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#### Immigration reform will pass – PC is key

Lopez 1/1/14 (Oscar, Latin Times, "New Year 2014: 4 Reasons Immigration Reform Will Pass In 2014," http://www.latintimes.com/new-year-2014-4-reasons-immigration-reform-will-pass-2014-141778)

Immigration reform is set to be the key issue of 2014. Following Mitt Romney's dismal performance among Latino voters in the 2012 election, both sides of the Government woke up to the necessity for comprehensive reform on immigration. Indeed, in his State of the Union address in February, President Obama declared that “the time has come to pass comprehensive immigration reform.” Yet with the House divided over Obamacare and the budget crisis, the Government Shutdown let immigration reform die. 2014 will change that: and here are 4 Reasons Why.¶ 1. Republican Support: A fundamental lack of support from the GOP has always been one of the major obstacles for passing comprehensive reform legislation, and indeed this seemed to be the case this year after the Bill passed by the Senate was struck down by Congress. However, more and more GOP members are realizing the significance of the Latino vote and understanding that passing comprehensive immigration reform is the most significant way of securing support from Latino voters. ¶ A July poll from Latino Decisions found that immigration reform was the most important issue facing the Latino community for 60 percent of those surveyed. The poll also found that 70 percent of those questioned were dissatisfied with the job Republicans were doing on the issue. The survey also found the 39 percent would be more likely to support a Republican congressional candidate if immigration reform was passed with Republican leadership. ¶ Republican candidates have become aware of the significance of immigration reform for the party. Even in traditionally conservative Republican strongholds like Texas, candidates are turning towards immigration reform. According to Republican strategist and CNN en Español commentator Juan Hernandez, "it also wouldn’t surprise me if after the primary, the candidates move to the center and support reform. For Republicans to stay in leadership in Texas, we must properly address immigration.”¶ The March 2014 primaries will be a key moment in determining how reform progresses: Republican Strategist John Feehery suggests, “The timing on this is very important. What was stupid to do becomes smart to do a little bit later in the year.” Once the primaries are over, GOP members will have the chance to implement reform legislation without fear of challenges from the right. ¶ 2. Legalization Over Citizenship: While the Senate’s 2013 immigration reform bill was struck down by Congress, GOP party members have indicated that they will support legislation which favors legalization of undocumented immigrants over a path to citizenship.¶ Meanwhile, a recent survey from Pew Research Hispanic Trends Project demonstrated that 55 percent of Hispanic adults believe that legalizing immigrants and removing the fear of deportation is more important than a pathway to citizenship (although citizenship is still important to 89 percent of Latinos surveyed.)¶ As CBS suggests, “Numbers like these could give leverage to lawmakers who are interested in making some reforms to the legal immigration system, but not necessarily offering any kind of citizenship.”¶ If House Republicans offered legalization legislation for the undocumented community, this could put pressure on the President to compromise. And while this kind of reform would not be as comprehensive as the Senate’s bill, a bipartisan agreement would be a significant achievement towards accomplishing reform.¶ 3. Activism Steps Up: 2013 saw one of the biggest surges in grassroots activism from immigration supporters, and political leaders started to listen. The hunger strike outside the White House was a particularly significant demonstration and drew visits of solidarity from a number of leaders from both sides of Congress, including the President and First Lady.¶ Immigration reform activists have promised "we will be back in 2014." Indeed, 2014 promises to be a year of even greater activism. Activist Eliseo Medina has pledged that immigrant advocacy groups would visit “as many congressional districts as possible” in 2014 to ensure further support.¶ Protests, rallies and marchers are likely to increase in 2014, putting greater pressure on Congress to pass legislation. Such visual, vocal protests will be key in ensuring comprehensive reform.¶ 4. Leadership: As immigration reform comes to the fore, party leaders will step up in 2014 to ensure change is achieved. While President Obama has made clear his support for comprehensive reform, House Speaker John Boehner previously stated that he had “no intention” of negotiating with the Senate on their comprehensive immigration bill. ¶ However, towards the end of 2013, it seemed that Representative Boehner was changing his tune. In November, President Obama revealed that “the good news is, just this past week Speaker Boehner said that he is “hopeful we can make progress” on immigration reform.” As if to prove the point, Boehner has recently hired top aide Rebecca Tallent to work on immigration reform.¶ With bipartisan leadership firmly focused on immigration reform and party members on both sides realizing the political importance of the issue, comprehensive legislation is one thing we can be sure of in 2014.

