power. Underpinning all this was the idea that freedom — free trade, free democracies, the free exchange of ideas — was essential to peace and prosperity, a more just world. It is a vision that has emerged pre-eminent a half century later. Trade has expanded twenty-fold since 1950. Millions in Asia, Latin America, and Africa are being lifted out of poverty, and millions more have new hope for the future. All the great powers — the US, Europe, Japan, India, China and soon Russia — are part of a rules-based multilateral trading system, greatly increasing the chances for world prosperity and peace. There is a growing realization that — in our interdependent world — sovereignty is constrained, not by multilateral rules, but by the absence of rules. All of these were America’s objectives. The US needs to be both clearer about the magnitude of what it has achieved, and more realistic about what it is trying to — and can — accomplish. Multilateralism can be slow, messy, and tortuous. But it is also indispensable to managing an increasingly integrated global economy. Multilateralism is based on the belief that all countries — even powerful countries like the United States — are made stronger and more secure through international co-operation and rules, and by working to strengthen one another from within a system, not outside of it. Multilateralism's greatest ideal is the ideal of negotiation, compromise, consensus, not coercion. As Churchill said of democracy, it is the worst possible system except for all the others. I do not believe America's long-term economic interests have changed. Nor do I believe that America's vision for a just international order has become blurred. If anything, the American vision has been sharpened since the terrorist attacks on New York and Washington; sharpened by the realization that there is now a new struggle globally between the forces of openness and modernity, and the forces of separatism and reaction. More than ever, America's interests lie in an open world economy resting on the foundation of a strong, rules-based multilateral system. More and more, America's growth and security are tied to the growth and security of the world economy as a whole. American leadership today is more — not less — important to our increasingly interconnected planet. A recent successful, and much needed, example is the multilateral agreement on intellectual property rights and access to medicines for poor countries, in which the US played a pivotal role. It would be a tragic mistake if the Doha Round, which offers the world a once-in-a-generation opportunity to eliminate trade distortions, to strengthen trade rules, and open markets across the world, were allowed to founder. We need courage and the collective political will to ensure a balanced and equitable outcome. What is the alternative? It is a fragmented world, with greater conflict and uncertainty. A world of the past, not the future — one that America turned away from after 1945, and that we should reject just as decisively today. America must lead. The multilateral trading system is too important to fail. The world depends on it. So does America.

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#### The United States Congress should propose an Amendment to the United States Constitution which declares that individuals indefinitely detained under the War Powers authority of the President of the United States must be tried by an existing Article II court, a military court martial, or be released. The Amendment should specify that it must be ratified immediately. The necessary states should ratify the Amendment.

#### Solves

Miksha 3 (Andre, “Declaring War on the War Powers Resolution”, Valparaiso University Law Review, Spring, 37 Val. U.L. Rev. 651, lexis)

C. The Implications of Modern Warfare A third major problem with the Resolution is that the world is a very different place than it was in 1973. The war powers construct needs to be reconfigured for the post-Cold War era. n187 The proliferation and increased power of intergovernmental organizations and supra-national [\*689] groups is only a small aspect of the change. n188 Warfare continues to change; low-intensity conflicts and small-scale conventional wars have become the norm of modern warfare. n189 Speed in decision-making is at a premium because of advancements in communications, intelligence, and warfare technology. n190 Not only have we benefited from two hundred years of presidential-congressional controversies, but the United States is also fighting wars in a much different manner. n191 Nevertheless, the Constitution vests the sole and exclusive authority to initiate military hostilities in Congress, regardless of the scope, size, or nature of the conflict. n192 The immediacy of contemporary warfare causes a heightened scrutiny of the war powers too. Failed war powers discussions may, in the end, cost lives and not just waste taxpayers' money as in other realms of governmental debate. n193 Contrary to some commentators, the power of the purse is not a sufficient check on the President, nor does the funding of the military act [\*690] as an implicit consent by Congress. n194 One must account for the military realities involved in refusing to fund on-going military operations. War, at the time of the Framers, was much slower; wars lasted years and involved troop movements and communications that were only as fast as a horse or boat. n195 During that period, Congress' deliberative and ensuing check of de-funding a military operation would not be militarily frustrating because armies took so long to coordinate and move. n196 Thus, such a check could be sufficient and historically based, but time is of the essence in today's world. n197 A constitutional amendment allows the government to realign the powers through a process that respects the Constitution's timelessness because the change would be sought and affected through proper constitutional means. n198 IV. THE WAR POWERS AMENDMENT A. Introductory Remarks The War Powers Resolution of 1973 is an unconstitutional determination of the war powers. n199 This Part proposes an alternative in the form of a constitutional amendment, the passage of which would [\*691] satisfy both the Constitution's substantive and procedural requirements. The amendment process will encourage discourse because it is protracted, public, intergovernmental, and intragovernmental. Considering the interests in the balance, a devotion to the righteousness of the process and to the justice of the solution requires nothing less. Surprisingly, most commentators do not suggest a single remedy or solution but only raise questions or possibilities. n200 The repeal of the Resolution hardly seems to be a wise solution, at least by itself, because the Resolution at least sets down some guidelines and a return to pre-1973 jurisprudence would open up a chaotic situation in constitutional law. n201 Serious ends require serious means, and there is no more serious means than a constitutional amendment. n202 Simply put, the amendment [\*692] creates a clear method for the process that will be necessary before introducing U.S. Armed Forces into hostilities.

### 1NC

#### Judicial review of war powers erodes the State Secrets Privilege

Kadidal 7 (Shayana – Center for Constitutional Rights, New York City; J.D., Yale 1994, “DOES CONGRESS HAVE THE POWER TO LIMIT THE PRESIDENT'S CONDUCT OF DETENTIONS, INTERROGATIONS AND SURVEILLANCE IN THE CONTEXT OF WAR?”, 2007, 11 N.Y. City L. Rev. 23, lexis)

As to the AUMF, this meta-defense runs as follows: In both our case and the ACLU's similar case, the government claims that it could explain how the program fits into what Congress authorized in the AUMF--namely, the "use [of] all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist [\*58] attacks that occurred on September 11, 2001" n127 and those who harbored them--but to do so it would have to explain to the court how the Program works, particularly who it was targeting and what kinds of communications it was intercepting. The sensitivity of that information about how the Program works in practice means that it cannot do that, even ex parte in camera. Thus, the government argues, the State Secrets Privilege forecloses the ability to litigate these questions. n128 As to the FISA-is-unconstitutional defense, the meta-defense argues that for the government to explain to the court how the Program fits into the core of the President's inherent power to defend the nation--that (limited) core aspect of the war power that is so fundamentally executive as to be immune to regulation from Congress--would require disclosing state secrets to the court. Since FISA might be unconstitutional to the extent that it restricts such a hypothetical core, unregulable part of the executive war power, the court cannot rely on FISA in enjoining the President from carrying out such surveillance:

#### The state secrets privilege is key to prevent detention secrets from going public – that tanks EU Relations

Blazey 10 (Elizabeth – J.D. Candidate, Class of 2011, University at Buffalo School of Law, “Controlling Government Secrecy: A Judicial Solution to the Internal and External Conflicts Surrounding the State Secrets Privilege”, December, Buffalo Law Review, 58 Buffalo L. Rev. 1187, lexis)

In response to this argument, the court held that the above mentioned facts were not those central to the case. n202 Instead, these facts were just "the general terms in which El-Masri has related his story to the press." n203 For El-Masri to proceed with his claim, the court would have to determine the personal liability of each defendant. n204 Such a determination would include, for instance, "evidence that exposes how the CIA organizes, staffs, and supervises its most sensitive intelligence operations . . . how the head of the CIA participates in such operations, and how information concerning their progress is relayed to him . . . and the existence and details of CIA espionage contracts . . . ." n205 Furthermore, El-Masri would have to rely on witnesses to make these showings "whose identities . . . [\*1231] must remain confidential in the interest of national security." n206 Lastly, even if El-Masri could make out a prima facie case without state secrets, the court held that the defendants could not present a defense "without using privileged evidence." n207 The court then discussed several scenarios whereby any defense would require privileged information. Next, the court summarized several cases where claims had been dismissed pursuant to a government claim that the disclosure of CIA methods of operations, the malfunctioning of military weapons, classified operating locations of the Air Force, and sensitive CIA personnel decisions would have been required. n208 El-Masri also claimed that the district court should have reviewed the documents in camera because of their constitutional duty to review claims of egregious misconduct by the executive. n209 In response, the court first quoted the holding in Reynolds that "when 'the occasion for the privilege is appropriate, . . . the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.'" n210 Also, the court countered El-Masri's assertion that this decision represents a "surrender of judicial control" by reasoning that "the court, not the Executive . . . determines whether the state secrets privilege has been properly invoked." n211 The court ultimately upheld the dismissal of El-Masri's claim based on the United States government's insertion of itself as a defendant and assertion of the state secrets privilege. n212 El-Masri highlights the difference between types of wrongdoing and methods of wrongdoing. In El-Masri, the plaintiff sought justice from wrongs inflicted by a program, the existence of which is widely publicized and acknowledged. However, the privilege was not invoked to [\*1232] protect from disclosure the facts of whether these wrongs occurred. Instead, the privilege was used to protect the identities of persons inside and outside the government who allegedly perpetrated the wrongs, the roles of those persons and organizations, and the agreements made between the government and outside organizations. Indeed, the plaintiff defined the essential facts of his case differently than the court. El-Masri focused in his claim on the consequences of alleged wrongful acts. The court, however, focused on the decision-making methods, government agreements and clandestine communications that would be required for such acts to take place. Even in relatively benign circumstances, these types of internal processes are often exempted from disclosure. For instance, under the Freedom of Information Act ("FOIA"), government agencies must disclose all requested agency records to any interested persons. n213 However, agencies can refuse to disclose records for national security reasons, as well as for reasons "related solely to the internal personnel rules and practices of an agency[,]" n214 and "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." n215 These exceptions allow agencies within the executive branch to freely communicate with one another, and carefully deliberate decisions without fear that materials related to their decision-making processes will become public and politicized. Additionally, under the Administrative Procedures Act ("APA") rulemaking requirements, n216 agencies are exempted from going through a public notice and comment process when they make rules that are related to military and foreign affairs functions n217 or to agency management or personnel. n218 These exceptions are in place to enable the President to perform core executive branch functions. These core [\*1233] functions involve, among other things, the enforcement of laws, the carrying out of military and foreign affairs, and the negotiation of international agreements. If the executive branch could not control information related to these core functions, it arguably could not perform the functions efficiently or effectively. Indeed, the underlying national security fear in disclosing the type of information sought by El-Masri lies in the potential for such disclosure to undermine the effectiveness of executive branch operations, the safety of government personnel and United States citizens, and the ability of the government to maintain relationships with foreign governments and other organizations. Furthermore, other countries have strong self interest in United States disclosure policies. In an article posted on the CIA's public website, Rutgers professor Warren F. Kimball explains that: "It could jeopardize lives if agents or contacts were revealed; it could jeopardize continued access to important information if special relationships with foreign agencies were acknowledged." n219 For instance, Kimball hypothesizes, "if the United States had a 'liaison' relationship with the government intelligence agency in a nation that had a strong anti-American political element . . . and the United States acknowledged that it received information from the intelligence agency in [that country,]" the government of that country "could fall." n220 The El-Masri case relies on a similar fear. The plaintiff alleged, for example, that he was first detained by the Macedonian government and then transferred to the custody of CIA operatives. n221 This suggests that the United States and Macedonia may have engaged in some sort of agreement either to detain the plaintiff or to hand him over to the United States or both. Macedonia, which is formerly part of Yugoslavia, has been trying to gain acceptance into the European Union since 2004, hindered, in part, by a disagreement with Greece over the right to use the name [\*1234] "Macedonia." n222 Macedonia is, however, a member of the Council of Europe, the well-respected European organization that stands separately from the European Union, and which deals with human rights and democratic principles. n223 The Council of Europe recently published a scathing review of the United States' extraordinary rendition program, stating, in part, that El-Masri's claims were highly credible. n224 If the United States were to announce formally any cooperation that Macedonia gave in such detentions, it could hinder Macedonia's political relationships within the Council of Europe, and give the European Union additional material to use in a decision to exclude Macedonia from membership. Therefore, Macedonia is a stakeholder in the decision to disclose or keep secret some of the information required in the El-Masri case. Furthermore, if someone within Macedonia cooperated without the formal consent of the Macedonian government, then details about the cooperation could expose that person or group to Macedonian legal consequences. If we "out" those who cooperate with us, we may dry up the flow of future cooperators and alienate those persons with whom we have already built or are cultivating relationships. El-Masri's claims also implicated cooperation between the United States government and Afghanistan and Albania, as well as cooperation between the United States government and [\*1235] private businesses who chartered the flights used to transport El-Masri. n225 Individual judges cannot be expected to have expertise on the intricacies of foreign policy relationships, so they are not in the best position to make decisions about whether certain information should be kept secret. Rather, the executive branch alone has the competency to make decisions about foreign relationships and decide when certain information must remain secret. Since judges make decisions based on what is furnished by the executive branch, mandatory judicial review does not, necessarily, effectively check abuse. It does, however, increase the risk of inappropriate dissemination of information and jeopardize the future cooperation of foreign governments, agents, and private businesses.

#### Solves WMD conflict and every other impact

Stivachtis 10 – Director of International Studies Program @ Virginia Polytechnic Institute [Dr. Yannis. A. Stivachtis (Professor of Poli Sci @ Virginia Polytechnic Institute & Ph.D. in Politics & International Relations from Lancaster University), THE IMPERATIVE FOR TRANSATLANTIC COOPERATION,” The Research Institute for European and American Studies, 2010, pg. <http://www.rieas.gr/research-areas/global-issues/transatlantic-studies/78.html>]

There is no doubt that US-European relations are in a period of transition, and that the stresses and strains of globalization are increasing both the number and the seriousness of the challenges that confront transatlantic relations. The events of 9/11 and the Iraq War have added significantly to these stresses and strains. At the same time, international terrorism, the nuclearization of North Korea and especially Iran, the proliferation of weapons of mass destruction (WMD), the transformation of Russia into a stable and cooperative member of the international community, the growing power of China, the political and economic transformation and integration of the Caucasian and Central Asian states, the integration andstabilization of the Balkan countries, the promotion of peace and stability in the Middle East, poverty, climate change, AIDS and other emergent problems and situations require further cooperation among countries at the regional, global and institutional levels. Therefore, cooperation between the U.S. and Europe is more imperative than ever to deal effectively with these problems. It is fair to say that the challenges of crafting a new relationship between the U.S. and the EU as well as between the U.S. and NATO are more regional than global, but the implications of success or failure will be global. The transatlantic relationship is still in crisis, despite efforts to improve it since the Iraq War. This is not to say that differences between the two sides of the Atlantic did not exist before the war. Actually, post-1945 relations between Europe and the U.S. were fraught with disagreements and never free of crisis since the Suez crisis of 1956. Moreover, despite trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the U.S. and Europe parted ways on issues from global warming and biotechnology to peacekeeping and national missile defense. Questions such as, the future role of NATO and its relationship to the common European Security and Defense policy (ESDP), or what constitutes terrorism and what the rights of captured suspected terrorists are, have been added to the list of US-European disagreements. There are two reasons for concern regarding the transatlantic rift. First, if European leaders conclude that Europe must become counterweight to the U.S., rather than a partner, it will be difficult to engage in the kind of open search for a common ground than an elective partnership requires. Second, there is a risk that public opinion in both the U.S. and Europe will make it difficult even for leaders who want to forge a new relationship to make the necessary accommodations. If both sides would actively work to heal the breach, a new opportunity could be created. A vibrant transatlantic partnership remains a real possibility, but only if both sides make the necessary political commitment. There are strong reasons to believe that the security challenges facing the U.S. and Europe are more shared than divergent. The most dramatic case is terrorism. Closely related is the common interest in halting the spread of weapons of mass destruction and the nuclearization of Iran and North Korea. This commonality of threats is clearly perceived by publics on both sides of the Atlantic.

Actually, Americans and Europeans see eye to eye on more issues than one would expect from reading newspapers and magazines. But while elites on both sides of the Atlantic bemoan a largely illusory gap over the use of military force, biotechnology, and global warming, surveys of American and European public opinion highlight sharp differences over global leadership, defense spending, and the Middle East that threaten the future of the last century’s most successful alliance. There are other important, shared interests as well. The transformation of Russia into a stable cooperative member of the international community is a priority both for the U.S. and Europe. They also have an interest in promoting a stable regime inUkraine. It is necessary for the U.S. and EU to form a united front to meet these challenges because first, there is a risk that dangerous materials related to WMD will fall into the wrong hands; and second, the spread of conflict along those countries’ periphery could destabilize neighboring countries and provide safe havens for terrorists and other international criminal organizations. Likewise, in the Caucasus and Central Asia both sides share a stake in promoting political and economic transformation and integrating these states into larger communities such as the OSCE. This would also minimize the risk of instability spreading and prevent those countries of becoming havens for international terrorists and criminals. Similarly, there is a common interest in integrating the Balkans politically and economically. Dealing with Iran, Iraq, Lebanon, and the Israeli-Palestinian conflict as well as other political issues in the Middle East are also of a great concern for both sides although the U.S. plays a dominant role in the region. Finally, US-European cooperation will be more effective in dealing with the rising power of China through engagement but also containment. The post Iraq War realities have shown that it is no longer simply a question of adapting transatlantic institutions to new realities. The changing structure of relations between the U.S. and Europe implies that a new basis for the relationship must be found if transatlantic cooperation and partnership is to continue. The future course of relations will be determined above all by U.S. policy towards Europe and the Atlantic Alliance. Wise policy can help forge a new, more enduring strategic partnership, through which the two sides of the Atlantic cooperate in meeting the many major challenges and opportunities of the evolving world together. But a policy that takes Europe for granted and routinely ignores or even belittles European concerns, may force Europe to conclude that the costs of continued alliance outweigh its benefits. There is no doubt that the U.S. and Europe have considerable potential to pursue common security interests. Several key steps must be taken to make this potential a reality. First, it is critical to avoid the trap of ‘division of labor’ in the security realm, which could be devastating for the prospects of future cooperation. Second, and closely related to avoiding division of labor as a matter of policy, is the crucial necessity for Europe to develop at least some ‘high-end’ military capabilities to allow European forces to operate effectively with the U.S. Third, is the need for both the U.S. and Europe to enhance their ability to contribute to peacekeeping and post-conflict stabilization and reconstruction. Fourth, is the importance of preserving consensus at the heart of alliance decision-making. Some have argued that with the expansion of NATO, the time has come to reconsider the consensus role. One way to increase efficiency without destroying consensus would be to strengthen the role of the Secretary General in managing the internal and administrative affairs of the alliance, while reserving policy for the member states. Fifth is the need to make further progress on linking and de-conflicting NATO and EU capabilities. Sixth is the need for enhanced transatlantic defense industrial cooperation. Seventh, one future pillar for transatlantic cooperation is to strengthen US-European coordination in building the infrastructure of global governance through strengthening institutions such as the UN and its specialized agencies, the World Bank, the IFM, G-8, OECD and regional development banks. Finally, cooperation can also be achieved in strengthening the global economic infrastructure, sustaining the global ecosystem, and combating terrorism and international crime. To translate the potential of the transatlantic relationship into a more positive reality will require two kinds of development. First, the EU itself must take further steps to institutionalize its own capacity to act in these areas. Foreign policy and especially defense policy remain the areas where the future of a ‘European’ voice is most uncertain. Second, the U.S. and Europe need to establish more formal, effective mechanisms for consultation and even decision-making. The restoration of transatlantic relations requires policies and actions that governments on both sides of the Atlantic should simultaneously adopt and not only a unilateral change of course. Developing a new, sustainable transatlantic relationship requires a series of deliberate decisions from both the U.S. and EU if a partnership of choice and not necessity is to be established. For the U.S., this means avoiding the temptation, offered by unprecedented strength, to go it alone in pursuit of narrowly defined national interests. For the EU, the new partnership requires a willingness to accept that the EU plays a uniquely valuable role as a leader in a world where power still matters, and that a commitment to a rule-based international order does not obviate the need to act decisively against those who do not share that vision.