#### The plan kills capital

Kriner 10 (Douglas L. Kriner, assistant professor of political science at Boston University, “After the

Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec

1, 2010, page 68-69)

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives . Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Reform Solves inevitable economic collapse

Ozimek 13 (Adam, Contributor, “Does An Aging Population Hurt The Economy?” Forbes, 2/7, http://www.forbes.com/sites/modeledbehavior/2013/02/07/does-an-aging-population-hurt-the-economy/)

The economic benefit of immigration is in part about how big of a problem our aging population is. Immigrants are in general younger, and our best way to fight against a growing ratio of retirees to workers. But this raises the question of how big of a problem is this ratio and our aging population in general. While many are concerned about this, Dean Baker argues it is not a problem. He agrees that the ratio has increased and will continue to increase in the future as the population ages, but he argues that we haven’t seen any problems yet so we won’t see any later: We have already seen a sharp decline in the ratio of workers to retirees, yet even people who follow the economy and economic policy closely, like Klein, were apparently not even aware of this fact. Since this decline is never cited as factor causing our current economic problems, why would we think the comparatively mild decline in this ratio projected for future decades will be a large burden? Dean is wrong that the ratio of workers to retirees is not cited as a factor in the current economic problems. The most prominent example comes from newly appointed Council of Economic Advisors member James Stock and his co-author Mark Watson. In their paper “Disentangling the Channels of the 2007-2009 Recession” they specifically cite demographic trends as a cause of our slow recovery. The variable Stock and Watson ultimately cite is the decline in labor force participation, and they argue it is driven by the aging of the workforce and the overall distribution of workers by age. Dean may argue that this technically isn’t the dependency ratio, but that would be quibbling: changes in these two measures capture the same basic economic phenomenon of the aging population and a lower percentage of the population working. Not only has the aging population contributed to the slow recovery, Stock and Watson argue there is good reason to believe it will mean slow recoveries in the future too: The main conclusion from this demographic work is that, barring a new increase in female labor force participation or a significant increase in the growth rate of the population, these demographic factors point towards a further decline in trend growth of employment and hours in the coming decades. Applying this demographic view to recessions and recoveries suggests that the future recessions with historically typical cyclical behavior will have steeper declines and slower recoveries in output and employment. Furthermore, this is just the impact of the aging population on business cycles, there is also the very serious problem of how it will affect our finances. Dean knows that by increasing the workforce immigration improves Social Security’s finances. In 2006 he wrote that if future immigration was at 2001-2002 levels instead of at around 900,000 per year it would reduce the Social Security trust fund’s long-term shortfall by 12%. A shortfall means we will reduce benefits or pay for it in higher taxes, and either are going to result in lower welfare for someone.

#### Global nuclear war

Harris & Burrows 9 (Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” <http://www.ciaonet.org/journals/twq/v32i2/f_0016178_13952.pdf>)

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### 1NC

#### Restrictions are prohibitions on action

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### That must be distinct from a condition

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### “War powers authority” covers the president’s authority to utilize military operations

Oxford International Encyclopedia of Legal History 2012

(Oxford University Press via Oxford Reference, Georgetown University library)

**The War Power in the Twenty-First Century**.

The presumption of a dual war-making role appears to have been eclipsed since 2001, during which time it has been argued by some that the president stands supreme in his war-making capacity as **commander in chief** and that he has no obligation to share such power with Congress. This view assumes that the president has all the requisite and necessary **authority to order whatever he deems necessary in terms of military operations** and that Congress can claim only the power to declare war; the resulting operational conduct is strictly a presidential prerogative. Opponents of this interpretation point to all the additional powers dealing with the military that are vested in Congress.

#### B. Vote Neg –

#### 1. Limits – Regulation and oversight of authority allows a litany of new affs in each area – justifies indirect effects of statutory policies and affs that don’t alter presidential authority – undermines prep and clash

#### 2. Ground – Restriction ground is the locus of neg prep – their interpretation jacks all core disads – politics, presidential powers, and any area based disad because an aff doesn’t have to prevent the president from doing anything

### 1NC

#### Text: The President of the United States should issue an executive order, via the appropriate administrative agencies, prohibiting the exclusion of women from Armed Forces introduced into hostilities. Enforcement will include, but not be limited to, a private cause of action.