### 1NC

Text: The United States federal judiciary should rule that individuals indefinitely detained under the War Powers authority of the President of the United States must be tried by an existing Article III court or be released.

#### Military court’s violate international standards and local jurisdiction, guts legitimacy

Ramer 12 (Captain Jacob A. Ramer (B.A., Harvard University; J.D., Chicago-Kent College of Law) is a judge advocate with the United States Air Force currently serving as Area Defense Counsel at Misawa Air Base, Japan, Evidence Obtained By Foreign Police: Admissibility And The Role Of Foreign Law, The Air Force Law Review, 2012, 68 A.F. L. Rev. 207)

Military case law has made clear that military courts will not apply U.S. constitutional law and the UCMJ to a search conducted solely by foreign law enforcement. n147 In fact, no prescribed law or standards exist by which to analyze the [\*227] legality of a foreign search. Nevertheless, some foreign-obtained evidence may not be admissible in a court-martial. Military courts must hold inadmissible evidence produced by a foreign search or seizure which subjected the accused to "gross and brutal maltreatment." n148 But few decisions have ever cited that rule and applied that standard to the particular facts of the case. n149 To date, no court has further clarified or explained what actually constitutes "gross and brutal maltreatment." n150 This suggests that military courts neglect a key aspect of the evidentiary rules applied to foreign searches. By comparison, several federal court decisions have addressed the relevance of foreign law to admissibility of evidence obtained through foreign searches. In determining whether a foreign search was reasonable and did not "shock the judicial conscience," the U.S. Court of Appeals for the Ninth Circuit in United States v. Barona considered whether the foreign wiretap violated that foreign law itself. n151 To do so, the court obviously had to review that country's law. n152 The court appeared to suggest that if a search is unlawful under foreign sovereign law, it might indicate that the search was so unreasonable that it shocks the judicial conscience, thereby rendering any evidence obtained inadmissible. n153 Prior to Barona, the Ninth Circuit had affirmed admission of evidence secured in violation of the foreign sovereign's wiretap law. n154 In cases where U.S. agents work together in a joint venture with foreign agents, the Ninth Circuit still considers an analysis of foreign law relevant to determining the admissibility of resulting evidence. In these cases, the court has held that "the law of the foreign country must be consulted at the outset as part of the determination whether or not the search was reasonable." n155 If foreign law enforcement--acting in tandem with U.S. law enforcement--violates its own law, [\*228] the search may be found unreasonable. n156 If the court concludes that a search violated foreign law, the Ninth Circuit then considers application of the good faith exception to the exclusionary rule. n157 According to the Ninth Circuit, this "exception is grounded in the realization that the exclusionary rule does not function as a deterrent in cases in which the law enforcement officers acted on a reasonable belief that their conduct was legal." n158 The Ninth Circuit applied this principle to foreign searches. n159 As such, if U.S. agents relied in good faith upon the foreign agents' assertions that the search was legally valid under that foreign law, then the search would be considered reasonable for purposes of admitting any seized evidence at a U.S. criminal trial. n160 Other federal courts have followed the Ninth Circuit's application of foreign law. n161 When considering admissibility of evidence obtained through a foreign search, military courts lack clear guidance. With foreign-obtained statements, the courts examine voluntariness according to well-established standards employed by U.S. federal district courts and U.S. military appellate courts. By contrast, evidence from foreign searches will be admitted absent "gross and brutal maltreatment"-- without any examination of compliance with foreign law, and without further guidance or interpretation applying that quite vague standard.

#### Adherence to foreign law is key to maintain LOAC and prevent terrorism

White 12 (Larry D., TOBB University of Economics and Technology, J.D. School of Law Ankara, Turkey, “The Legal Aspects of Combating Terrorism,” 2012)

The principles of International Humanitarian Law (IHL), as recognized by the Geneva Conventions and customary international law, establish a desire of the international community to regulate the conduct of war. While recognizing that war is not a desired state, but may happen, IHL has created the distinction of ‘unlawful combatant.’ However, in practice, the international community has found that label to be harsh and demanded that unlawful combatants be tried as Lawful combatants or as criminals. This thinking is false – the status of a combatant is far from that of a criminal and does disservice to the lawful combatant by undermining the incentives under UHL for a combatant to adhere to the principles and rules of IHL and remain lawful. If all those who claim combatant status are treated the same, there is no incentive to adhere to IHL. The sanctions imposed on an unlawful combatant were intended to be harsh - and should remain so - as a means to moderate the horrors of war. This system has been somewhat confused by the so-called war on terrorism that President George Bush declared in the aftermath of the 11 September 2001 attacks by ‘declaring war’ on terrorism, he created confusion in this classification and incentive system that leads to a dilution of the protections of IHL. Those who commit terrorist acts (targeting the civilian populace) are criminals; unlawful combatants can only come from those who target only military targets in the service of a political entity. 3.3 Minimum Standards for Detainee Treatment It can be difficult for a commander of security forces to understand what has to be provided to detainees. Although Common Article 3 of the Geneva Convention provides some guidelines, and international human rights law does as well the tactical situation may not allow for a lot of debate over the subject. However, a fair reading of the applicable documents would result in a conclusion that a commander should ensure that any detainees are protected from danger (especially retribution) and are fed equivalent to what the security forces have for food. Doing so may provide for more than is necessary in some cases but will arguably ensure that the commander did his best consistent with the situation. 3.4 Terrorist Proceedings Must Conform to Other Procedures As the discussion in Section 3.2 supra covered, keeping the division between terrorists as criminals separate from the status of ‘unlawful combatant’ is advisable. 1 However, criminals and unlawful combatants are still entitled with a minimum level of procedural und substantive fairness in any proceedings against them. Common Article 3 requires that detainees be tried by a "regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Although this a very broad statement subject to differing interpretation, the Universal Convention on Human Rights requires a presumption of innocence before a fair and impartial court with the assistance of counsel. Many nations provide more protections in their criminal and should provide such protections, or the equivalent, to those accused of terrorism, either as a criminal or as a combatant. Conclusion Security forces must pay attention to the legal aspects of the fight against terrorists throughout the fight. Not only do we have to be careful while preventing attacks, but also in ensuring that no mistakes are made in the prosecution of terrorists, because one way to discourage terrorism is through sure prosecution of terrorists. Although the legal aspects of the fight against terrorism can sometimes complicate the operational aspects, it is important that the legal aspects not be forgotten. If security forces fail to follow their own laws regarding the treatment of terrorists, then the overall faith in the legal system is reduced within the populace. It also discourages the surrender of terrorists and may prolong the conflict. Outside of the country, this situation discourages foreign development and investment. In the end, the failure to ensure minimum levels of treatment of suspected terrorists discourages peaceful resolution and supports the terrorist cause.

#### Law of armed conflict controls deterrence—collapse causes global WMD conflict

Delahunty 10 (Robert and John – associate prof – U St. Thomas Law, and Yoo, law prof – UC Berkeley, 59 DePaul L. Rev. 803)

Finally, the extension of IHRL to armed conflict may have significant consequences for the success of international law in advancing global welfare. Rules of the LOAC represent the delicate balancing between the imperatives of combat and the humanitarian goals in wartime. The LOAC has been remarkably successful in achieving compliance from warring nations in obeying these rules. This is most likely due to the reciprocal nature of the obligations involved. Nations treat prisoners of war well in order to guarantee that their own captive soldiers will be treated well by the enemy; nations will refrain from usingweapons of mass destruction because they are deterred by their enemy's possession of the same weapons. It has been one of the triumphs of international law to increase the restrictions on the use of unnecessarily destructive and cruel weapons, and to advance the norms of distinction and the humane treatment of combatants and civilians in wartime. IHRL norms, on the other hand, may suffer from much lower rates of compliance. This may be due, in part, to the non-reciprocal nature of the obligations. One nation's refusal to observe freedom of speech, for example, will not cause another country to respond by depriving its own citizens of their rights. If IHRL norms--which were developed without much, if any, consideration of the imperatives of combat--merge into the LOAC, it will be likely that compliance with international law will decline. If nations must balance their security [\*849] needs against ever more restrictive and out-of-place international rules supplied by IHRL, we hazard to guess that the latter will give way. Rather than attempt to superimpose rules for peacetime civilian affairs on the unique circumstances of the "war on terror," a better strategy for encouraging compliance with international law would be to adapt the legal system already specifically designed for armed conflict.

## Blowback

### Shift

#### Detention restrictions increases rendition and drone strikes—comparatively worse and turns cred

**Goldsmith, 12** (Law Prof-Harvard, 6/29, Proxy Detention in Somalia, and the Detention-Drone Tradeoff, www.lawfareblog.com/2012/06/proxy-detention-in-somalia-and-the-detention-drone-tradeoff/

There has been speculation about the effect of the Obama administration’s pinched detention policy – i.e. no new detainees brought to GTMO, and no new detainees to Parwan (Afghanistan) from outside Afghanistan – on its other counterterrorism policies. I have long believed there must be some tradeoff between narrowing U.S. detention capabilities and other counterterrorism options, at least implicitly, and not necessarily for the better. As I wrote three years ago, in response to news reports that the Obama administration’s cutback on USG detentions resulted in more USG drone strikes and more outsourcing of rendition, detention, and interrogation: There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries. The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse. The main response to this argument – especially as it applies to the detention-drone tradeoff – has been to deny any such tradeoff on the ground that there are no terrorists outside of Afghanistan (a) whom the United States is in a position to capture on the ground (as opposed to kill from the sky), and (b) whom the USG would like to detain and interrogate. Dan Klaidman’s book provides some counter-evidence, but I will save my analysis of that for a review I am writing. Here I would like to point to an important story by Eli Lake that reveals that the “United States soldiers have been hunting down al Qaeda affiliates in Somalia”; that U.S. military and CIA advisers work closely with the Puntland Security Force in Somalia, in part to redress piracy threats but mainly to redress threats from al-Shabab; that the Americans have since 2009 captured and brought to the Bosaso Central Prison sixteen people (unclear how many are pirates and how many are al-Shabab); and that American interrogators are involved in questioning al-Shabab suspects. The thrust of Lake’s story is that the conditions of detention at the Bosaso Central Prison are atrocious. But the story is also important for showing that that the United States is involved outside of Afghanistan in capturing members of terrorists organizations that threaten the United States, and does have a national security need to incapacitate and interrogate them. It does not follow, of course, that the USG can or should be in the business of detaining every al-Shabab suspect currently detained in the Bosaso Central Prison. But the Lake story does show that the alternatives to U.S. detention are invariably worse from a human rights perspective. It portends (along with last month’s WPR Report and related DOD press release) that our creeping involvement on the ground in places like Somalia and Yemen mean that the USG will in fact be in a position to capture higher-level terrorists in al Qaeda affiliates. And that in turn suggests that the factual premise underlying the denial of a detention-drone tradeoff will become harder and harder to defend.

### Alt Causes

#### Alt causes to legitimacy

Kudryashov 11 - Roman Kudryashov, Researcher: Applied Politics & Economics, the New School, May 17, 2011, “Democracy Promotion in between Domestic and International Needs,” online: http://whataretheseideas.wordpress.com/2011/05/17/democracy-promotion-in-between-domestic-and-international-needs/

Additionally, America must occasionally pause for self reflection (in an attempt to understand how other people view the nation): While America advertises democratization, policy choices, alliances, and domestic conditions all run counter argument. Where the CFR report suggests switching some media programming into a C-SPAN format to show how democratic politics work (Albright p.32), I argue that the bitter partisan politics leading to budget deadlocks in congress, the radicalizing ideology of the Tea Party, George Bush’s blatant disregard of UN Security Council advice on invading Iraq, and the illegitimate politics of Wisconsin’s Scott Walker in the face of a state-wide strike advertise the failings of the American democratic system 21. As far as neoliberal policies that America packages with its democratization program go, Joseph Stieglitz points out that with the distribution of wealth in America, the nation more and more begins to resemble the autocratic regimes it is criticizing (Stieglitz 1). As Michael Pocalyko points out at the end of the CFR dissenting views, “Abu Ghraib matters infinitely more than Americans realize. Its effects are enduring. These human rights abuses were a stunning desecration of American values and a psychological assault on Islam. No one…in the Arab nations has ‘moved on’” (Albright p.47). Likewise, Washington’s almost-axiomatic support for Israel will mean that America will be blamed by proxy for whatever conflicts and injustices arise out of the Israeli-Arab and Palestinian conflicts 22. America would do well to be careful of the image it creates for **itself** in international affairs---the adverse reactions to American democracy promotion confirm that Arabic civil society responds to what America does, not what it says, so a strategic planning approach concerning how America is perceived would argue for repairing America’s reputation through policy changes, before embarking on noble goals of democracy promotion.

### No Impact – Legitimacy

#### No legitimacy impact

Brooks & Wohlforth 8 – Stephen G. Brooks, Assistant Professor of Government at Dartmouth, and William C. Wohlforth, Associate Professor of Government at Dartmouth, 2008, World Out of Balance: International Relations and the Challenge of American Primacy, p. 201-206

First, empirical studies find no clear relationship between U.S. rulebreaking, legitimacy, and the continued general propensity of other governments to comply with the overall institutional order. Case studies of U.S. unilateralism—that is, perceived violations of the multilateral principle underlying the current institutional order—reach decidedly mixed results.74 Sometimes unilateralism appears to impose costs on the United States that may derive from legitimacy problems; in other cases, these acts appear to win support internationally and eventually are accorded symbolic trappings of legitimacy; in yet others, no effect is discernable. Similar results are reported in detailed analyses of the most salient cases of U.S. noncompliance with international law, which, according to several studies, is as likely to result in a “new multilateral agreement and treaties [that] generally tilt towards U.S. policy preferences” as it is to corrode the legitimacy of accepted rules.75 The contestation created by the Bush administration’s “new unilateralism,” on the one hand, and the “new multilateralism” represented by other states’ efforts to develop new rules and institutions that appear to constrain the United States, on the other hand, fits the historical pattern of the indirect effect of power on law. Highlighting only the details of the struggle over each new rule or institution may deflect attention from the structural influence of the United States on the overall direction of change. For example, a focus on highly contested issues in the UN, such as the attempt at a second resolution authorizing the invasion of Iraq, fails to note how the institution’s whole agenda has shifted to address concerns (e.g., terrorism, proliferation) that the United States particularly cares about. The secretary-general’s Highlevel Panel on Threats, Challenges and Change endorsed a range of U.S.-supported positions on terrorism and proliferation.76 International legal scholars argue that the United States made measurable headway in inculcating new rules of customary law to legitimate its approach to fighting terrorism and containing “rogue states.”77 For example, UN Security Council Resolution 1373 imposed uniform, mandatory counterterrorist obligations on all member states and established a committee to monitor compliance. That said, there is also evidence of resistance to U.S. attempts to rewrite rules or exempt itself from rules. Arguably the most salient example of this is the International Criminal Court (ICC). During the negotiations on the Rome Convention in the late 1990s, the United States explicitly sought to preserve great-power control over ICC jurisdiction. U.S. representatives argued that the United States needed protection from a more independent ICC in order to continue to provide the public good of global military intervention. When this logic failed to persuade the majority, U.S. officials shifted to purely legal arguments, but, as noted, these foundered on the inconsistency created by Washington’s strong support of war crimes tribunals for others. The Rome Convention rejected the U.S. view in favor of the majority position granting the ICC judicial panel authority to refer cases to court’s jurisdiction.78 By 2007, 130 states had signed the treaty and over 100 were full-fledged parties to it. President Clinton signed the treaty, but declined to submit it to the Senate for ratification. The Bush administration “unsigned” it in order legally to be able to take action to undermine it. The United States then persuaded over 75 countries to enter into agreements under which they undertake not to send any U.S. citizen to the ICC without the United States’ consent; importantly, these agreements do not obligate the United States to investigate or prosecute any American accused of involvement in war crimes. This clearly undermines the ICC, especially given that about half the states that have signed these special agreements with the United States are also parties to the Rome Statute. 79 At the same time, the EU and other ICC supporters pressured governments not to sign special agreements with the United States, and some 45 have refused to do so—about half losing U.S. military assistance as a result. In April 2005, the United States chose not to veto a UN Security Council resolution referring the situation in Darfur, Sudan, to the ICC. To many observers, this suggests that inconsistency may yet undermine U.S. opposition to the court.80 If the U.S. campaign to thwart the court fails, and there is no compromise solution that meets some American concerns, the result will be a small but noticeable constraint: U.S. citizens involved in what might be construed as war crimes and who are not investigated and prosecuted by the U.S. legal system may have to watch where they travel. The upshot as of 2007 was something of a stalemate on the ICC, demonstrating the limits of both the United States’ capability to quash a new legal institution it doesn’t like and the Europeans’ ability to legitimize such an institution without the United States’ participation. Similar stalemates characterize other high-profile arguments over other new international legal instruments, such as the Kyoto Protocol on Climate Change and the Ottawa Landmine Convention. Exactly as constructivists suggest, these outcomes lend credence to the argument that power does not translate unproblematically into legitimacy. What the larger pattern of evidence on rule breaking shows, however, is that this is only one part of the story; the other part involves rule breaking with few, if any, legitimacy costs, and the frequent use of go-it-alone power to revise or create rules. AN EROSION OF THE ORDER? The second general evidence pattern concerns whether fallout from the unpopular U.S. actions on ICC, Kyoto and Ottawa, Iraq, and many other issues have led to an erosion of the legitimacy of the larger institutional order. Constructivist theory identifies a number of reasons why institutional orders are resistant to change, so strong and sustained action is presumably necessary to precipitate a legitimacy crisis that might undermine the workings of the current order. While aspects of this order remain controversial among sections of the public and elite both in the United States and abroad, there is little evidence of a trend toward others opting out of the order or setting up alternatives. Recall also that the legitimacy argument works better in the economic than in the security realm. It is also in the economic realm that the United States arguably has the most to lose. Yet it is hard to make the empirical case that U.S. rule violations have undermined the institutional order in the economic realm. Complex rules on trade and investment have underwritten economic globalization. The United States generally favors these rules, has written and promulgated many of them, and the big story of the 1990s and 2000s is their growing scope and ramified nature—in a word, their growing legitimacy. On trade, the WTO represents a major strengthening of the GATT rules that the United States pushed for (by, in part, violating the old rules to create pressure for the upgrade). As of 2007, it had 149 members, and the only major economy remaining outside was Russia’s. And notwithstanding President Putin’s stated preference for an “alternative” WTO, Russian policy focused on accession.81 To be sure, constructivists are right that the WTO, like other rational-legal institutions, gets its legitimacy in part from the appearance of independence from the major powers.82 Critical analysts repeatedly demonstrate, however, that the organization’s core agenda remains powerfully influenced by the interests of the United States.83 Regarding international finance, the balance between the constraining and enabling properties of rules and institutions is even more favorable to the United States, and there is little evidence of general legitimacy costs. The United States retains a privileged position of influence within the International Monetary Fund and the World Bank. An example of how the scope of these institutions can expand under the radar screen of most legitimacy scholarship is International Center for Settlement of Investment Disputes (ICSID)—the major dispute settlement mechanism for investment treaties. Part of theWorld Bank group of institutions, it was established in 1966, and by 1991 it had considered only 26 disputes. With the dramatic growth in investment treaties in the 1990s, however, the ICSID came into its own. Between 1998 and 2004, over 121 disputes were registered with the Center.84 This increase reflects the rapidly growing scope of international investment law. And these new rules and treaties overwhelmingly serve to protect investors’ rights, in which the United States has a powerful interest given how much it invests overseas. Looking beyond the economic realm, the evidence simply does not provide a basis for concluding that serial U.S. rule-breaking imposed general legitimacy costs sufficient to erode the existing order. On the contrary, it suggests a complex and malleable relationship between rule breaking, legitimacy, and compliance with the existing order that opens up numerous opportunities for the United States to use its power to change rules and limit the legitimacy costs of breaking rules. The evidence also suggests that just as rules do not automatically constrain power, power does not always smoothly translate into legitimacy. As our review of the ICC issue showed, the United States is not omnipotent, and its policies can run afoul of the problems of hypocrisy and inconsistency that constructivists and legal scholars identify. Indeed, neither the theory nor the evidence presented in this chapter can rule out the possibility that the United States might have enjoyed much more compliance, and had much more success promulgating its favored rules and quashing undesired rule change, had it not been such a rule breaker or had it pursued compensating strategies more energetically.

### Link Turn

#### Courts kill heg

**Knowles 9** – Acting Assistant Professor, New York University School of Law (Robert, Spring, “American Hegemony and the Foreign Affairs Constitution”, 41 Ariz. St. L.J. 87, Lexis Law)

1. Flexibility Because the world is inherently anarchic and thus unstable, flexibility is crucial. Because the meaning of international law changes with subtly shifting power dynamics, the United States must be capable of quickly altering its interpretation of laws in order to preserve its advantage and avoid war if possible. n295 Like Machiavelli's Prince, n296 the U.S. government [\*135] must be willing and able to bend with the shifting political winds and transgress norms if necessary. n297 On this terrain, the executive branch appears to have clear advantages over the courts. The executive branch is more capable of altering its interpretation of the law when it suits U.S. interests. The courts must work within the confines of doctrine and stare decisis. n298 Courts cannot weigh in on the vast majority of foreign affairs issues because they only hear the controversies that parties bring before them, and have only the power to adjudicate the issues raised. n299 In short, courts' status as legal, rather than political, institutions limits their flexibility. Again, however, the anarchy-based argument for flexibility boils down to an argument for total discretion. How do the courts determine when and how much to cabin executive power? Jide Nzelibe has concluded that in cases involving individual rights, the courts should take into account their competence in adjudicating such issues while balancing the individual rights concerns against the need to defer to the executive branch's foreign policy requirements. n300 But if the courts lack competence to evaluate the importance of a foreign policy need, how can they competently weigh that need against the importance of protecting individual rights? 2. SpeedSince Curtiss-Wright, speed has been recognized as an important executive branch characteristic. The executive branch can reach a uniform interpretation of the law quickly, and the courts are, by comparison, quite slow. n301 This is understandable in a world in which subtly-shifting alliances determine the balance of power. And in the age of terrorism, speed remains a crucial component of effective foreign policy. The ace card for defenders of special deference remains the national security emergency. How can we [\*136] possibly take the risk that the courts will hobble the President's efforts to protect the United States in a time of crisis? n302 It is important to separate the very slender category of true emergencies from the vast category of foreign relations in general. The great majority of foreign affairs controversies do not involve the President sending troops abroad or a threatened terrorist attack, and there is very little opportunity for courts to interfere with an executive response to a crisis situation. Courts typically review the legality of presidential decisions years later. n303 Most of the "enemy combatants" detained at Guantanamo were captured within a few months of September 11, 2001, and arrived at Guantanamo in early 2002. n304 The Supreme Court did not address the detainees' constitutional right to habeas review until 2008. n305 The difficulty lies in situations where the courts are asked to use their equitable powers and issue injunctions or TROs before the issues have been fully adjudicated. Here it is the courts' institutional deliberativeness that is, arguably, the problem. n306 3. Secrecy Since Curtiss-Wright, secrecy has also been invoked as a rationale for deference to the executive in foreign affairs. n307 Again, this evokes a multipolar world in which diplomacy is conducted in private by an elite cadre from the great powers. However, courts are capable of handling secrets - even more skillfully than Congress. n308 The secrecy argument is really an argument about the potential consequences of revealing secrets to non-governmental parties and the collateral consequences that would result. [\*137] 4. Collateral Consequences Many of the rationales for special deference - expertise, embarrassment, uniformity, and secrecy - have, at their core, the assumption that the courts' involvement in foreign affairs will risk serious collateral consequences in international relations that courts cannot anticipate, cannot fully understand, and do not have the power to adequately address. n309 There are collateral consequences for court decisions in the domestic context as well. But the distinction drawn in foreign affairs reflects the tragic side of realism - that the world is inherently an unstable and dangerous place, an arena for clashes between great powers under constant threat of war. In an international system in which the balance of power is precarious and preserved only through delicate maneuvering by statesmen, the courts' involvement could risk provoking another great power and undermining these efforts. But once again, this justification, taken to its logical conclusion, requires complete deference. If courts truly lack any sense of the collateral consequences of their foreign affairs decisions, they cannot competently weigh those consequences against competing constitutional values. Suppose that the U.S. government advances a novel interpretation of criminal statutes in order to prosecute a suspected terrorist whose release, the government insists, would create instability in a key U.S. ally in the Middle East. Under the collateral consequences justification, the court must always defer to the government's interpretation. This would eviscerate entirely the courts' statutory interpretation role whenever there is a claimed foreign affairs exigency. 5. Legitimacy Arguments for the courts' incompetence in foreign affairs also focus on legitimacy. Courts are said to lack legitimacy in this area because their ordinary power to bestow legitimacy on the other branches in the domestic context cannot function properly in the entirely political external realm. The political branches do not require the courts' blessing for their activities outside the U.S. n310 Furthermore, the courts seem to face a dilemma: If they contravene the executive branch, the public will view this involvement with [\*138] hostility, especially when national security is at stake. n311 But if the courts side with the President, they risk being seen as mere cogs in the government's foreign policy apparatus. n312 However, some deferentialists acknowledge that courts should adjudicate foreign affairs cases involving individual rights claims but balance the right in question against the government's asserted foreign policy needs. n313 The difficulty with this approach is that, under the anarchy/realpolitik worldview, the government's arguments must always trump. If the courts are not competent to evaluate the importance of foreign policy necessity, then how can they weigh it against the value of individual rights? Similarly, if the courts lack legitimacy to evaluate foreign policy needs, their decisions will be perceived as lacking legitimacy whether individual rights are involved or not. Professors Ku and Yoo do not make a similar concession, at least with respect to non-citizens. They have concluded that, while the public may tolerate limited intervention to protect constitutional liberties in wartime, the public has no patience for the courts' interfering with executive prerogatives to reinforce the rights of aliens designated as enemies. n314 But in any event, the realist model seems to leave little room for the consideration of individual liberties, even for citizens.

### Terror

#### Detention doesn’t cause terror

Joscelyn, 10 – senior fellow at the Foundation for Defense of Democracies (Thomas, 12/27. “Gitmo Is Not Al Qaeda's 'Number One Recruitment Tool'.” http://www.weeklystandard.com/blogs/gitmo-not-al-qaedas-number-one-recruitment-tool\_524997.html?page=2)

THE WEEKLY STANDARD has reviewed translations of 34 messages and interviews delivered by top al Qaeda leaders operating in Pakistan and Afghanistan (“Al Qaeda Central”), including Osama bin Laden and Ayman al Zawahiri, since January 2009. The translations were [published online](http://nefafoundation.org/index.cfm?pageID=44) by the NEFA Foundation. Guantanamo is mentioned in only 3 of the 34 messages. The other 31 messages contain no reference to Guantanamo. And even in the three messages in which al Qaeda mentions the detention facility it is not a prominent theme.¶ Instead, al Qaeda’s leaders repeatedly focus on a narrative that has dominated their propaganda for the better part of two decades. According to bin Laden, Zawahiri, and other al Qaeda chieftains, there is a Zionist-Crusader conspiracy against Muslims. Relying on this deeply paranoid and conspiratorial worldview, al Qaeda routinely calls upon Muslims to take up arms against Jews and Christians, as well as any Muslims rulers who refuse to fight this imaginary coalition. ¶ This theme forms the backbone of al Qaeda’s messaging – not Guantanamo. ¶ To illustrate this point, consider the results of some basic keyword searches. Guantanamo is mentioned a mere 7 times in the 34 messages we reviewed. (Again, all 7 of those references appear in just 3 of the 34 messages.) ¶ By way of comparison, all of the following keywords are mentioned far more frequently: Israel/Israeli/Israelis (98 mentions), Jew/Jews (129), Zionist(s) (94), Palestine/Palestinian (200), Gaza (131), and Crusader(s) (322). (Note: Zionist is often paired with Crusader in al Qaeda’s rhetoric.)¶ Naturally, al Qaeda’s leaders also focus on the wars in Afghanistan (333 mentions) and Iraq (157). Pakistan (331), which is home to the jihadist hydra, is featured prominently, too. Al Qaeda has designs on each of these three nations and implores willing recruits to fight America and her allies there. Keywords related to other jihadist hotspots also feature more prominently than Gitmo, including Somalia (67 mentions), Yemen (18) and Chechnya (15). ¶ Simply put, there is no evidence in the 34 messages we reviewed that al Qaeda’s leaders are using Guantanamo as a recruiting tool. Undoubtedly, “Al Qaeda Central” has released other messages during the past two years that are not included in our sample. Some of those messages may refer to Guantanamo. And some of the al Qaeda messages provided by NEFA, which does a remarkable job collecting and translating al Qaeda’s statements and interviews, may be only partial translations of longer texts. ¶ However, the messages we reviewed also surely include most of what al Qaeda’s honchos have said publicly since January 2009. These messages do not support the president’s claim. A closer look at the 3 out of 34 messages in which “Al Qaeda Central” actually referred to Guantanamo reveals just how weak the president’s argument is. Even in these messages al Qaeda is far more interested in other themes.¶ In a February 17, 2010 message entitled, “[The Way to Save the Earth](http://nefafoundation.org/file/nefa_ublwaytosaveearth0210.pdf),” Osama bin Laden made an offhand reference to Guantanamo. But it is hardly a prominent feature of the terror master’s message. As bin Laden makes clear in the opening lines, his main concern is climate change.¶ “This is a message to the whole world about those who cause climate change and its dangers – intentionally or unintentionally – and what we must do,” bin Laden said. Bin Laden blames the “greedy heads of major corporations” and “senior capitalists” who are “characterized by wickedness and hardheartedness” for the supposed deleterious effects of global warming.¶ Bin Laden does refer to Guantanamo, but it is brief and in the context of a rambling passage. In the surrounding sentences, bin Laden criticizes America for waging war in Iraq for oil, incorrectly claims that America and her allies have “killed, wounded, orphaned, widowed and displaced more than 10 million Iraqis,” and calls President Obama’s acceptance of the Nobel Peace Prize “an extreme example of the deception and humiliation of humanity.” ¶ If bin Laden’s February 17th message is evidence that al Qaeda is using Guantanamo as a recruiting tool, then it is also evidence that al Qaeda is using climate change and President Obama’s Nobel to earn new recruits.¶ The other two messages in our sample that refer to Guantanamo do not fare much better when any amount of scrutiny is applied.

#### Detention solves terror

Tomatz and Graham, 13 – Colonel, B.A., University of Houston, J.D., University of Texas, LL.M., The Army Judge Advocate General Legal Center and School (2002); serves as the Chief of Operations and Information Operations Law in the Pentagon; and J.D., University of South Carolina, serves as the Senior Individual Mobilization Augmentee to The Judge Advocate Senior United States Senator from South Carolina (Michael and Lindsey O. “NDAA 2012: CONGRESS AND CONSENSUS ON ENEMY DETENTION.” Air Force Law Review, 69 A.F. L. Rev. 1. Lexis.)

President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing authorities "relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

### 1NC Terror

#### No nuke terror

John J. Mearsheimer 14, R. Wendell Harrison Distinguished Service Professor of Political Science at the University of Chicago, “America Unhinged”, January 2, nationalinterest.org/article/america-unhinged-9639?page=show

Am I overlooking the obvious threat that strikes fear into the hearts of so many Americans, which is terrorism? Not at all. Sure, the United States has a terrorism problem. But it is a minor threat. There is no question we fell victim to a spectacular attack on September 11, but it did not cripple the United States in any meaningful way and another attack of that magnitude is highly unlikely in the foreseeable future. Indeed, there has not been a single instance over the past twelve years of a terrorist organization exploding a primitive bomb on American soil, much less striking a major blow. Terrorism—most of it arising from domestic groups—was a much bigger problem in the United States during the 1970s than it has been since the Twin Towers were toppled.¶ What about the possibility that a terrorist group might obtain a nuclear weapon? Such an occurrence would be a game changer, but the chances of that happening are virtually nil. No nuclear-armed state is going to supply terrorists with a nuclear weapon because it would have no control over how the recipients might use that weapon. Political turmoil in a nuclear-armed state could in theory allow terrorists to grab a loose nuclear weapon, but the United States already has detailed plans to deal with that highly unlikely contingency.¶ Terrorists might also try to acquire fissile material and build their own bomb. But that scenario is extremely unlikely as well: there are significant obstacles to getting enough material and even bigger obstacles to building a bomb and then delivering it. More generally, virtually every country has a profound interest in making sure no terrorist group acquires a nuclear weapon, because they cannot be sure they will not be the target of a nuclear attack, either by the terrorists or another country the terrorists strike. Nuclear terrorism, in short, is not a serious threat. And to the extent that we should worry about it, the main remedy is to encourage and help other states to place nuclear materials in highly secure custody.

### Russia

#### No Russia revolution – they are satiated by the Olympics?

#### No Russia War

Graham 7 (Thomas Graham, senior advisor on Russia in the US National Security Council staff 2002-2007, 2007, "Russia in Global Affairs” The Dialectics of Strength and Weakness http://eng.globalaffairs.ru/numbers/20/1129.html)

An astute historian of Russia, Martin Malia, wrote several years ago that “Russia has at different times been demonized or divinized by Western opinion less because of her real role in Europe than because of the fears and frustrations, or hopes and aspirations, generated within European society by its own domestic problems.” Such is the case today. To be sure, mounting Western concerns about Russia are a consequence of Russian policies that appear to undermine Western interests, but they are also a reflection of declining confidence in our own abilities and the efficacy of our own policies. Ironically, this growing fear and distrust of Russia come at a time when Russia is arguably less threatening to the West, and the United States in particular, **than it has been at any time since the end of the Second World War**. Russia does not champion a totalitarian ideology intent on our destruction, its military poses no threat to sweep across Europe, its economic growth depends on constructive commercial relations with Europe, and its strategic arsenal – while still capable of annihilating the United States – is under more reliable control than it has been in the past fifteen years and **the threat of a strategic strike approaches zero probability**. Political gridlock in key Western countries, however, precludes the creativity, risk-taking, and subtlety needed to advance our interests on issues over which we are at odds with Russia while laying the basis for more constructive long-term relations with Russia.