#### Solves the case

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

### 1NC

#### The plan limits executive war fighting capabilities – devastates all operations

Kriner 10 (Douglas – asst prof of poli sci @ Boston Univ , "After the Rubicon: Congress, Presidents, and the Politics of Waging War," Ed. by William Howell and Jon Peverhouse, p. 285-286)

American history offers few examples of Congress using its legislative power to bring to heel a wayward commander in chief. Only in the rarest cases will Congress be able to marshall the supermajorities required to pass legislation compelling the president to abandon his preferred policy preferences. However, to focus only on the lack of concrete legislation terminating an ongoing war or blocking the use of force altogether is to miss the more indirect, yet still powerful means of influence through which members of Congress have routinely shaped the course of American military affairs. Even when Congress fails to write its military preferences into law, its members rarely stand on the sidelines of the policy process. Rather, members of Congress have historically engaged in a variety of actions from formal intiatives, such as introducing legislation or holding hearings that challenge the president's conduct of military action, to informal efforts to shape the nature of the policy debate in the public sphere. These actions can raise significantly the political and strategic costs to the president of waging large-scale, long-duration military actions to pursue their policy goals. In some cases, presidents may judge that the benefits of responding miltiarily to a foreign policy crisis or continuing an ongoing military engagement may outweigh even the heightened costs that congressional opposition generates. In these instances, enacting legislation to compel the president to change course may be the only remedy available to congressional opponents. In many other cases, however, congressional opposition has had tangible effects on policy outcomes. Again and again, the statistical and qualitative analyses have showed presidents modifying their policies, moderating the scale and duration of their military ventures, and sometimes foregoing a military response altogether, when faced with real or anticipated opposition on Capitol Hill. When exerted indirectly, congressional influence is less immediately visible and dramatic than it is in the rare occasions when Congress has enacted legislation to mandate a change in militar policy. Yet through indirect mechanisms, Congress has often encouraged presidents to pursue significantly different military policies than they would have adopted in the absence of congressional opposition.

#### It spills over to destabilize all presidential war powers

Heder 10 (Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is no constitutional provision on whether Congress has the legislative power to limit, end, or otherwise redefine the scope of a war. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 the same cannot be said about Congress’s legislative authority to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully declined to grant Congress such powers. And as this Article argues, granting Congress this power would be inconsistent with the general war powers structure of the Constitution. Such a reading of the Constitution would unnecessarily empower Congress and tilt the scales heavily in its favor. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time when the Executive’s expertise is needed. 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### The impact is the loss of fourth-gen warfighting capabilities that escalate to nuclear use

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.

### 1NC

#### The United States federal judiciary should prohibit the exclusion of women from Armed Forces introduced into hostilities.

#### CP is competitive – statutory restrictions on executive war authority means Congress

Fisher 7 (Louis, Specialist, Constitutional Law Law Library, Library of Congress, "The Power of Congress to End a War," 1/30, lexis)