#### No miscalc

William J. Perry and James R. Schlesinger et al, 2009. Former Secretary of Defense, Michael and Barbara Berberian Professor at Stanford University, senior fellow at FSI and serves as co-director of the Preventive Defense Project, and former Secretary of Defense, Secretary of Energy and Director of the Central Intelligence Agency, Counselor to the Center for Strategic and International Studies, lecturer @ SAIS, Johns Hopkins University, PhD International Relations @ UPenn. “America’s Strategic Posture,” Report of the Congressional Commission on the Strategic Posture of the United States, media.usip.org/reports/strat\_posture\_report.pdf.

The second is de-alerting. Some in the arms control community have pressed enthusiastically for new types of agreements that take U.S. and Rus- sian forces off of so-called “hair trigger” alert. This is simply an erroneous characterization of the issue. The alert postures of both countries are in fact highly stable. They are subject to multiple layers of control, ensuring clear civilian and indeed presidential decision-making. The proper focus really should be on increasing the decision time and information available to the U.S. president—and also to the Russian president—before he might autho- rize a retaliatory strike. There were a number of incidents during the Cold War when we or the Russians received misleading indications that could have triggered an accidental nuclear war. With the greatly reduced tensions of today, such risks now seem relatively low. The obvious way to further reduce such risks is to increase decision time for the two presidents. The President should ask the Commander of U.S. Strategic Command to give him an analysis of factors affecting the decision time available to him as well as recommendations on how to avoid being put in a position where he has to make hasty decisions. It is important that any changes in the decision process preserve and indeed enhance crisis stability.

### Circumvention

#### Circumvention occurs

**Lennard, 12/27/13** – Natasha, assistant news editor at Salon, “Obama signs NDAA 2014, indefinite detention remains”, <http://www.salon.com/2013/12/27/obama_signs_ndaa_2014_indefinite_detention_remains/>

Meanwhile the troubling NDAA provision first signed into law in 2012, which permits the military to detain individuals indefinitely without trial, remains on the books for 2014. Efforts to quash or reform the provision (especially with regard to the indefinite detention of U.S. citizens) have failed and have been fiercely fought by the administration. Most notably, a lawsuit filed by plaintiffs including journalist Chris Hedges, Noam Chomsky and Daniel Ellsberg against the provision has been aggressively fought at every turn by the president’s attorneys. The plaintiffs argue that the NDAA provision constitutes a significant expansion of the laws regarding indefinite detention already established by Authorization for Use of Military Force (AUMF).

## Judiciary

### CMR Screwed

#### Alt causes to CMR - sequester and Afghanistan

Tilghman 13

[Andrew, Navy Times, JCS chief: Time to rethink civil-military relations, 7/12/13, <http://www.navytimes.com/article/20130712/NEWS05/307120023/JCS-chief-Time-rethink-civil-military-relations>]

Dempsey’s call for a national discussion comes at a challenging time for civil-military relations, according to several experts, career officers and others who spoke to Military Times. In Washington, a fierce debate is in full swing about the future of defense spending that could veer into a bitter battle over pay and benefits for the people who serve in uniform. Across the country, veterans are returning in large numbers, some of them struggling to adjust or suffering from physical or psychological injuries. And as the war in Afghanistan winds down, the military may begin to lose its privileged place in American culture. “The moral contract between the people and the military is changing. It changes after every war,” said James Burk, a civil-military affairs expert who teaches at Texas A&M University. “I think Dempsey is taking a stand against polarization and calling for a serious discussion about what the military community needs and how we achieve those objectives.” Sensitive issues Dempsey also touched briefly on proposed changes to pay and benefits in light of the current budget squeeze. “We owe much to our veterans and their families, but we shouldn’t view all proposed defense cuts as an attack on them,” Dempsey wrote. “Modest reforms to pay and compensation will improve readiness and modernization.” He also trod lightly on issues underlying the budget debate, cautioning service members not to assume they have a special or unique claim to national service. “We are an all-volunteer force, but we are not all who volunteer,” Dempsey wrote. “Service has always been fundamental to being an American. Across our country, police officers, fire fighters, teachers, coaches, pastors, scout masters, business people and many others serve their communities every day. Military service makes us different, but the desire to contribute permeates every corner of the United States.” Peter Feaver, a former Bush administration adviser during the Iraq War who is now a professor at Duke University, said Dempsey may be concerned about the long-term effects of the special status afforded to service members during the past decade-plus of war. “He is a warning against the pride that the military may take after a decade of having privileged access to the nation’s resources and the pride of place, whether it’s in terms of our national ceremonies or sporting events or letting those in military uniforms board a plane first.” Feaver said. That’s a valid concern, said Marine Maj. Peter Munson, the author of “War, Welfare & Democracy: Rethinking America’s Quest for the End of History.” “The military has been lionized in these recent conflicts and **I don’t think that is necessarily healthy**,” Munson said in an interview after reading Dempsey’s op-ed. “I think there is a certain subculture in the military that has grown to expect the perks and admiration and adulation. I think that a lot of folks are starting to feel that way without realizing it,” he said. “While I certainly think that what the military has done over the past decade is admirable, we don’t want to feel entitled to a certain treatment different from other citizens. Ours should be a culture of selfless service and selfless leadership.”

#### No impact to CMR

Feaver and Kohn 5 - Peter Feaver, professor of Political Science and Public Policy and the director of the Triangle Institute for Security Studies at Duke University, and Richard H. Kohn, Professor of History at the University of North Carolina, 2005, “The Gap: Soldiers, Civilians, and Their Mutual Misunderstanding,” in American Defense Policy, 2005 edition, ed. Paul J. Bolt, Damon V. Coletta, Collins G. Shackelford, p. 339

Concerns about a troublesome divide between the armed forces and the society they serve are hardly new and in fact go back to the beginning of the Republic. Writing in the 1950s, Samuel Huntington argued that the divide could best be bridged by civilian society tolerating, if not embracing, the conservative values that animate military culture. Huntington also suggested that politicians allow the armed forces a substantial degree of cultural autonomy. Countering this argument, the sociologist Morris Janowitz argued that in a democracy, military culture necessarily adapts to changes in civilian society, adjusting to the needs and dictates of its civilian masters.2 The end of the Cold War and the extraordinary changes in American foreign and defense policy that resulted have revived the debate. The contemporary heirs of Janowitz see the all volunteer military as drifting too far away from the norms of American society, thereby posing problems for civilian control. They make tour principal assertions. First, the military has grown out of step ideologically with the public, showing itself to be inordinately right-wing politically, and much more religious (and fundamentalist) than America as a whole, having a strong and almost exclusive identification with the Republican Party. Second, the military has become increasingly alienated from, disgusted with, and sometimes even explicitly hostile to, civilian culture. Third, the armed forces have resisted change, particularly the integration of women and homosexuals into their ranks, and have generally proved reluctant to carry out constabulary missions. Fourth, civilian control and military effectiveness will both suffer as the military—seeking ways to operate without effective civilian oversight and alienated from the society around it—loses the respect and support of that society. By contrast, the heirs of Huntington argue that a degenerate civilian culture has strayed so far from traditional values that it intends to eradicate healthy and functional civil-military differences, particularly in the areas of gender, sexual orientation, and discipline. This camp, too, makes four key claims. First, its members assert that the military is divorced in values from a political and cultural elite that is itself alienated from the general public. Second, it believes this civilian elite to be ignorant of, and even hostile to, the armed forces—eager to employ the military as a laboratory for social change, even at the cost of crippling its warfighting capacity. Third, it discounts the specter of eroding civilian control because it sees a military so thoroughly inculcated with an ethos of subordination that there is now too much civilian control, the effect of which has been to stifle the military's ability to function effectively Fourth, because support for the military among the general public remains sturdy, any gap in values is inconsequential. The problem, if anything, is with the civilian elite. The debate has been lively (and inside the Beltway, sometimes quite vicious), but it has rested on very thin evidence—(tunneling anecdotes and claims and counterclaims about the nature of civilian and military attitudes. Absent has been a body of systematic data exploring opinions, values, perspectives, and attitudes inside the military compared with those held by civilian elites and the general public. Our project provides some answers.

#### Policy disagreements don’t spill over

Hansen 9 – Victor Hansen, Associate Professor of Law, New England Law School, Summer 2009, “SYMPOSIUM: LAW, ETHICS, AND THE WAR ON TERROR: ARTICLE: UNDERSTANDING THE ROLE OF MILITARY LAWYERS IN THE WAR ON TERROR: A RESPONSE TO THE PERCEIVED CRISIS IN CIVIL-MILITARY RELATIONS,” South Texas Law Review, 50 S. Tex. L. Rev. 617, p. lexis

According to Sulmasy and Yoo, these conflicts between the military and the Bush Administration are the latest examples of a [\*624] crisis in civilian-military relations. n32 The authors suggest the principle of civilian control of the military must be measured and is potentially violated whenever the military is able to impose its preferred policy outcomes against the wishes of the civilian leaders. n33 They further assert that it is the attitude of at least some members of the military that civilian leaders are temporary office holders to be outlasted and outmaneuvered. n34 If the examples cited by the authors do in fact suggest efforts by members of the military to undermine civilian control over the military, then civilian-military relations may have indeed reached a crisis. Before such a conclusion can be reached, however, a more careful analysis is warranted. We cannot accept at face value the authors' broad assertions that any time a member of the military, whether on active duty or retired, disagrees with the views of a civilian member of the Department of Defense or other member of the executive branch, including the President, that such disagreement or difference of opinion equates to either a tension or a crisis in civil-military relations. Sulmasy and Yoo claim there is heightened tension or perhaps even a crisis in civil-military relations, yet they fail to define what is meant by the principle of civilian control over the military. Instead, the authors make general and rather vague statements suggesting any policy disagreements between members of the military and officials in the executive branch must equate to a challenge by the military against civilian control. n35 However, until we have a clear understanding of the principle of civilian control of the military, we cannot accurately determine whether a crisis in civil-military relations exists. It is to this question that we now turn.

### Modeling – 1NC

#### Only impact to the rule of law is terrorism – that was on the other flow

#### U.S. judicial leadership is not modeled – influence is on the decline

Liptak 12 (Adam – J.D. – Yale Law School, NYT Supreme Court Correspondent, ‘We the People’ Loses Appeal With People Around the World, 2/6, <http://www.nytimes.com/2012/02/07/us/we-the-people-loses-appeal-with-people-around-the-world.html?_r=2&partner=MYWAY&ei=5065>)

In 1987, on the Constitution’s bicentennial, Time magazine calculated that “of the 170 countries that exist today, more than 160 have written charters modeled directly or indirectly on the U.S. version.” A quarter-century later, the picture looks very different. “The U.S. Constitution appears to be losing its appeal as a model for constitutional drafters elsewhere,” according to a new study by David S. Law of Washington University in St. Louis and Mila Versteeg of the University of Virginia. The study, to be published in June in The New York University Law Review, bristles with data. Its authors coded and analyzed the provisions of 729 constitutions adopted by 188 countries from 1946 to 2006, and they considered 237 variables regarding various rights and ways to enforce them. “Among the world’s democracies,” Professors Law and Versteeg concluded, “constitutional similarity to the United States has clearly gone into free fall. Over the 1960s and 1970s, democratic constitutions as a whole became more similar to the U.S. Constitution, **only to** reverse course **in the 1980s and 1990s**.” “The turn of the twenty-first century, however, saw the beginning of a steep plunge that continues through the most recent years for which we have data, to the point that the constitutions of the world’s democracies are, on average, less similar to the U.S. Constitution now than they were at the end of World War II.” There are lots of possible reasons. The United States Constitution is terse and old, and it guarantees relatively few rights. The commitment of some members of the Supreme Court to interpreting the Constitution according to its original meaning in the 18th century may send the signal that it is of little current use to, say, a new African nation. And the Constitution’s waning influence may be part of a general decline in American power and prestige. In an interview, Professor Law identified a central reason for the trend: **the availability of newer, sexier and more powerful operating systems in the constitutional marketplace**. “Nobody wants to copy Windows 3.1,” he said. In a television interview during a visit to Egypt last week, Justice Ruth Bader Ginsburg of the Supreme Court seemed to agree. “I would not look to the United States Constitution if I were drafting a constitution in the year 2012,” she said. She recommended, instead, the South African Constitution, the Canadian Charter of Rights and Freedoms or the European Convention on Human Rights. The rights guaranteed by the American Constitution are parsimonious by international standards, and they are frozen in amber. As Sanford Levinson wrote in 2006 in “Our Undemocratic Constitution,” “the U.S. Constitution is the most difficult to amend of any constitution currently existing in the world today.” (Yugoslavia used to hold that title, but Yugoslavia did not work out.) Other nations routinely trade in their constitutions wholesale, replacing them on average every 19 years. By odd coincidence, Thomas Jefferson, in a 1789 letter to James Madison, once said that every constitution “naturally expires at the end of 19 years” because “the earth belongs always to the living generation.” These days, the overlap between the rights guaranteed by the Constitution and those most popular around the world is spotty. Americans recognize rights not widely protected, including ones to a speedy and public trial, and are outliers in prohibiting government establishment of religion. But the Constitution is out of step with the rest of the world in failing to protect, at least in so many words, a right to travel, the presumption of innocence and entitlement to food, education and health care. It has its idiosyncrasies. Only 2 percent of the world’s constitutions protect, as the Second Amendment does, a right to bear arms. (Its brothers in arms are Guatemala and Mexico.) The Constitution’s waning global stature is consistent with the diminished influence of the Supreme Court, which “is losing the central role it once had among courts in modern democracies,” Aharon Barak, then the president of the Supreme Court of Israel, wrote in The Harvard Law Review in 2002. Many foreign judges say they have become less likely to cite decisions of the United States Supreme Court, in part because of what they consider its parochialism. “America is in danger, I think, of becoming something of a legal backwater,” Justice Michael Kirby of the High Court of Australia said in a 2001 interview. He said that he looked instead to India, South Africa and New Zealand.

### 1NC Bioterror

#### No internal link to bioterror – military isn’t allowed to do it because of deference – they will continue to do so post plan

#### No bioterror impact

Keller 3/7 -- Analyst at Stratfor, Post-Doctoral Fellow at University of Colorado at Boulder (Rebecca, 2013, "Bioterrorism and the Pandemic Potential," http://www.stratfor.com/weekly/bioterrorism-and-pandemic-potential)

It is important to remember that the risk of biological attack is very low and that, partly because viruses can mutate easily, the potential for natural outbreaks is unpredictable. The key is having the right tools in case of an outbreak, epidemic or pandemic, and these include a plan for containment, open channels of communication, scientific research and knowledge sharing. In most cases involving a potential pathogen, the news can appear far worse than the actual threat. Infectious Disease Propagation Since the beginning of February there have been occurrences of H5N1 (bird flu) in Cambodia, H1N1 (swine flu) in India and a new, or novel, coronavirus (a member of the same virus family as SARS) in the United Kingdom. In the past week, a man from Nepal traveled through several countries and eventually ended up in the United States, where it was discovered he had a drug-resistant form of tuberculosis, and the Centers for Disease Control and Prevention released a report stating that antibiotic-resistant infections in hospitals are on the rise. In addition, the United States is experiencing a worse-than-normal flu season, bringing more attention to the influenza virus and other infectious diseases. The potential for a disease to spread is measured by its effective reproduction number, or R-value, a numerical score that indicates whether a disease will propagate or die out. When the disease first occurs and no preventive measures are in place, the reproductive potential of the disease is referred to as R0, the basic reproduction rate. The numerical value is the number of cases a single case can cause on average during its infectious period. An R0 above 1 means the disease will likely spread (many influenza viruses have an R0 between 2 and 3, while measles had an R0 value of between 12 and 18), while an R-value of less than 1 indicates a disease will likely die out. Factors contributing to the spread of the disease include the length of time people are contagious, how mobile they are when they are contagious, how the disease spreads (through the air or bodily fluids) and how susceptible the population is. The initial R0, which assumes no inherent immunity, can be decreased through control measures that bring the value either near or below 1, stopping the further spread of the disease. Both the coronavirus family and the influenza virus are RNA viruses, meaning they replicate using only RNA (which can be thought of as a single-stranded version of DNA, the more commonly known double helix containing genetic makeup). The rapid RNA replication used by many viruses is very susceptible to mutations, which are simply errors in the replication process. Some mutations can alter the behavior of a virus, including the severity of infection and how the virus is transmitted. The combination of two different strains of a virus, through a process known as antigenic shift, can result in what is essentially a new virus. Influenza, because it infects multiple species, is the hallmark example of this kind of evolution. Mutations can make the virus unfamiliar to the body's immune system. The lack of established immunity within a population enables a disease to spread more rapidly because the population is less equipped to battle the disease. The trajectory of a mutated virus (or any other infectious disease) can reach three basic levels of magnitude. An outbreak is a small, localized occurrence of a pathogen. An epidemic indicates a more widespread infection that is still regional, while a pandemic indicates that the disease has spread to a global level. Virologists are able to track mutations by deciphering the genetic sequence of new infections. It is this technology that helped scientists to determine last year that a smattering of respiratory infections discovered in the Middle East was actually a novel coronavirus. And it is possible that through a series of mutations a virus like H5N1 could change in such a way to become easily transmitted between humans. Lessons Learned There have been several influenza pandemics throughout history. The 1918 Spanish Flu pandemic is often cited as a worst-case scenario, since it infected between 20 and 40 percent of the world's population, killing roughly 2 percent of those infected. In more recent history, smaller incidents, including an epidemic of the SARS virus in 2003 and what was technically defined as a pandemic of the swine flu (H1N1) in 2009, caused fear of another pandemic like the 1918 occurrence. The spread of these two diseases was contained before reaching catastrophic levels, although the economic impact from fear of the diseases reached beyond the infected areas. Previous pandemics have underscored the importance of preparation, which is essential to effective disease management. The World Health Organization lays out a set of guidelines for pandemic prevention and containment. The general principles of preparedness include stockpiling vaccines, which is done by both the United States and the European Union (although the possibility exists that the vaccines may not be effective against a new virus). In the event of an outbreak, the guidelines call for developed nations to share vaccines with developing nations. Containment strategies beyond vaccines include quarantine of exposed individuals, limited travel and additional screenings at places where the virus could easily spread, such as airports. Further measures include the closing of businesses, schools and borders. Individual measures can also be taken to guard against infection. These involve general hygienic measures -- avoiding mass gatherings, thoroughly washing hands and even wearing masks in specific, high-risk situations. However, airborne viruses such as influenza are still the most difficult to contain because of the method of transmission. Diseases like noroviruses, HIV or cholera are more serious but have to be transmitted by blood, other bodily fluids or fecal matter. The threat of a rapid pandemic is thereby slowed because it is easier to identify potential contaminates and either avoid or sterilize them. Research is another important aspect of overall preparedness. Knowledge gained from studying the viruses and the ready availability of information can be instrumental in tracking diseases. For example, the genomic sequence of the novel coronavirus was made available, helping scientists and doctors in different countries to readily identify the infection in limited cases and implement quarantine procedures as necessary. There have been only 13 documented cases of the novel coronavirus, so much is unknown regarding the disease. Recent cases in the United Kingdom indicate possible human-to-human transmission. Further sharing of information relating to the novel coronavirus can aid in both treatment and containment. Ongoing research into viruses can also help make future vaccines more efficient against possible mutations, though this type of research is not without controversy. A case in point is research on the H5N1 virus. H5N1 first appeared in humans in 1997. Of the more than 600 cases that have appeared since then, more than half have resulted in death. However, the virus is not easily transmitted because it must cross from bird to human. Human-to-human transmission of H5N1 is very rare, with only a few suspected incidents in the known history of the disease. While there is an H5N1 vaccine, it is possible that a new variation of the vaccine would be needed were the virus to mutate into a form that was transmittable between humans. Vaccines can take months or even years to develop, but preliminary research on the virus, before an outbreak, can help speed up development. In December 2011, two separate research labs, one in the United States and one in the Netherlands, sought to publish their research on the H5N1 virus. Over the course of their research, these labs had created mutations in the virus that allowed for airborne transmission between ferrets. These mutations also caused other changes, including a decrease in the virus's lethality and robustness (the ability to survive outside the carrier). Publication of the research was delayed due to concerns that the results could increase the risk of accidental release of the virus by encouraging further research, or that the information could be used by terrorist organizations to conduct a biological attack. Eventually, publication of papers by both labs was allowed. However, the scientific community imposed a voluntary moratorium in order to allow the community and regulatory bodies to determine the best practices moving forward. This voluntary ban was lifted for much of the world on Jan. 24, 2013. On Feb. 21, the National Institutes of Health in the United States issued proposed guidelines for federally funded labs working with H5N1. Once standards are set, decisions will likely be made on a case-by-case basis to allow research to continue. Fear of a pandemic resulting from research on H5N1 continues even after the moratorium was lifted. Opponents of the research cite the possibility that the virus will be accidentally released or intentionally used as a bioweapon, since information in scientific publications would be considered readily available. The Risk-Reward Equation The risk of an accidental release of H5N1 is similar to that of other infectious pathogens currently being studied. Proper safety standards are key, of course, and experts in the field have had a year to determine the best way to proceed, balancing safety and research benefits. Previous work with the virus was conducted at biosafety level three out of four, which requires researchers wearing respirators and disposable gowns to work in pairs in a negative pressure environment. While many of these labs are part of universities, access is controlled either through keyed entry or even palm scanners. There are roughly 40 labs that submitted to the voluntary ban. Those wishing to resume work after the ban was lifted must comply with guidelines requiring strict national oversight and close communication and collaboration with national authorities. The risk of release either through accident or theft cannot be completely eliminated, but given the established parameters the risk is minimal. The use of the pathogen as a biological weapon requires an assessment of whether a non-state actor would have the capabilities to isolate the virulent strain, then weaponize and distribute it. Stratfor has long held the position that while terrorist organizations may have rudimentary capabilities regarding biological weapons, the likelihood of a successful attack is very low. Given that the laboratory version of H5N1 -- or any influenza virus, for that matter -- is a contagious pathogen, there would be two possible modes that a non-state actor would have to instigate an attack. The virus could be refined and then aerosolized and released into a populated area, or an individual could be infected with the virus and sent to freely circulate within a population. There are severe constraints that make success using either of these methods unlikely. The technology needed to refine and aerosolize a pathogen for a biological attack is beyond the capability of most non-state actors. Even if they were able to develop a weapon, other factors such as wind patterns and humidity can render an attack ineffective. Using a human carrier is a less expensive method, but it requires that the biological agent be a contagion. Additionally, in order to infect the large number of people necessary to start an outbreak, the infected carrier must be mobile while contagious, something that is doubtful with a serious disease like small pox. The carrier also cannot be visibly ill because that would limit the necessary human contact. As far as continued research is concerned, there is a risk-reward equation to consider. The threat of a terrorist attack using biological weapons is very low. And while it is impossible to predict viral outbreaks, it is important to be able to recognize a new strain of virus that could result in an epidemic or even a pandemic, enabling countries to respond more effectively. All of this hinges on the level of preparedness of developed nations and their ability to rapidly exchange information, conduct research and promote individual awareness of the threat.

### Warfighting

#### Plan slows warfighting

Yoo 13 (John – professor of law at the University of California, Berkeley, School of Law and visiting scholar at AEI. Former deputy assistant attorney general in the Office of the Legal Counsel of the U.S. Department of Justice and a law clerk to Justice Clarence Thomas and Judge Laurence Silberman. “Hiding behind judicial robes in the battle over national security”, Published June 13th. Accessed 6/30/2013. Available at <http://www.aei.org/article/foreign-and-defense-policy/defense/hiding-behind-judicial-robes-in-the-battle-over-national-security/>)

In the most unlikely of outcomes, everyone's favorite crutch in the controversy over the National Security Agency's eavesdropping programs has become the Foreign Intelligence Surveillance Court (FISC). Sitting in a steel vault at the top of the Justice Department building in Washington, D.C., the Court issues warrants under the 1978 FISA law, enhanced by the 2001 Patriot Act, to conduct electronic surveillance of potential spies and terrorists. Until the 1978 FISA, presidents unilaterally ordered electronic surveillance of enemy spies and, later, terrorists, based on their Commander-in-Chief powers. Gathering signals intelligence - i.e., intercepting enemy communications - has long been a weapon in the executive national security arsenal. But stung by the Nixon administration's abuses of the CIA and NSA to pursue its domestic political opponents, the post-Watergate Congress attempted to tame the commander-in-chief with the rule of judges. The Constitution clearly resists the effort to legalize national security. Judges are very good at reconstructing historical events (such as crimes), hearing evidence from all relevant parties in formal proceedings, and finding fair results - because they have the luxury of time and resources. National security and war, however, demand fast decisions based on limited time and imperfect information, where judgments may involve guesses and prediction as much as historical fact. As the Framers well understood, only a single executive could act with the "decision, activity, secrecy, and dispatch" required for the "administration of war" (in the words of Alexander Hamilton's Federalist No. 70). The September 11 attacks made clear the harms of altering the Constitution's original design for war. Concerned that domestic law enforcement might use information gathered under the FISA's lower warrant standards, the FISC erected the much-maligned "wall" that prohibited intelligence agencies from sharing information with the FBI. That wall prevented the CIA from informing the FBI of the identities of two of the 9-11 hijackers who had entered the country. A president acting under his commander-in-chief powers, without the unconstitutional involvement of federal judges, could have ordered the agencies to cooperate to track terrorists whose operations don't stop at national borders. Hiding behind the FISA court may allow our elected leadership to dilute their accountability for the electronic surveillance that has helped stopped terrorist attacks. It may even reassure the public that a pair of impartial judicial eyes has examined the NSA's operations and found them reasonable. But it will also advance the legalization of warfare, which will have the deeper cost of slowing the ability of our military and intelligence agencies to act with the speed and secrecy needed to protect the nation's security. And judicial involvement won't magically subject our intelligence operations to the Constitution. If anything, it will further distort our founding document's original design to fight and win wars.

#### Turns both advantages

Li 9 (Zheyao, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modem state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

# 2NC

## Court Ptx

### Impact – 2NC – Trade

#### Escalates to great power wars

Patrick 9 (Stewart, senior fellow and director of the Program on International Institutions and Global Governance at the Council on Foreign Relations, “Protecting Free Trade,” March 13, <http://nationalinterest.org/article/protecting-free-trade-3060>)

In the 1930s, authoritarian great-power governments responded to the global downturn by adopting more nationalistic and aggressive policies. Today, the economic crisis may well fuel rising nationalism and regional assertiveness in emerging countries. Russia is a case in point. Although some predict that the economic crisis will temper Moscow's international ambitions, evidence for such geopolitical modesty is slim to date. Neither the collapse of its stock market nor the decline in oil prices has kept Russia from flexing its muscles from Ukraine to Kyrgyzstan. While some expect the economic crisis to challenge Putin's grip on power, there is no guarantee that Washington will find any successor regime less nationalistic and aggressive. Beyond generating great power antagonism, misguided protectionism could also exacerbate political upheaval in the developing world. As Director of National Intelligence Dennis Blair recently testified, the downturn has already aggravated political instability in a quarter of the world's nations. In many emerging countries, including important players like South Africa, Ukraine and Mexico, political stability rests on a precarious balance. Protectionist policies could well push developing economies and emerging market exporters over the edge. In Pakistan, a protracted economic crisis could precipitate the collapse of the regime and fragmentation of the state. No surprise, then, that President Obama is the first U.S. president to receive a daily economic intelligence briefing, distilling the security implications of the global crisis. What guidance might Cordell Hull give to today's policymakers? To avoid a protectionist spiral and its political spillovers, the United States must spearhead multilateral trade liberalization involving all major developed and developing countries.

#### Causes nuclear and bio weapon use

**Pazner 8** (Michael J., Faculty – New York Institute of Finance, Financial Armageddon: Protect Your Future from Economic Collapse, p. 137-138)

The rise in isolationism and protectionism will bring about ever more heated arguments and dangerous confrontations over shared sources of oil, gas, and other key commodities as well as factors of production that must, out of necessity, be acquired from less-than-friendly nations. Whether involving raw materials used in strategic industries or basic necessities such as food, water, and energy, efforts to secure adequate supplies will take increasing precedence in a world where demand seems constantly out of kilter with supply. Disputes over the misuse, overuse, and pollution of the environment and natural resources will become more commonplace. Around the world, such tensions will give rise to full-scale military encounters, often with minimal provocation. In some instances, economic conditions will serve as a convenient pretext for conflicts that stem from cultural and religious differences. Alternatively, nations may look to divert attention away from domestic problems by channeling frustration and populist sentiment toward other countries and cultures. Enabled by cheap technology and the waning threat of American retribution, terrorist groups will likely boost the frequency and scale of their horrifying attacks, bringing the threat of random violence to a whole new level. Turbulent conditions will encourage aggressive saber rattling and interdictions by rogue nations running amok. Age-old clashes will also take on a new, more heated sense of urgency. China will likely assume an increasingly belligerent posture toward Taiwan, while Iran may embark on overt colonization of its neighbors in the Mideast. Israel, for its part, may look to draw a dwindling list of allies from around the world into a growing number of conflicts. Some observers, like John Mearsheimer, a political scientists at the University of Chicago, have even speculated that an “intense confrontation” between the United States and China is “inevitable” at some point. More than a few disputes will turn out to be almost wholly ideological. Growing cultural and religious differences will be transformed from wars of words to battles soaked in blood. Long-simmering resentments could also degenerate quickly, spurring the basest of human instincts and triggering genocidal acts. Terrorists employing biological or nuclear weapons will vie with conventional forces using jets, cruise missiles, and bunker-busting bombs to cause widespread destruction. Many will interpret stepped-up conflicts between Muslims and Western societies as the beginnings of a new world war.

#### jacks US/Russian relations – domestic politics key

Sokov 13 (Nicholas – Senior Fellow at the Vienna Center for Disarmament and Non-Proliferation (VCDNP), “US-Russian Relations: Beyond the Reset”, 1/29, http://www.europeanleadershipnetwork.org/us-russian-relations-beyond-the-reset\_459.html)

Looking into the future, most observers of US-Russian relations tend to concentrate on arms control and disarmament – a new treaty to replace New START, missile defense, tactical nuclear weapons and other similar issues. Others pay attention to the human and political rights issues, including first of all the conservative wave that is sweeping through Russia. It is quite sad that nuclear disarmament and political rights dominate the agenda. This only shows that the relationship lacks depth. More than twenty years after the end of the Cold War, trade and investment remain at an extremely low level. They cannot serve as a stabilizer of the relationship (in sharp contrast to Russia’s relations with Europe) and their absence allows other, more volatile and more adversarial issues to top the agenda. Two features are likely to dominate the future of the US-Russian relationship and both will have a negative effect: domestic politics and the political transition in the Middle East and Northern Africa which is commonly known as the “Arab Spring.” Contrary to common opinion, there are very few truly difficult issues on the bilateral agenda that cannot be resolved through negotiation. The increasingly conflictual nature of the relationship results from domestic politics in both countries rather than from strategic, economic, or political differences. A good illustration is the well-known controversy over missile defense. Any decent diplomat could find a solution in a matter of months. Russian concerns concentrate on the fourth – and the last – phase of the American plan (known as the Phased Adaptive Approach), which foresees deployment of systems theoretically capable of intercepting strategic missiles. The solution proposed by Russian military leaders is to limit the capability of the fourth-phase system (for example, through limits on the number of interceptors and the areas of their deployment) so that it does not undermine the existing US-Russian strategic balance while preserving the ability of the American system to intercept a small number of long-range missiles, i.e., to limit the system to its officially proclaimed purpose. In the end, this is about the predictability of the American missile defense capability. The prospect of reaching agreement, however, is barred by the Republican Party, especially its Tea Party wing, which regards any limits whatsoever as anathema. Missile defense is an article of faith. This is not about plans or capabilities: this is about a deeply ideological commitment to unrestricted unilateralism. The increasingly tough and vocal (even shrill) Russian rhetoric also stems from domestic politics. Implementation of phase four of PAA is supposed to begin in the end of this decade and it may be another five to seven years, if not longer, until it begins to affect Russian strategic capability. There is plenty of time to negotiate. However, the rhetoric of the Russian government suggests that the threat is imminent. It is safe to assume that is simply the familiar “rally-around-the-flag” tactic of consolidating the public around the government.

#### Russia relations solve global nuclear war

Allison 11 (Graham, Director – Belfer Center for Science and International Affairs at Harvard’s Kennedy School, and Former Assistant Secretary of Defense, and Robert D. Blackwill, Senior Fellow – Council on Foreign Relations, “10 Reasons Why Russia Still Matters”, Politico, 2011, http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

### U – 2NC – Yes Strike Down

#### Limits will be struck down – best experts

Hamm 13 (Andrew – Deputy Manager at SCOTUSblog, “Event recap: The Roberts Court and OT2013”, 9/13, http://www.scotusblog.com/2013/09/event-recap-the-roberts-court-and-ot2013/)

Before diving straight into the October Term 2013, the panelists – Pete Williams of NBC News, Tony Mauro of the National Law Journal, Tom Goldstein and Amy Howe of SCOTUSblog, and moderator Sonja West of the University of Georgia Law School – gave the audience, which was largely a mix of law and journalism students and professors, a view of the wider arc of the Roberts Court and its individual members. With three associate Justices joining the Court following Roberts’s ascension to the position of Chief Justice, and four current members over the age of seventy-five, the Court finds itself in an age of transition but with an emerging incremental approach and conservative direction. Mauro argued that during the past few Terms, the Chief Justice has taken more control over the direction of the Court, with regard to both its docket and the outcomes. Using skills he developed as a Supreme Court advocate, the Chief Justice has demonstrated a mastery over developing coalitions and counting to five. The Chief Justice is, of course, not the only member of the Court, and the panelists noted that the three female Justices have had an impact as well. In the last Term, Justice Ruth Bader Ginsburg emerged as the new leader of the Court’s liberal wing after the retirement of Justice John Paul Stevens. Justice Elena Kagan has proven herself to be very strategically effective, rarely dissenting and largely able to align herself with other Justices, and a skilled writer as well. Justice Sonia Sotomayor, who often dominates arguments with her questions, has demonstrated in her writings a deep and nuanced yet somewhat unappreciated legal analysis that could have an impact on future constitutional jurisprudence. Thinking of the Court as a block, panelists focused on the extent to which the Court has moved cautiously and incrementally in its rulings, with Fisher v. University of Texas serving as a recent example. Howe recalled a speech by Justice Anthony Kennedy last year in which he expressed concern that the Court was taking on too many hot-button issues that could be better left to other branches of government. Ruling on divisive issues like abortion or religion, which will be a first for the present Court, inevitably highlights the political divisions on the Court, often to the chagrin of the Justices. This attention could itself create an atmosphere in which the Justices are reluctant to rule too strongly in any one direction, as in the Fisher or Perry cases. Williams offered the Court’s approach to the Voting Rights Act as a prime example of the present Court’s step-by-step approach. In Northwest Austin Municipal Utilities District No. 1 v. Holder, the Court intended to send Congress a message that the formula used to determine who must comply with the Act’s pre-clearance requirements relied on out-of-date data. Four years later – during which Congress failed to act — the Court intervened and ruled the formula unconstitutional in Shelby County v. Holder. As for the October Term 2013 itself, the panelists to varying degrees largely expressed skepticism about the fate of the same-sex marriage cases currently on a fast track to the Court. Put another way, although the Hollingsworth v. Perry and United States v. Windsor decisions led to a wave of lawsuits seeking a declaration that there is a right to same-sex marriage, the Court may not be ready to issue that ruling. The central message from Perry is instead that the Supreme Court likely wants to avoid doing precisely that, but it may not have the luxury of sitting back and letting the process play out in the states. This Term the Court may take up the issue of restrictions on abortion – in Cline v. Oklahoma Coalition for Reproductive Justice, a challenge to an Oklahoma law regulating medical (as opposed to surgical) abortions. And whenever the Court returns to the issue of abortion, there is the potential for a very significant ruling. Although Justice Kennedy in Planned Parenthood v. Casey voted to salvage Roe v. Wade, he wrote for the Court in Gonzales v. Carhart (in which the Court upheld the federal ban on partial-birth abortion), suggesting that he has become more receptive to restrictions on abortion. Mauro also observed that the more conservative Justice Samuel Alito has replaced Justice Sandra Day O’Connor, the author and main proponent of Casey’s undue burden test. The panel predicted that the Court will materially restrict Roe with an incremental step, but one that will send a strong message to the states that restrictions on abortion will largely be viewed favorably by the Supreme Court. Williams joked that National Labor Relations Board v. Noel Canning, the challenge to the constitutionality of the president’s recess appointments to the NLRB, is one that “nobody should win.” With the Senate confirmation process largely gridlocked, a ruling by the Court which limited the availability of recess appointments could strengthen minority leaders in the Senate and could have significant consequences for politics, the filibuster, and the nuclear option. Finally, turning to the upcoming oral argument in McCutcheon v. FEC, in which the Court will consider the constitutionality of aggregate limits on campaign contributions, the panelists agreed that the Court is likely to strike down the limits. With the Court in Citizens United v. FEC having already emphasized that free speech in politics requires the ability to spend money on campaigns, and with the anti-corruption argument against contribution limits less persuasive in the case of an individual’s aggregate spending to multiple candidates, at least five members of the present Court seem poised to allow such spending.