Contemporary Statutory Restrictions¶ Congress has often enacted legislation to restrict and limit military operations by the President, selecting both appropriations bills and authorizing legislation to impose conditions and constraints. The Congressional Research Service recently prepared a lengthy study that lists these statutory provisions. A major cutoff of funds occurred in 1973, when Congress passed legislation to deny funds for the war in Southeast Asia. After President Nixon vetoed the bill, the House effort to override failed on a vote of 241 to 173, or 35 votes short of the necessary two-thirds majority. A lawsuit by Representative Elizabeth Holtzman asked the courts to determine that President Nixon could not engage in combat operations in Cambodia and elsewhere in Indochina in the absence of congressional authorization. A federal district court held that Congress had not authorized the bombing of Cambodia. Its inability to override the veto and the subsequent adoption of an August 15 deadline for the bombing could not be taken as an affirmative grant of legislative authority: "It cannot be the rule that the President needs a vote of only one-third plus one of either House in order to conduct a war, but this would be the consequence of holding that Congress must override a Presidential veto in order to terminate hostilities which it had not authorized." Appellate courts mooted the case because the August 15 compromise settled the dispute between the two branches and terminated funding for the war.¶ Through its power to authorize programs and appropriate funds, Congress can define and limit presidential military actions. Some claim that the power of the purse is an ineffective and impractical method of restraining presidential wars. Senator Jacob Javits said that Congress "can hardly cut off appropriations when 500,000 American troops are fighting for their lives, as in Vietnam." The short answer is that Congress can, and has, used the power of the purse to restrict and terminate presidential wars. If Congress is concerned about the safety of American troops, those lives are not protected by voting additional funds for a war it does not support.¶ A proper and responsible action, when war has declining value or purpose, is to reevaluate the commitment by placing conditions on appropriations, terminating funding, moving U.S troops to a more secure location, and taking other legislative steps. There is one central and overriding question: Is the continued use of military force in the nation's interest? If not, then U.S. soldiers need to be safely withdrawn and redeployed. Answering that difficult question is not helped by speculation about whether congressional action might "embolden the enemy."¶ Other examples of congressional intervention can be cited. In 1976, Congress prohibited the CIA from conducting military or paramilitary operations in Angola and denied any appropriated funds to finance directly or indirectly any type of military assistance to Angola. In 1984, Congress adopted the Boland Amendment to prohibit assistance of any kind to support the Contras in Nicaragua. No constitutional objection to this provision was ever voiced publicly by President Reagan, the White House, the Justice Department, or any other agency of the executive branch.¶ Congress has options other than a continuation of funding or a flat cutoff. In 1986, Congress restricted the President's military role in Central America by stipulating that U.S. personnel "may not provide any training or other service, or otherwise participate directly or indirectly in the provision of any assistance, to the Nicaraguan democratic resistance pursuant to this title within those land areas of Honduras and Costa Rica which are within 20 miles of the border with Nicaragua." In 1991, when Congress authorized President George H. W. Bush to use military force against Iraq, the authority was explicitly linked to UN Security Council Resolution 678, which was adopted to expel Iraq from Kuwait. Thus, the legislation did not authorize any wider action, such as using U.S. forces to invade and occupy Iraq. In 1993, Congress established a deadline for U.S. troops to leave Somalia. No funds could be used for military action after March 31, 1994, unless the President requested an extension from Congress and received prior legislative priority.¶ Conclusions¶ In debating whether to adopt statutory restrictions on the Iraq War, Members of Congress want to be assured that legislative limitations do not jeopardize the safety and security of U.S. forces. Understandably, every Member wants to respect and honor the performance of dedicated American soldiers. However, the overarching issue for lawmakers is always this: Is a military operation in the nation's interest? If not, placing more U.S. soldiers in harm's way is not a proper response. Members of the House and the Senate cannot avoid the question or defer to the President. Lawmakers always decide the scope of military operations, either by accepting the commitment as it is or by altering its direction and purpose. In a democratic republic, that decision legitimately and constitutionally resides in Congress.

#### Judicial restrictions on executive authority are vital to signaling judicial independence globally – impact is democratic consolidation

CJA et al 3 ("Brief of the Center for Justice and Accountability, International League for Human Rights, and Individual Advocates for the Independence of the Judiciary in Emerging Democracies," October, Odah vs. USA and Rasul vs. Bush, http://jenner.com/system/assets/assets/5567/original/AmiciCuriae\_Center\_for\_Justice\_Int\_League\_Human\_Rights\_Adv\_For\_Indep\_Judiciary2.pdf?1323207521)