### A2: Thumper – Schuette

#### 3. Won’t be a controversial ruling and not about affirmative action

Hart 9/16

[Melissa Hart is an Associate Professor of Law and the Director of the Byron R. White Center at Colorado Law, University of Colorado Boulder., 9/16/13, <http://www.scotusblog.com/?p=169437>]

I do not like the Schuette case. Of course the Supreme Court had to take it. A provision of a state constitution had been declared unconstitutional under the federal Constitution, and the Sixth Circuit’s decision created a direct conflict with an earlier decision of the Ninth Circuit. It would have been very strange if the Court had declined review. But the fact that the Court took the case doesn’t mean it has to spend much time on it. This is not a case that calls for a big decision. The smaller the better, in fact. At first glance, Schuette might look like it is a case primarily about affirmative action. The question presented — “Whether a state violates the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public-university admissions decisions” – certainly sounds like it. One of the respondents calls itself the Coalition to Defend Affirmative Action By Any Means Necessary. And the amicus briefs submitted on both sides spend considerable time debating the merits of race-sensitive admissions policies. But the case that has come to the Supreme Court really is not a case about affirmative action.

#### 4. Schuette will be a limited, noncontroversial ruling

Lemieux, 7-9 (Scott, assistant professor of political science at the College of Saint Rose, “Affirmative Action's Ominous Future,” http://prospect.org/article/affirmative-actions-ominous-future)

In fact, it's hard to imagine an existing program in higher education the current Court majority would vote to uphold as constitutional—just as it is nearly impossible to imagine a preclearance formula for the Voting Rights Act that this Court would approve—even if Kennedy is unwilling to hold affirmative action unconstitutional writ large. It's even possible that Kennedy will ultimately be willing to take the next step. One reason for the Court deciding to write a minimalist opinion in Fisher after sitting on the case for the better part of a year is that the facts of Fisher were not very favorable to opponents of affirmative action. Abigail Fisher, the plaintiff, probably would not have been admitted to U.T. Austin even under entirely race-neutral admissions criteria, making her a less-than-ideal vehicle for demonstrating the alleged injustices of affirmative action. Given a different set of facts, the Roberts Court may well be willing to go further.¶ However, the upcoming case, Schuette v. Coalition to Defend Affirmative Action, concerns the constitutionality of bans on affirmative action, rather than focusing on the constitutionality of affirmative-action programs. It's unlikely to overturn Grutter since the Court declined to do so in Fisher. In 2006, Michigan voters passed Proposal 2, which banned all affirmative-action programs by state agency. In November of last year, a badly divided Sixth Circuit ruled that Proposal 2 violated the equal protection clause of the Fourteenth Amendment. According to the majority opinion, Proposal 2 was unconstitutional because it "reallocates political power or reorders the decision-making process in a way that places special burdens on a minority group's ability to achieve its goals through that process."¶ This decision's odds of being upheld by the Supreme Court are near to nil. In all candor, it might be an uphill struggle for the opinion to get even one vote. I strongly believe that most affirmative-action programs are constitutional and deplore Proposal 2 as a policy matter, but it's a stretch to argue that Michigan is required to have affirmative-action programs. However, this case presents very different conceptual issues than Fisher did. Since it would be entirely possible to overrule the Sixth Circuit without saying anything about the constitutionality of affirmative action, it is very unlikely that the Court will use the case as a way to resolve the issues Fisher didn't. And so the can will likely be kicked down the road once more, hopefully awaiting a more favorable Court majority in the near future.

### A2: Thumper – Abortion

#### Abortion case won't overturn precedent

Hubbell 10/7/13 (Webb, former Associate Attorney General of the United States, "Shutdown Or Not, SCOTUS Is Back," http://www.talkradionews.com/supreme-court/2013/10/07/shutdown-or-not-scotus-is-back.html#.UmbsO\_msiSo)

McCullen v. Coakley. This case brings a new twist to the abortion debate. Massachusetts enacted a law prohibiting people from entering a 35-foot zone around abortion clinics unless they are entering the clinic, using a public sidewalk to reach a destination other than the clinic or are clinic employees acting within the scope of their employment. In the case of Hill v. Colorado the Court decided that a law prohibiting anyone from entering an area next to a health care facility, to engage another person in conversation without permission, was constitutional because the law didn’t draw lines based on the content of what was spoken or who said it. The buffer zone applied to everyone and therefore was permissible. Since the law in Massachusetts allows employees of the clinic to approach people in the buffer zone, the plaintiffs claim it is “a content-based distinction that allows pro-choice speech but not anti-abortion speech,” and therefore is unconstitutional.¶ Early Prediction: This case gives the Supreme Court the chance to revisit Hill v. Colorado and could be a precursor to a revisit of Roe v. Wade, so it will receive lots of attention. By a narrow margin this law will be upheld as a reasonable restraint on speech, but a one-person shift could lead to an opinion that opens the door to intrusive protests at abortion clinics.

### Link – War Powers – 2NC

#### The plan costs court capital – McGinnis and Rappaport says the court doesn’t want to overturn deference in foreign affairs and judicial review would erode prestige and undermine capital

#### The plan drains court capital

McGinnis ’93 (John O., Prof of Law @ Cardozo Law @ Yeshiva, “Constitutional Review By The¶ Executive In Foreign Affairs And¶ War Powers: A Consequence Of¶ Rational Choice In The¶ Separation Of Powers,” *Law and Contemporary Problems*, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4213&context=lcp)

The Court has the least interest of all in exercising rights of governance in¶ the foreign affairs and war powers areas. The Court does not have the¶ institutional capacity to make assessments in these areas. Any inept decision¶ about war and peace may have dramatic and readily understood real world¶ consequences that may erode the Court's prestige and endanger its public¶ respect. Thus, decisions in this area stand in contrast with decisions elaborating¶ individual rights, a role in which it may appear as the tribune of the people. The latter decisions, even when controversial, are likely to have some group of¶ supporters, and their real world consequences are less immediate and dramatic¶ than issues of war and peace. Resistance, if encountered, can be tempered by¶ incremental implementationY7¶ A useful thought experiment to aid in evaluating the interests of the Court¶ in deciding war powers and other separation of powers cases is to imagine the¶ Court divided into two entirely separate courts: a structural court and a rights¶ court. The structural court would adjudicate only separation of powers and¶ federalism, the structural provisions of the Constitution. The rights court would¶ adjudicate only individual rights, principally the Bill of Rights. A structural court¶ in such a regime may be rationally more interested in deciding more structural¶ cases, because structural cases will be its raison d'etre.68 A court, like the¶ Supreme Court, with a discretionary jurisdiction that includes both rights and¶ structural functions, however, would rationally consider the possibility that some¶ structural cases would so endanger its political capital that they should be¶ shunned.¶ Against this background of interests, it is therefore not surprising that the¶ Court has largely ceded the rights of governance in foreign affairs and war¶ powers to the executive, because the executive values them more. In this way,¶ the Court maximizes utility among the branches and, thus, minimizes the chance¶ of retaliation against its own interests.69 The Court, however, has largely given this control to the executive not so much through substantive decisions favoring¶ the executive (although there have been some substantive doctrines favorable to¶ the executive), but through decisions invoking the political question doctrine or¶ justiciability doctrine, thus providing the executive with some initial authority to¶ fashion the substantive law in the area.7¶ ' The strategy of ceding power to the¶ executive through decisions on such threshold matters rather than on the merits¶ has three additional advantages for the judiciary. First, it provides the judiciary¶ with a graceful way of avoiding substantive decisions against congressional¶ interests. Second, since the Court has not put its imprimatur on a substantive¶ allocation of rights in this area, Congress may more readily use its own powers¶ to take concrete action against the executive, thus providing the judiciary with¶ additional information about the value it attached to these rights. Given such¶ information, the Court might find ways of redistributing some rights from the¶ executive to the Congress without disturbing as much substantive precedent.71

### U – A2: UQ Overwhelms the Link

#### No – all evidence predicts a close 5-4 decision -- 1nc Gora says this outcome hinges on Kennedy --- he’ll change his mind if he thinks the court’s already spent too much capital

Smith, ’92 (Christopher E. Smith, Pol. Sci. @ Akron, Fall 1992, “SUPREME COURT SURPRISE: JUSTICE ANTHONY KENNEDY'S MOVE TOWARD MODERATION,” 45 Okla. L. Rev. 459)

There is, of course, no way to know with certainty why Justice Kennedy made his dramatic move toward moderation in highly publicized cases during the 1991 Term. Because it is highly unlikely that Justice Kennedy will ever forthrightly discuss his changing views, scholars must rely on the available evidence to analyze the motivations for and consequences of his move away from the Court's conservative bloc. It is clear that Justice Kennedy, more than any other Justice, altered his decisions and contradicted his previously stated positions in order to preserve precedents in cases concerning abortion and the Establishment Clause. Although there might be various explanations for this switch, the emphasis in his opinions on preserving doctrinal stability and the Court's legitimacy in the eyes of the public provides the strongest plausible explanation for the change in his judicial behavior. It is difficult to predict how Justice Kennedy will vote in future cases or if his move toward moderation will have lasting impact, particularly because new ap- pointments in the next few years may further alter the ideological balance of power on the Court. In any event, Justice Kennedy's decisions during the 1991 Term seem to confirm two important observations. First, Justices' decisions are obviously affected by a set of factors more complex than the mere sum of their judicial philosophies and policy preferences. As Justice Kennedy's actions demonstrate, the factors motivating a Justice's decisions can change from Term to Term. Justice Kennedy's obvious concern for the Court's legitimacy with respect to the abortion issue did not emerge until Roe was actually threatened with reversal during the tumult of a presidential election year. Second, this relatively quiet and unassuming Justice, who'is nearly always overshadowed by his more controversial and outspoken col- leagues, deserves additional scrutiny from scholars as an emerging "power broker" in the middle of the Supreme Court who can determine the out- comes of cases when the Court is deeply divided.

### U – McCutcheon – Capital Key

#### Court capital is key for controversial campaign finance decisions

Hasen 11 (Richard L. – William H. Hannon Distinguished Professor of Law, Loyola Law School-Los Angeles, “ARTICLE: CITIZENS UNITED AND THE ILLUSION OF COHERENCE”, 2011, 109 Mich. L. Rev. 581, lexis)

Although these findings would likely give the Justices considerable pause before overturning core campaign contribution limitations, it does not mean that the Court's campaign finance jurisprudence is likely to remain stagnant. Campaign finance issues are barely understood by the public and generally not a national priority. n261 Only extreme opinions like Citizens United are likely to get the public's attention. Assuming this same five-Justice majority stays on the Court, the Justices will be presented with many less-salient ways to loosen the campaign finance rules. n262 However, complete deregulation, along the lines proposed by Justice Thomas, would take political courage to issue additional politically unpopular decisions. It is not clear that there are five Justices willing to spend considerable goodwill and political capital on such a strategy.

#### Biggest case on the docket

Smith 9/6 (Bradley, “Bradley Smith: The Supreme Court and Ed Corsi's Life of Political Crime”, 2013, http://online.barrons.com/article/SB10001424127887324009304579040671355619380.html?mod=BOL\_article\_full\_more)

When the Supreme Court reconvenes in October, the big campaign-finance case will be McCutcheon v. Federal Election Commission, which nervous censors have dubbed "the next Citizens United." McCutcheon deals with the ability of affluent Americans to contribute to political parties and candidates. Never mind that the candidates and causes these people support represent the views of millions of citizens. "Reformers" argue, and many Americans seem to agree, that "big money" in politics must be regulated.

#### PC is key – It’s as big as Citizens United

Jones 9/11 (Jessica, “Supreme Court Preview: McCutcheon v. Federal Election Commission”, 2011, http://www.lwv.org/blog/supreme-court-preview-mccutcheon-v-federal-election-commission)

The U.S. Supreme Court is set to begin hearing cases in its fall term next month. On the second day of arguments, a case that has been labeled the “next Citizens United” will be heard by the Justices. The case, McCutcheon v. Federal Election Commission (FEC), challenges aggregate spending limits that are imposed on individual donors in order to prevent corruption and the appearance of corruption. To understand the full effect that this case could have on campaign finance, it’s important to understand what limits are currently placed on individual donor contributions.

### Detention Links

#### Court won’t rule against executive detainees without institutional capital

Segal ’04 (Jeffrey, Prof. of PoliSci @ Stony Brook, “The effect of war on the U.S. Supreme Court,” www.nyulawglobal.org/workingpapers/detail/documents/GLWP0304Segal.pdf)

In raising this question, Grossman suggests that the justices in Korematsu were forced to think long and hard about President Roosevelt’s response to a decision adverse to his order. Apparently, though, pressure from the same administration in the Nazi saboteur case, Ex Parte Quirin,130 avoided any need for Court members to cull subtle and not-so-subtle historical signals.131 According to Turley: Roosevelt’s Attorney General Francis Biddle warned that the president would not accept anything but total support from the court [in the Quirin case]. Justice Owen J. Roberts conveyed this warning to the whole court in its conference on July 29, 1942. He informed his colleagues that the President intended to have all eight men shot if the Court did not acknowledge his authority, warning that they must avoid such a “dreadful” confrontation.132 Similar, though perhaps less overt, political pressure continued with President George W. Bush’s Justice Department leveling threats against appellate courts it believes have contravened anti-terrorism measures passed in the wake of September 11th . For example, after the Fourth Circuit ruled, in United States v. Moussaoui,133 that the defendant facing trial for the September 11th attacks should be allowed to interview a captured Al Qaeda member as a potential witness to his case, the Justice Department defied the order in the name of national security. It also threatened to move the prosecution to a military tribunal.134 What these stories suggest is that when the political branches credibly threaten to circumvent or ignore disliked outcomes, the Supreme Court is well advised to exercise “passive virtues.”135 Rather than squandering its resources on “ineffective judgments,”136 as Alexander Bickel warned, the Court ought and does assume a more deferential stance. Institutional legitimacy thereby may become an implicit decision calculus that leads justices to issue decidedly different opinions during times of war.137 In addition, because concerns over institutional legitimacy are constant, the Court must follow precedent established during wartime even after the crisis dissipates. If it does not, it once again may risk undermining its fundamental efficacy. That is so for several reasons, not the least of which is that members of legal and political communities base their future expectations on the belief that others will follow existing rules. Should the Court make a radical change in those rules, the communities may be unable to adapt, resulting in a decision that does not produce a (new) efficacious rule. If a sufficient number of such decisions accumulate overtime, the Court will undermine its legitimacy. Hence, the norm of stare decisis can constrain the decisions of all justices, even those who do not believe they should be constrained by past decisions or who dislike extant legal principles.

### Link Shield/Booster – Negativity Bias – 2NC

#### Link outweighs the turn –

#### Negativity bias proves – disagreement produces a stronger response

Grosskopf and Mondak 98 (Anne and Jeffery, University of Pittsburgh + Florida State Univ., “Do Attitudes Toward Specific Supreme Court Decisions Matter?” Political Research Quarterly, p. 652)

The pattern of effects reported here also comports well with the concept of a negativity bias. Respondents who agreed with both the abortion and the flag-burning decisions gave the Court minimal credit for ruling twice in the preferred direction, but people who disagreed with one or both edicts reacted more strongly against the Court in response. This pattern reveals why the Court must operate with caution: favorable response to its rulings is, in itself, likely to be insufficient to offset the damage inflicted by too many high-salience, unpopular decisions. The dominance of negativity also means that aggregate confidence in the Supreme Court can change even if large portions of the American public are unaware of a particular decision, because effects will be unidirectional. Where positive perceptions do not cancel out negative views, critical reactions to a decision by even a relatively small percentage of the public can trigger a measurable decline in confidence.

#### There’s only a risk of a link—studies prove

Grosskopf and Mondak 98 (Anne and Jeffery, University of Pittsburgh + Florida State Univ., “Do Attitudes Toward Specific Supreme Court Decisions Matter?” Political Research Quarterly, p. 636-7)

Few of us cheer an umpire’s good call with the same passion that we boo when the umpire gets one wrong, and we certainly do not remember the good calls when we talk about the game at work on Monday. We hypothesize that precisely such a negativity bias operates on perceptions concerning the Supreme Court, meaning that the harm the Court suffers from its unpopular rulings is not offset by a boost in public esteem from its popular rulings. In research consistent with the negativity effect, several studies of the Supreme Court have found that, as in other contexts, negative information is more memorable than positive. Specifically, respondents offered approximately three times more disliked than liked cases when answering open-ended questions about the Court’s actions (Murphy and Tanenhaus 1968; Adamany and Grossman 1983). Also, a mathematical model of public support for the Supreme Court casts the negativity bias in formal terms, and shows that observed change in confidence in the Court in the period 1973 to 1994 is consistent with the presence of a very strong negativity effect (Mondak and Smithey 1997).

### Yes Make-Up/Spillover – 2NC

#### Controversial decisions spend political capital

Grosskopf and Mondak ‘98 (Anke Grosskopf, Assistant Prof of Political Science @ Long Island University, & Jeffrey Mondak, Professor of Political Science @ U of Illinois, 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54 September 1998)

Our empirical focus in this article may be specific, but, on a theoretical level, we see several components in the relationship between public opinion and the Supreme Court. Discussion of this broad relationship thus provides context necessary to understand the empirical contribution we hope to offer. We begin by noting that we presume there to be a bidirectional link between opinion about Supreme Court decisions and support for the Court as an institution. Support for the Supreme Court acts as a form of political capital (e.g., Choper 1980; Grosskopf 1996; Mondak 1992). From this perspective, the Supreme Court "spends" a portion of its institutional support when it affixes its imprimatur to controversial policy questions. In short, a popular Court can increase public support for unpopular policy actions, but, by doing so, the Court exposes itself to the risk of diminished public esteem. The Supreme Court's legitimating function has been demonstrated in several experimental and quasi-experimental studies (Hoekstra 1995; Hoekstra and Segal 1996; Mondak 1990, 1992, 1994). This body of research, which draws heavily on social-psychological theories of information processing, establishes that the Supreme Court can in at least some circumstances elevate public support for a policy simply by issuing a decision. However, this effect does not operate uniformly for all decisions or for all people. Instead, knowledge that the Supreme Court has ruled a particular way increases the perceived legitimacy of a policy the most for those people for whom the issue is of the lowest salience or personal relevance.

#### That forces a tradeoff – judges act strategically – they perceive a need to make-up call

Grosskopf and Mondak ‘98 (Anke Grosskopf, Assistant Prof of Political Science @ Long Island University, & Jeffrey Mondak, Professor of Political Science @ U of Illinois, 1998, “Do attitudes toward specific supreme court decisions matter? The impact of Webster and Texas v Johnson on Public Confidence in the Supreme Court” Political Research Quarterly, vol. 51 no 3 633-54 September1998)

The existence of a strong link between basic values and diffuse support does not necessarily preclude a role for specific decisions, particularly when we seek to understand how support comes to change over time (e.g., Caldeira and Gibson 1992: 658-61). We believe that any claim that the Supreme Court is fully immune to backlash against controversial decisions can be rejected on a prima facie level. First, consider the extreme case. Were the Supreme Court to make its occasional blockbusters-Brown v. Board of Education, Roe v. Wade, Texas v. Johnson, etc.-the norm by routinely ruling on the thorniest social questions, we see it as implausible that such actions would bring no cumulative impact on how people view the Court. Second, the Supreme Court's typical mode of operation suggests that justices themselves view institutional support as an expendable political capital (Choper 1980). That is, the Court recognizes its own political limitations, and thus justices pick their spots carefully when approaching potentially controversial cases. From this perspective, the apparent dominance of democratic values as a determinant of institutional support (e.g., Caldeira and Gibson 1992) means not that the Court is insulated from backlash, but that strategic justices tread cautiously so as to keep backlash to a minimum. Consequently, how and where we examine whether public response to Supreme Court decisions affects institutional support may shape what answer we find.

#### Capital is finite – the court strategically picks its battles

Young, ’04 (Ernest A. Young, Prof of Law at UT Austin, November 2004, “The Rehnquist Court's Two Federalisms” 83 Tex. L. Rev. 1)

Whether or not Alexander Hamilton was right to call the judiciary the "least dangerous branch," n451 both contemporary theory and historical experience suggest that courts' ability to defy the national political branches is not unlimited. Those limits bear on federalism doctrine in at least three respects. First, they support, at least to some extent, the notion that the judiciary has limited institutional capital. If that is true, then courts may not be able to pursue all possible doctrinal avenues at once and may, in consequence, have to choose among them. Second, these limits suggest that courts should pursue certain kinds of doctrine. In particular, they support doctrine that advances the goal of state autonomy without forcing direct confrontations by invalidating political branch actions. Finally, the limits on the judiciary's ability to confront the political branches ought to temper our expectations (or fears) of what judicial federalism doctrine can accomplish.

### Decision K2 Stop Super PACS – 2NC

#### McCutcheon key to stop super PACS – national committees would be less limited in money they can get which draws support away from super PACs because they can compete again

#### McCutcheon decision key – sweeping impacts

Troyan, 8-7 (Mary Orndorff, Gannett Washington Bureau, “Alabama GOP donor enters national spotlight,” ln)

Three years ago, Shaun McCutcheon was a regular guy with a successful engineering business outside Birmingham. But after cutting some huge checks to help elect certain Republicans to office, he's become a GOP rock star and the central character in a Supreme Court case that could radically alter the world of campaign finance.¶ "In 2010, nobody knew who he was. Now, everybody is calling him," said Alabama Republican political consultant Chris Brown.¶ McCutcheon, a 46-year-old Georgia Tech graduate who lives in Hoover and runs Coalmont Electrical Development in Tuscaloosa County, will be at the Supreme Court Oct. 8 when the justices debate whether there should be limits on how much one person can give to federal candidates and political parties every two years.¶ He says the limits infringe on his right to free speech.¶ "If the government tells you that you can't spend your money where you want, there should be a real, real good reason," McCutcheon said in a recent interview in Washington.¶ The Federal Election Commission adjusts donation limits for inflation every election cycle. For 2013-14, the agency limits an individual's total giving to $48,600 in donations to candidates and $74,600 in donations to political parties -- a total of $123,200.¶ The limits, previously upheld in a Supreme Court case from 1976, are intended to prevent a wealthy few from exerting outsized influence on the political process.¶ But recent court opinions have started to chip away at limits on political spending, and McCutcheon, joined by the Republican National Committee, says the aggregate donation limits should be the next to go.¶ He doesn't challenge the $2,600 base limit on how much a person can give to a single candidate in a single election (the base limit is $5,200 for both a primary and a general election). In fact, McCutcheon supports the base limits as a protection against corruption. He just wants to be able to give the maximum to as many candidates as he chooses.¶ "Is it because that 18th candidate is going to be more corrupted than the 17th? That's not a reason," McCutcheon said.¶ But the aggregate limits have their defenders. If the Supreme Court invalidates them, one person could spend about $3.6 million per cycle supporting every Democratic or Republican congressional candidate and making maximum donations to federal and state party committees, according to calculations by the Campaign Legal Center, which supports the limits.

## Judiciary Advantage

### doesn’t Solve

**Their detention k2 deference IL is dumb – it just says detention implicates deference not that the plan’s ruling would literally eliminate all deference and it doesn’t even say the plan is key**

Masur 05 (Jonathan, Law clerk for Posner, JD from Harvard, "A Hard Look or a Blind Eye: Administrative Law and Military Deference" Hastings Law Journal, Lexis)

In evidence is a court that instinctively views military action as judicially incomprehensible and legally untouchable. To the Fourth Circuit, law cannot bend the exigent realities of war to its constraining will because it cannot extract necessary factual clarity from amidst the "murkiness and chaos"; courts would thus be well-advised to remain outside the fray. n320 It is this judicial predilection that necessitates firm proof of dissimilitude between military and criminal detention. **When military operations assume the form and function of typical law enforcement acts, courts become hard-pressed to justify their abstention** from the rule-of-law constitutional questions that form the core of their juridical task. Despitea body of Supreme Court administrative law doctrine counseling judicial intervention into areas of executive expertise, and despite the principle that courts must act to vindicate the rule of law even [\*519] in fields of overwhelming executive or legislative authority, **Article III courts have come to view military questions as a taxonomic grouping they are simply incapable of navigating. Yet in this legal area** (as in most others), **doctrinal facts ought to drive psychological attitudes. Military cases do not always hold the threat of substantially greater national peril, nor offer more pressing exigencies, nor present more intractable** fact or policy **questions** than do typical administrative law adjudications. **Courts that remain unafraid to pass on the factual rationality of highway safety regulations** that may affect tens of thousands of lives each year **should hold no** particular impressionistic **aversion towards inquiring into the legality of detentions** or secretive hearings. There, the danger of a judicial misstep remains speculative precisely because courts have refused to put the Administration to its proofs. Moreover, **courts** themselves **possess responsibility for enforcing the legal limitations that exist to bind administrative actors. To leave wartime cases exclusively in the hands of the Executive Branch in the name of** "comity" or "**deference" would be to reduce fundamental constitutional guarantees to mere precatory language,** slaves to the vicissitudes of the executive expediency they were meant to curb. Lower courts need not shrink from validating the rule of law in cases that bear such resemblance to the administrative law doctrines with which they are familiar. If they continue to do so, **the Supreme Court must act to reconstitute wartime doctrine** along existing precedential lines, **lest the U**nited **S**tates **reap the consequences of this** unfortunate, self-conscious **judicial hand-washing.** Conclusion **Over the past three years, the "War on Terror" has become as much a legal strategy as a military operation.** Incursions abroad have been matched by informational blackouts at home. International manhunts for suspected terrorists are coupled with detention of American citizens. Constitutional rights have been eroded by a torrent of ostensibly security-enhancing measures, and aggrieved individuals have turned to the courts for redress, just as they did six decades ago when the Japanese population of the West Coast was interned in the name of national defense. Yet **courts have behaved solicitously** not towards claims of constitutional deprivations, but rather **towards governmental declarations of necessity and authority** over the lives and rights of the citizenry in wartime. In particular, **courts have overwhelmingly deferred to the executive branch** regarding the assertions of fact that form the factual predicates for governmental actions. Deference has come according to two rationales: first, the President's unique constitutional role as guarantor of national security, and second, the Executive's [\*520] superior institutional expertise in wartime matters. **In awarding deference** on these grounds, **the judiciary has ignored the operation of the Constitution** and laws as contemporaneous structural constraints on executive military action. The President and the military hold only the authority vested in them by the Constitution or by law. Action outside of those legal boundaries is by definition unconstitutional and unauthorized. Similarly, the Bill of Rights enshrines individual freedoms that executive action, even if otherwise lawful, cannot infringe. Moreover, **many cases implicating national security turn on issues of individual statutory and constitutional rights - such as the lawfulness of detention** or free speech rights such as access to information - that form the archetypal bailiwick of civilian tribunals. Thus, **even in wartime circumstances there is often constitutional and statutory law to apply, law to which courts must hold the Executive** and the legislature. As courts have nearly unanimously recognized, **it is emphatically the province of the judiciary to vindicate the rule of law by demanding that government bodies remain within circumscribed boundaries.** It is in this respect that administrative law can usefully inform the adjudication of wartime cases. Administrative law jurisprudence developed to address the particular problems presented by executive branch agencies possessing tremendous institutional expertise and resources and specially empowered by Congress to manage technically difficult subject matter. So-called "military" cases come to Article III courts within precisely the same jurisprudential framework as civilian administrative ones: courts must determine the degree to which they should defer to the legal or factual allegations of an expert, empowered executive branch organization. Despite the obvious considerations favoring substantial administrative deference, the Supreme Court's modern administrative law jurisprudence stands for the principle that adherence to the rule of law demands that courts meaningfully scrutinize administrative determinations of fact. The Court has recognized that enforcement of a legal stricture is toothless without a concomitant inquiry into that stricture's factual predicate. It has therefore insisted upon "substantial evidence" in support of agency judgments before affirming them and required courts to perform "rationality review" of agency policy decisions to ensure that agencies have considered all available alternatives and reached logical conclusions from available information. The rule-of-law principles that motivate judicial scrutiny of administrative determinations compel similar treatment for the claims of fact proffered by the military in the interest of surmounting constitutional restraints. The reasons that courts advance in defense of their acquiescence in wartime circumstances are logically unconvincing. [\*521] **The military matters that have come before the judiciary are neither more judicially inscrutable nor more legally intractable than the administrative issues upon which hard look and substantial evidence review were founded. If military cases present greater national dangers - a question that can hardly be answered accurately without judicial review in the first instance - than their civilian counterparts, they also threaten more dramatic erosions of civil and constitutional rights**. Courts cannot continue to invoke "national security" as a shibboleth absolving them from their responsibility, exemplified within the principles of administrative law, to examine especially those actions taken by broadly empowered, highly experienced executive bodies. On September 22, 2004, almost three years after Yaser Esam Hamdi was taken into custody by American forces in Afghanistan, and nearly three months after the Supreme Court had ruled that he could not be held indefinitely without some nature of adjudicative process, the United States Department of Justice decided that Hamdi's "intelligence value had been exhausted" and agreed to release him, provided he never again set foot in the United States. n321 Nineteen days later, Hamdi was placed on a flight bound for Saudi Arabia. n322 What justification the United States military believed it possessed for holding Hamdi may never be known; one can only presume that it would not have withstood even the limited scrutiny the Supreme Court had prescribed. Hamdi's release completed the military's circular narrative: it was the executive branch that chose to incarcerate Hamdi; it was the executive branch that unilaterally chose to release him; and it appears that the executive branch never ceased believing that it alone held the authority to make these decisions. Yaser **Hamdi**, Jose **Padilla, and** all American **citizens** bearing constitutional rights **are entitled to a government that operates by law and logic, not by executive fiat. Courts must act to vindicate the rule of law if such a government is to persevere.**

### Bioterror

#### No impact – tons of examples vote neg

Dove, 12 – PhD in Microbiology, science journalist and former Adjunct Professor at New York University (Alan, 1/24. “Who’s Afraid of the Big, Bad Bioterrorist?” http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/)

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶ Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶ Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of a cult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed, and had many highly educated members, so this release over the world’s largest city really represented a worst-case scenario.¶ Nobody got sick or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

### Modeling – 2NC

#### Judiciary isn’t modeled – new courts, no foreign citations, and diminished credibility

Liptak 8 (Adam – J.D. – Yale Law School, NYT Supreme Court Correspondent, “U.S. Court Is Now Guiding Fewer Nations “, 9/17, http://www.nytimes.com/2008/09/18/us/18legal.html?pagewanted=all&\_r=0)

But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices. “One of our great exports used to be constitutional law,” said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. “We are losing one of the greatest bully pulpits we have ever had.” From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six. Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72. The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, “they tend not to look to the rulings of the U.S. Supreme Court.” The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court’s fading influence, legal experts said. The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another. Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration’s unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience. “It’s not surprising, given our foreign policy in the last decade or so, that American influence should be declining,” said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago. Aversion to Foreign Law The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role, some foreign judges say. “Most justices of the United States Supreme Court do not cite foreign case law in their judgments,” Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. “They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems.” Partly as a consequence, Chief Justice Barak wrote, the United States Supreme Court “is losing the central role it once had among courts in modern democracies.” Justice Michael Kirby of the High Court of Australia said that his court no longer confined itself to considering English, Canadian and American law. “Now we will take information from the Supreme Court of India, or the Court of Appeal of New Zealand, or the Constitutional Court of South Africa,” he said in an interview published in 2001 in The Green Bag, a legal journal. “America” he added, “is in danger of becoming something of a legal backwater.”

#### No modeling – newest ev

Law and Versteeg 12 (David, Prof. of Law and Prof of PoliSci @ Washington University, St Louis, PHD @ Stanford, JD @ Harvard Law, Mila, Assoc. Prof, U of Virginia Law, D.Phil @ Oxford, "The Declining Influence of the United States Constitution" New York University Law Review -- Vol 87:762 -- www.law.nyu.edu/ecm\_dlv2/groups/public/@nyu\_law\_website\_\_journals\_\_law\_review/documents/documents/ecm\_pro\_072892.pdf)

There are growing suspicions, however, that America’s days as a¶ constitutional hegemon are coming to an end. ¶ 12¶ It has been said that the United States is losing constitutional influence because it is¶ increasingly out of sync with an evolving global consensus on issues of¶ human rights.¶ 13¶ Indeed, to the extent that other countries still look to¶ the United States as an example, their goal may be less to imitate¶ American constitutionalism than to avoid its perceived flaws and mistakes.¶ 14¶ Scholarly and popular attention has focused in particular¶ upon the influence of American constitutional jurisprudence. The¶ reluctance of the U.S. Supreme Court to pay “decent respect to the¶ opinions of mankind” 15 by participating in an ongoing “global judicial¶ dialogue”¶ 16¶ is supposedly diminishing the global appeal and influence¶ of American constitutional jurisprudence.¶ 17¶ Studies conducted by scholars in other countries have begun to yield empirical evidence that¶ citation to U.S. Supreme Court decisions by foreign courts is in fact on the decline.¶ 18¶ By contrast, however, the extent to which the U.S.¶ Constitution itself continues to influence the adoption and revision of¶ constitutions in other countries remains a matter of speculation and¶ anecdotal impression.¶ With the help of an extensive data set of our own creation that¶ spans all national constitutions over the last six decades, this¶ Article explores the extent to which various prominent¶ constitutions—including the U.S. Constitution—epitomize generic¶ rights constitutionalism or are, instead, increasingly out of sync with¶ evolving global practice. A stark contrast can be drawn between the¶ declining attraction of the U.S. Constitution as a model for other¶ countries and the increasing attraction of the model provided by¶ America’s neighbor to the north, Canada. We also address the possibility that today’s constitution makers look for inspiration not only to¶ other national constitutions, but also to regional and international¶ human rights instruments such as the Universal Declaration of¶ Human Rights and the European Convention on Human Rights. Our findings do little to assuage American fears of diminished influence in¶ the constitutional sphere.