While much of the world is moving to adopt the institutions ¶ necessary to secure individual rights, many still regularly ¶ abuse these rights. One of the hallmarks of tyranny is the lack ¶ of a strong and independent judiciary. Not surprisingly, ¶ where countries make the sad transition to tyranny, one of the ¶ first victims is the judiciary. Many of the rulers that go down ¶ that road justify their actions on the basis of national security ¶ and the fight against terrorism, and, disturbingly, many claim ¶ to be modeling their actions on the United States. ¶ Again, a few examples illustrate this trend. In Peru, one of ¶ former President Alberto Fujimori’s first acts in seizing ¶ control was to assume direct executive control of the ¶ judiciary, claiming that it was justified by the threat of ¶ domestic terrorism. He then imprisoned thousands, refusing ¶ the right of the judiciary to intervene. International ¶ Commission of Jurists, Attacks on Justice 2000-Peru, August ¶ 13, 2001, available at¶ http://www.icj.org/news.php3?id\_article=2587&lang=en (last ¶ visited Jan. 8, 2004). ¶ In Zimbabwe, President Mugabe’s rise to dictatorship has ¶ been punctuated by threats of violence to and the co-opting of ¶ the judiciary. He now enjoys virtually total control over ¶ Zimbabweans' individual rights and the entire political ¶ system. R.W. Johnson, Mugabe’s Agents in Plot to Kill ¶ Opposition Chief, Sunday Times (London), June 10, 2001; ¶ International Commission of Jurists, Attacks on Justice 2002—¶ Zimbabwe, August 27, 2002, available at¶ http://www.icj.org/news.php3?id\_article=2695&lang=en (last ¶ visited Jan. 8, 2004). ¶ While Peru and Zimbabwe represent an extreme, the ¶ independence of the judiciary is under assault in less brazen ¶ ways in a variety of countries today. A highly troubling ¶ aspect of this trend is the fact that in many of these instances ¶ those perpetuating the assaults on the judiciary have pointed ¶ to the United States’ model to justify their actions. Indeed, ¶ many have specifically referenced the United States’ actions ¶ in detaining persons in Guantánamo Bay. ¶ For example, Rais Yatim, Malaysia's "de facto law ¶ minister" explicitly relied on the detentions at Guantánamo to ¶ justify Malaysia's detention of more than 70 suspected Islamic ¶ militants for over two years. Rais stated that Malyasia's ¶ detentions were "just like the process in Guantánamo," adding, ¶ "I put the equation with Guantánamo just to make it graphic to ¶ you that this is not simply a Malaysian style of doing things." ¶ Sean Yoong, "Malaysia Slams Criticism of Security Law ¶ Allowing Detention Without Trial," Associated Press, ¶ September 9, 2003 (available from Westlaw at 9/9/03 ¶ APWIRES 09:34:00). ¶ Similarly, when responding to a United States Government ¶ human rights report that listed rights violations in Namibia, ¶ Namibia's Information Permanent Secretary Mocks Shivute ¶ cited the Guantánamo Bay detentions, claiming that "the US ¶ government was the worst human rights violator in the world." ¶ BBC Monitoring, March 8, 2002, available at 2002 WL ¶ 15938703. ¶ Nor is this disturbing trend limited to these specific ¶ examples. At a recent conference held at the Carter Center in ¶ Atlanta, President Carter, specifically citing the Guantánamo ¶ Bay detentions, noted that the erosion of civil liberties in the ¶ United States has "given a blank check to nations who are ¶ inclined to violate human rights already." Doug Gross, ¶ "Carter: U.S. human rights missteps embolden foreign ¶ dictators," Associated Press Newswires, November 12, 2003 ¶ (available from Westlaw at 11/12/03 APWIRES 00:30:26). At ¶ the same conference, Professor Saad Ibrahim of the American ¶ University in Cairo (who was jailed for seven years after ¶ exposing fraud in the Egyptian election process) said, "Every ¶ dictator in the world is using what the United States has done ¶ under the Patriot Act . . . to justify their past violations of ¶ human rights and to declare a license to continue to violate ¶ human rights." Id.¶ Likewise, Shehu Sani, president of the Kaduna, Nigeriabased Civil Rights Congress, wrote in the International¶ Herald Tribune on September 15, 2003 that "[t]he insistence ¶ by the Bush administration on keeping Taliban and Al Quaeda ¶ captives in indefinite detention in Guantánamo Bay, Cuba, ¶ instead of in jails in the United States — and the White ¶ House's preference for military tribunals over regular courts ¶ — helps create a free license for tyranny in Africa. It helps ¶ justify Egypt's move to detain human rights campaigners as ¶ threats to national security, and does the same for similar ¶ measures by the governments of Ivory Coast, Cameroon and ¶ Burkina Faso." Available at¶ http://www.iht.com/ihtsearch.php?id=109927&owner=(IHT)&dat¶ e=20030121123259. ¶ In our uni-polar world, the United States obviously sets an ¶ important example on these issues. As reflected in the ¶ foundational documents of the United Nations and many other ¶ such agreements, the international community has consistently ¶ affirmed the value of an independent judiciary to the defense ¶ of universally recognized human rights. In the crucible of ¶ actual practice within nations, many have looked to the United ¶ States model when developing independent judiciaries with ¶ the ability to check executive power in the defense of ¶ individual rights. Yet others have justified abuses by ¶ reference to the conduct of the United States. Far more ¶ influential than the words of Montesquieu and Madison are ¶ the actions of the United States. This case starkly presents the ¶ question of which model this Court will set for the world. CONCLUSION ¶ Much of the world models itself after this country’s two ¶ hundred year old traditions — and still more on its day to day ¶ implementation and expression of those traditions. To say ¶ that a refusal to exercise jurisdiction in this case will have ¶ global implications is not mere rhetoric. Resting on this ¶ Court’s decision is not only the necessary role this Court has ¶ historically played in this country. Also at stake are the ¶ freedoms that many in emerging democracies around the globe ¶ seek to ensure for their peoples.