# 1NR

## Loac

### Sup

#### The plan signals a lack of resolve for upholding the Law of Armed Conflict – they are unlawful combatants

Carafano 7 (James – Vice President, Foreign and Defense Policy Studies, E. W. Richardson Fellow, and Director, “Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay”, 9/24, http://www.heritage.org/research/reports/2007/09/treatment-of-detainees-and-unlawful-combatants-selected-writings-on-guantanamo-bay)

Despite its admirable record in dealing with the challenges posed by unlawful combatants, the U.S government has received unwarranted criticism. Human rights activists, media outlets, and critics of the Administration have derisively characterized the U.S. military detention facility at Guantanamo as the "gulag of our times."[1] Specifically, they argue that the detention of enemy combatants at Guantanamo Bay violates international law and that the U.S. is unlawfully denying detainees the right to habeas corpus. Granting unwarranted legal rights to these detainees puts soldiers and civilians at risk by rewarding treachery with privilege. The detainees willfully violated the laws of war and are therefore classified as "unlawful" enemy com­batants. Most of the detainees at Guantanamo were captured while fighting for the Taliban or al-Qaeda and wore no uniforms or insignia, refused to carry their arms openly, and-perhaps most important-represented no govern­ment and thus no military hierarchy. Consequently, the detainees are not entitled to Prisoner of War (POW) status or the full protection of the Geneva Conventions, let alone unfettered access to U.S. courts. Summarily granting them these privileges would cripple the integrity of the laws of war. Moreover, even if the detainees were granted POW status, the Geneva Conventions require that combatants be released from custody only "after the cessation of active hostilities."[2] The U.S. Supreme Court recently affirmed the principle that the detention of enemy combatants is a "fundamental and accepted…incident of war" and concluded that the President is therefore authorized to hold detainees for the duration of the conflict in Afghanistan.[3]

### U – Detention Compliance

#### Status quo is US complying – revoking detention authority would directly contradict necessary principles of LOAC

Chesney 11 (Robert – Francis Professor in Law, University of Texas School of Law, “WHO MAY BE HELD? MILITARY DETENTION THROUGH THE HABEAS LENS”, May, 52 B.C. L. Rev 769, lexis)

A plurality of the Court, in an opinion by Justice O'Connor, up-held both the government's notional assertion of some authority to detain and its claim that such authority extended at least to Hamdi's alleged circumstances. n227 Justice Thomas provided a fifth vote for these conclusions in a separate opinion. n228 To begin with, the plurality framed the issue as turning on a question of domestic law informed by reference to international law: they focused on the meaning of the September 18, 2001 Authorization for Use of Military Force (AUMF) as construed in light of the law of armed conflict. n229 As to the existence of some authority to detain, no treaty-based detention provision appeared directly applicable; Hamdi was not held as a prisoner of war or security internee, and, by 2004, the conflict in Afghanistan no longer appeared to be an international armed conflict in any event. n230 Nonetheless, the plurality concluded that detention was a traditional "incident" of warfare and thus, presumably, a necessary part of whatever body of customary law of armed conflict ("LOAC") principles might govern in this setting. n231 As for who precisely might be detained as a result, the plurality concluded that detention authority at least extended to persons who engaged in a particular combination of past conduct and associational status: bearing arms as part of a Taliban military unit in Afghanistan. n232 [\*808] Furthermore, emphasizing that the point of military detention is preventive incapacitation, the plurality expressly rejected the idea that detention might be justified on the collateral ground that a person may possess useful intelligence. n233

## CP

### Solvency – 2NC

#### Amending solves the case without hurting the Supreme Court's image or risking rollback

Baker 95 (Thomas E. Baker, Law Prof @ Texas Tech, 1995, “Exercising the Amendment Power,” 22 Hastings Const. L.Q. 325, lexis)

Indeed, the best use of this “republican veto” would be to set aside a Supreme Court decision that itself overrules a prior decision. This would have the immediate effect of reinstating the preferred earlier interpretation. For example, Congress and the state legislatures by vetoing either National League of Cities v. Usery86 or Garcia v. San Antonio Metropolitan Transit Authority, could have settled the debate over the Tenth Amendment, at least for this generation. That would have avoided the constitutional consternation that resulted from the Court’s yo-yoing of its own precedents.88 This usage to set aside judicial overrulings has the potential to reclaim valuable constitutional precedent at only an incremental cost to the Court as an institution.89 The Supreme Court’s recent internal debate over stare decisis for constitutional questions is instructive and provides Congress with some helpful criteria to consider in deciding whether to veto a Supreme Court decision. Such criteria include the narrowness of the margin of the decision, the persuasiveness of the dissents, the lack of allegiance by present members of the Court, the difficulty of consistent application by the lower courts and subsequent Supreme Courts, the extent of reliance on the ruling within the legal community and in society at large, how related doctrines have affected the ruling, and whether the facts and assumptions relied on in the decision have been overcome by subsequent developments.90 The debate over the particular proposal ought to take place on this level of pragmatic argumentation, with full consideration afforded to all relevant and prudential factors,91 including the threshold assumption that there is a higher burden for constitutional change than for legislative matters. Constitutional politics ought to claim the best wisdom of our nation, expressed through the Congress and the state legislatures. How can the Supreme Court be expected to act in response to the exercise of the “republican veto” if the practice becomes routine? If an amendment is proposed by Congress and ratified by the states, then the Court is oath-bound 92 to respect the outcome of the political process.93 In fact, each time Article V has been relied on to overrule a Supreme Court decision, the Justices have adhered to their oaths.94 The Supreme Court, no less than the political branches, must adhere to the rule of law; indeed, the Court as an institution has the most to lose under the rule of man.95 The constitutional dialogue would be enhanced by regular repair to the “republican veto.”96 Under settled understandings of the principle of separation of powers, the decisions when and what to propose and ratify in a “republican veto” are wholly given over to the Article V procedures. The judicial task of interpreting any amendment, including a new amendment setting aside a specific Court decision, necessarily resides with the Supreme Court, as does the continuing obligation to interpret the scope of the underlying provision of the Constitution’ The implied veto of judicial review is subject to the explicit veto of Article V, but the awesome responsibility to interpret the Constitution will remain with the Supreme Court. Once ratified, a “republican veto” will become part and parcel of the same constitutional dynamic.98 Arguably, an amendment that is negative should be preferred over an amendment that attempts affirmatively to state a new constitutional rule for decision. What is needed is a different interpretation, not different language.99 In our constitutional theater, the Supreme Court always will perform center stage, but Article V makes Congress the director, and the people in the states the playwrights. A “republican veto” will oblige the Justices to reinterpret their part as they perform their ongoing role. This is a constitutionally creative collaboration which is textually preferred over the common law methodology within the exclusive domain of the Justices.’°°

### A2: Perm – Do Both

#### 4) Simultaneous ruling on new amendment is clear violation of standing and ripeness doctrines –independently links and collapses judicial credibility turning whole case

Ferejohn and Kramer 2 (John A. Ferejohn, Professor of Political Science and Senior Fellow of the Hoover Institution, Stanford University; & Larry D. Kramer, Professor of Law and Politics, New York University School of Law, New York University Law Review, October, 2002, lexis)

The federal judiciary has responded to these changed circumstances by inventing a whole series of doctrinal constraints that significantly reduce the scope of its potential authority. Taken together, these require that cases assume a certain form and achieve a degree of particularity and focus before they can become proper subjects for adjudication. Certainly the range of justiciable claims is larger today than it was in Madison's time. As a result of these doctrines, though, it is also smaller than it might otherwise be. From a technical standpoint, the Supreme Court has grounded its doctrinal innovations in the language of Article III, specifically the words "cases" and "controversies" in the provisions conferring federal jurisdiction. n181 Hence, these limitations on justiciability are sometimes referred to as the "case or controversy requirement." But no one seriously believes that the Framers chose those words with anything like the Supreme Court's doctrinal framework in mind or that the Court's justiciability rulings are anything other than a judicially invented gloss on the Constitution. Certain aspects of the case or controversy requirement are quite old and also quite explicit in steering the bench away from political controversy. Take the prohibition on advisory opinions, which one leading commentator calls "the oldest and most consistent thread in the federal law of justiciability." n182 In July 1793, Secretary of State Thomas Jefferson wrote to the Justices of the Supreme Court on behalf of President Washington, requesting advice on a number of matters pertaining to America's obligations under the treaty of alliance [\*1005] with France and to her legal options were she to remain neutral in the war between France and England. n183 The President and his cabinet had no reason to doubt that the Court would respond. Judges had offered advice on legal matters throughout the eighteenth century, both in England and in the colonies, and courts in the United States had continued the practice after the Revolution. n184 Nor had judges forsaken their advisory role upon the adoption of the Constitution, performing a variety of extrajudicial tasks for and during the Washington Administration. n185 "The appropriateness of judicial advice," writes the leading historian of the question, "was a matter of established custom." n186 But the Court did refuse to answer Washington's request, explaining in a letter that separation of powers, together with text that seemed to authorize the President to call for opinions from the heads of executive departments only, "are considerations which afford strong arguments against the Propriety of our extrajudicially deciding the questions alluded to." n187 Against the background of contemporary practice, it is hard not to view the Jay Court's explanation for declining to opine with skepticism. Against the background of contemporary politics, however, the matter of neutrality was fraught with meaning. It symbolized how the United States would respond to the French Revolution, and few issues have matched the French Revolution as a divisive force in American politics. As Lance Banning once remarked, the bitterness of the split aroused by the revolution in France "has been exceeded only once in American history, and that resulted in a civil war." n188 Even George Washington's seemingly impregnable reputation could not withstand such passions, and the President's decision to steer America on a neutral course provoked the first open attacks on his previously untouchable character and judgment. n189 [\*1006] John Jay and his brethren were not stupid, and they had no desire to be drawn into this fray. The mere announcement that their opinion had been sought touched off negative commentary in Republican newspapers, which added to the furor already generated by the willingness of a federal circuit court to try Gideon Henfield for privateering on behalf of France n190 (not to mention the still-recent ruling in Chisholm v. Georgia that private citizens could sue states in federal court). n191 The Justices were seasoned politicians, acutely conscious of the political mood in the country. Plus, they had an agenda of their own, hoping to persuade Congress to eliminate the burdensome circuit-riding system that made life on the Supreme Court such a misery. n192 Recognizing, as John Jay wrote to Rufus King in December 1793, that "the federal Courts have Enemies in all who fear their Influence on State Objects," n193 the Justices were not about to squander political capital unnecessarily. So they refused to answer. Their refusal was not purely political, of course. Legitimate arguments pertaining to separation of powers were available, and offered, for adopting a position against advisory opinions. n194 But there is little doubt that the charged political atmosphere had much to do with the decision of Chief Justice Jay and his brethren to steer clear of this particular controversy. The precedent thus established has, with remarkably few exceptions, n195 guided federal courts ever since. For more than two centuries it has been established that federal judges will not render an opinion or decide a case unless there is an actual dispute between adverse litigants before the court. n196 So accustomed have we grown to this condition [\*1007] that we have ceased to appreciate its profound significance. Imagine how different things might have looked had federal courts maintained the tradition of rendering advice, thus putting the judiciary's credibility and reputation at risk in every important political or constitutional controversy. Instead, the Court has restricted its involvement to a much narrower set of circumstances, avoiding many controversies altogether while addressing others in more particularized, and so less contentious, forms. Over time, the Court has refined and extended the rule against advisory opinions in ways the Justices deemed necessary to preserve its essence. In the early years of the Republic, and even after the Jay Court had declared against advisory opinions, federal judges happily entertained lawsuits that had been contrived by the parties. n197 But this attitude changed, as the Supreme Court became increasingly uncomfortable with actions that were feigned for the sole purpose of obtaining a judicial opinion. n198 In United States v. Johnson, n199 the Court ruled explicitly that a suit brought by the plaintiff at the request of a defendant (who had also financed and directed the litigation) must be dismissed. An "'honest and actual antagonistic assertion of rights,'" the Court held, is "a safeguard essential to the integrity of the judicial process." n200 Some uncertainty remains as to the precise line between an illegitimate contrived case and a legitimate test one, but it generally is accepted today that feigned litigation is nonjusticiable. n201 For similar reasons, the Court has held that litigants must have genuinely adverse interests and that a judgment of the court one way or the other must have some effect on the parties. With respect to the former requirement, for example, the Court in Muskrat v. United [\*1008] States n202 refused to entertain suits brought by Native Americans to determine the constitutionality of a statutory allotment of land. Although these actions were authorized specifically by statute, the Court found that the plaintiffs' interests were not adverse to the government's and that Congress had adopted the statute simply to enable the federal courts to issue an advisory opinion on the constitutionality of its land policy. n203 The requirement that a ruling of the court have some actual effect on the parties has manifested itself in a variety of settings. Judicial rulings must be final, at least with respect to the controversy before the court, and thus not subject either to further review or to being disregarded by executive officials. n204 Congress may revise the law, but it may not reverse a particular judgment rendered. n205 Most important for present purposes, a controversy between adverse parties must continue to exist at every stage of the proceedings. If events subsequent to the filing of a case or an appeal resolve the dispute, the action must be dismissed as moot. n206 Despite exceptions for special situations, n207 the mootness doctrine operates as a significant restraint on what courts do, particularly in today's world, where settlements are common at every stage in litigation. As suggested above, much of the law of justiciability was generated in response to other legal changes occurring in the nineteenth and twentieth centuries. In addition to liberalizing rules of procedure, the law witnessed an enormous substantive transformation during this period, particularly in the century just ended. The advent of the regulatory state brought legislation creating countless new interests that had not been protected at common law, interests that invariably were [\*1009] shared by large numbers of people. At the same time, the Supreme Court recognized a myriad of new constitutional rights, also widely held, that likewise did not resemble traditional forms of liberty or property. These changes forced courts to address, in the words of one leading group of commentators, "who, if anyone, should be able to sue to ensure governmental compliance with statutory and constitutional provisions intended to protect broadly shared interests of large numbers of citizens." n208 Taken for all they were worth, the new procedural and substantive regimes might have opened the doors of the courthouse to practically anyone unhappy with almost anything the government did. Instead, the Supreme Court circumscribed access to the judiciary by fabricating the doctrines of standing and ripeness. There was no doctrine of standing prior to the middle of the twentieth century. The word "standing" made scattered appearances, but it was unattached to any analytical framework because no such framework was needed. n209 Litigants invariably based their claims on legal interests of a type long recognized at common law. Even in suits raising constitutional challenges, plaintiffs typically complained about official action that caused them some form of traditional physical or economic harm - a trespass or a conversion or something like that. n210 Not surprisingly, the Supreme Court tried to import this traditional private law model in its early encounters with rights conferred by the new administrative state. In Massachusetts v. Mellon, n211 a federal taxpayer challenged the constitutionality of the Maternity Act of 1921, n212 which provided federal funds to state programs to reduce maternal and infant mortality. Alleging that the Act exceeded Congress's Article I powers, the plaintiff argued that it harmed her by increasing her tax liability. n213 The Supreme Court held the action nonjusticiable, explaining that to invoke the judicial power a party must show "not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury [actionable at common law] as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." n214 To accept jurisdiction, the Court continued, "would be not to decide a judicial controversy, but to assume a position of authority [\*1010] over the governmental acts of another and co-equal department, an authority which plainly we do not possess." n215 Over time, as the amount and importance of public law surged, this private law model proved too unforgiving, and excluded too many of the government's new activities. Responding to the pressure, the Supreme Court revisited the question of standing, and - after a brief detour that momentarily promised an extravagantly expansive doctrine n216 - settled on a framework that is more permissive than Mellon, but that still imposes limits on the reach of the federal courts. n217 Describing this doctrine concisely is difficult because the cases are such a jumbled mess. In its present guise, however, the law of standing consists of three main requirements, ostensibly grounded in Article III, together with a handful of subconstitutional "prudential" limitations that are sometimes hard to disentangle from the constitutional ones. In terms of Article III, a party must have suffered an "injury in fact" that consists of something more than an ideological opposition to what government is doing; there must be some material harm that is "distinct and palpable," n218 rather than "'conjectural'" or "'hypothetical,'" n219 and this harm must be suffered personally. n220 The plaintiff's harm must also be "fairly traceable" to the challenged action and it must be "likely to be redressed by the requested relief." n221 A plaintiff who satisfies these constitutional requirements still may be excluded from federal court, however, if he or she runs afoul of a judicially developed prudential limitation, such as presenting a claim that is too "generalized," n222 or seeking relief when the plaintiff is not "arguably [\*1011] within the zone of interests to be protected or regulated" by the substantive law at issue. n223 The law of standing shields only a small number of questions from federal judicial review, mainly those that fall within the prudential limitation on generalized disputes. The primary effect of standing is to alter the form and timing by which questions are addressed, making sure they are presented in a concrete form by an individual with a real interest at stake. In some instances, the resulting delay before such an individual emerges may be enough to resolve a problem without judicial intervention. Even where this is not the case, however, the requirements of standing change the form in which courts address an issue in a way that helps to minimize political friction. Standing really does make the judiciary's intervention appear more necessary and less like a roving commission looking to scold. Ripeness, like standing, is a creature of the administrative state, though also like standing it is now applied in many situations not involving agency action. n224 Where standing addresses the propriety of allowing a particular party to litigate, ripeness asks whether the subject matter is ready for adjudication; it deals with when review is appropriate. The ripeness doctrine seeks to separate actions that are premature from those that are fit to be litigated. It is the obverse of mootness, defining when it is too soon rather than too late for federal court action. Courts use the ripeness doctrine to avoid ruling if an alleged injury is speculative or may never occur, thus sidestepping unnecessary judicial involvement. n225 Ripeness issues often intersect with overbreadth or void-for-vagueness challenges in the First Amendment [\*1012] context, n226 and they have been important in limiting the scope and timing of review in Takings Clause cases. n227 Among the most significant uses of ripeness has been to avoid requests for equitable relief in cases challenging certain practices by the government, especially in the area of law enforcement.

### Solves – Modeling

#### CP is modeled – solves

Blaustein 4 (Albert, Prof of Law @ Rutgers, "THE U.S. CONSTITUTION: AMERICA'S MOST IMPORTANT EXPORT," http://usinfo.state.gov/journals/itdhr/0304/ijde/blaustein.htm)

All this leads to the question: Why has the American Constitution been so influential? To begin with, it was the first constitution and thus the obvious precedent for all subsequent constitution-makers. Most constitution-writers are lawyers, and lawyers inevitably seek precedents. From the beginning, commentaries on the American Constitution were published-and studied and discussed by fellow lawyers throughout the world. America's Founding Fathers believed in a constitutionally limited republic and they succeeded in constructing a regime that balanced order and liberty. This has led a large number of foreigners to our shores to study American-style government and to return home advocating selected features of it. In many instances, this has been made possible by scholarships provided by the American foundations and universities and by grants from the U.S. government. To this category must be added the foreigners who came here for other purposes and were likewise inspired by American constitutionalism. This started with France's Lafayette and Poland's Tadeusz Kosciuszko, both officers in George Washington's army who later became leaders in the struggles for freedom in their own countries. Conversely, the influence of the U.S. Constitution has been carried abroad by Americans who have been called upon to serve as advisers in the writing of other constitutions. Americans have helped draft the Liberian, Mexican, German, Japanese, and Zimbabwean constitutions. American scholars also provided ideas for constitutional reform in the Philippines [and more recently in Eastern Europe and the middle East]. The principal reason for the influence of the Philadelphia Constitution abroad, however, can be summed up in one word—success. America is the richest, freest, and most powerful country in the world, with the longest-lived constitution. The second oldest is Belgium's, from 1831, followed by Norway's, from 1841. There are only four other countries that have constitutions written before the twentieth century: Argentina in 1853, Luxembourg in 1868, Switzerland in 1878, and Columbia in 1886. Seven other constitutions were created before World War II. The U.S. Constitution has withstood the test of time. U.S. constitutional research is a major project in at least a dozen countries, as its value is being analyzed with a view to the writing of new constitutions.