**Extinction**

**Halperin 11** (Morton H., Senior Advisor – Open Society Institute and Senior Vice President of the Center for American Progress, “Unconventional Wisdom – Democracy is Still Worth Fighting For”, Foreign Policy, January / February, <http://www.foreignpolicy.com/articles/2011/01/02/unconventional_wisdom?page=0,11>)

As the United States struggles to wind down two wars and recover from a humbling financial crisis, realism is enjoying a renaissance. Afghanistan and Iraq bear scant resemblance to the democracies we were promised. The Treasury is broke. And America has a president, Barack Obama, who once compared his foreign-policy philosophy to the realism of theologian Reinhold Niebuhr: "There's serious evil in the world, and hardship and pain," Obama said during his 2008 campaign. "And we should be humble and modest in our belief we can eliminate those things." But one can take such words of wisdom to the extreme-as realists like former Secretary of State Henry Kissinger and writer Robert Kaplan sometimes do, arguing that the United States can't afford the risks inherent in supporting democracy and human rights around the world. Others, such as cultural historian Jacques Barzun, go even further, saying that America can't export democracy at all, "because it is not an ideology but a wayward historical development." Taken too far, such realist absolutism can be just as dangerous, and wrong, as neoconservative hubris. For there is one thing the neocons get right: As I argue in *The Democracy Advantage*, democratic governments are more likely than autocratic regimes to engage in conduct that advances U.S. interests and avoids situations that pose a threat to peace and security. Democratic states are more likely to develop and to avoid famines and economic collapse. They are also less likely to become failed states or suffer a civil war. Democratic states are also more likely to cooperate in dealing with security issues, such as terrorism and proliferation of weapons of mass destruction. As the bloody aftermath of the Iraq invasion painfully shows, democracy cannot be imposed from the outside by force or coercion. It must come from the people of a nation working to get on the path of democracy and then adopting the policies necessary to remain on that path. But we should be careful about overlearning the lessons of Iraq. In fact, the outside world can make an enormous difference in whether such efforts succeed. There are numerous examples-starting with Spain and Portugal and spreading to Eastern Europe, Latin America, and Asia-in which the struggle to establish democracy and advance human rights received critical support from multilateral bodies, including the United Nations, as well as from regional organizations, democratic governments, and private groups. It is very much in America's interest to provide such assistance now to new democracies, such as Indonesia, Liberia, and Nepal, and to stand with those advocating democracy in countries such as Belarus, Burma, and China. It will still be true that the United States will sometimes need to work with a nondemocratic regime to secure an immediate objective, such as use of a military base to support the U.S. mission in Afghanistan, or in the case of Russia, to sign an arms-control treaty. None of that, however, should come at the expense of speaking out in support of those struggling for their rights. Nor should we doubt that America would be more secure if they succeed.

#### Net beneficial w/ out da’s–

#### A) Warfighting – about congressional opposition

#### B) CP avoids politics

Ting 9 (Jan, Professor of Law – Temple University and Former Assistant Commissioner – INS, “Panel: Should Judges Set Immigration Policy?”, June, http://www.cis.org/Transcript/PlenaryPowerPanel)

And to me that’s sort of a backhanded way, and a much more sophisticated way, of arguing for open borders than our friends at Cato and Wall Street Journal, who openly advocate it. I mean, there’s this other view that says, no, we’re not going to openly advocate it – that would be political suicide – but we’re going to keep spending the money but we’re going to have it come through a different way. So again, it’s important that we clarify the plenary powers dispute is premised on the notion we’re going to have a system of limited immigration and someone is going to make rules about who can come in and who can’t and who can stay and who can’t, and then we can talk about who makes the rules. The discussion also assumes that the political branches, the Congress and the executive, actually want to retain plenary powers over immigration. Again, it’s not entirely clear that they do. You know, from the point of view of Congress, it might be a good thing to let this hot potato be resolved by the judges rather than a member of Congress who – as a member once told me that there is a popular notion out there that people run for Congress so that they can vote on the tough issues of the day and have input on the tough issues of the day. And this former member suggested that’s actually not the case, that people don’t really want to vote on the tough issues of the day. They’d much rather vote on non-controversial stuff like naming post offices and Future Farmers of America Week and things like that rather than the tough issues which are going to force them to make a decision and alienate some of their constituents.

### 1NC

#### A. Interpretation – Hostilities is defined as an armed conflict during war

GAO 8 (Government Accountability Office, DOD’s Post-Deployment Health Reassessment, 1/25/08, <http://www.gao.gov/new.items/d08181r.pdf>)

To be eligible, the veteran must have served in combat during a period of war after the Persian Gulf War or against a hostile force during a period of hostilities after November 11, 1998. See 38 U.S.C. § 1710(e)(1)(D); VHA Directive 2005-020, Determining Combat Veteran Eligibility (June 2, 2005). “Hostilities” is defined as an armed conflict in which servicemembers are subjected to danger comparable to the danger encountered in combat with enemy armed forces during a period of war, as determined by the Secretary of VA. See 38 U.S.C. § 1712A(a)(2)(B). Eligibility under 38 U.S.C. § 1710(e)(1)(D) does not extend, however, to veterans whose disabilities are found to have resulted from a cause other than the service described in the statute. H.R. 1585, the National Defense Authorization Act for Fiscal Year 2008, contains a provision that would extend the length of the presumptive eligibility for certain combat veterans. The House and Senate approved this bill in December, 2007. However, on December 27, 2007, the President issued a memorandum indicating his disapproval of H.R. 1585 and declined to sign the legislation

#### B. Violation – their 1AC evidence indicates that wartime barriers to women in combat have been reduced- means the aff has already happened and they aren’t T

#### C. Vote Neg –

#### 1. Limits – an expansive definition of hostilities doubles the amount of armed force affs – affs already specify geography and the type of force – they add different versions of every aff for nebulous conflicts – limits are key to preparation and clash

#### 2. Precision – our definition is the government’s definition that is codified in US law and has an intent to define – any other interpretation is arbitrary with regards to US policy making – accurate reading of the resolution is a pre-requisite to fairness and education

## Contention 1

### 1NC Aff Not Solve

#### Either squo solves or the aff doesn’t either – integration results in more sexual violence

Angyal, 13 – editor at Feministing (Chloe, 1/24. “Women in combat? OK, but what about the sexual assaults?” http://www.msnbc.com/melissa-harris-perry/women-combat)

In a move that surprised many, Secretary of Defense Leon Panetta announced a major change to Pentagon policy on Wednesday. He followed up with a press conference Thursday afternoon announcing that, as of 2016, women will be allowed to serve in frontline combat roles. Though women have in practice been serving in artillery, armor, and infantry roles throughout the ongoing war in Afghanistan and the recently-ended war in Iraq, Panetta has decided to reverse the 1994 policy that, on paper, bans them from those roles. The New York Times reported: Women have long chafed under the combat restrictions and have increasingly pressured the Pentagon to catch up with the reality on the battlefield. The move comes as Mr. Panetta is about to step down from his post and would leave him with a major legacy after only 18 months in the job. We should be able to celebrate this policy change as a victory for gender equality. If this country is going to have a state of the art military, if we’re going to hold that force up as representing the best of us, then women shouldn’t be excluded from serving. Women, as they’ve proved over and over again on the battlefields of Iraq and Afghanistan, can do the work as well as men can, and that should be recognized. Whatever you think of the wars and the armed forces, this should be an egalitarian victory for our women troops. And yet, when a woman in the armed forces has a higher chance of being raped by a fellow servicemember than of being killed by the enemy, it is awfully hard to celebrate. According to official estimates, 20% of women serving in the United States armed forces will be sexually assaulted while serving their country. In all likelihood, the real figure is larger than that, given low reporting rates. Even if that number is accurate, that’s as many as 500,000–half a million–women assaulted since the armed forces began admitting women. I want to repeat that one more time, because I want us to really think about it—half a million women, sexually assaulted. That’s about as many people as live in Raleigh, North Carolina. Military sexual violence is an incredibly complicated epidemic—and that is the right word—and one whose reach and consequences are only now beginning to be taken seriously. A lot of that is thanks to the excellent, stomach-churning, Oscar-nominated documentary The Invisible War. As that documentary explains, it is incredibly difficult for women who are raped while serving in the military to report what was done to them, partly because the strict adherence to the chain of command means that they’re often expected to report rapes to the very person who assaulted them, or to one of his close colleagues. As a result, thousands of rapes and assaults go unreported, or unpunished, with disastrous consequences for the women whose bodies and dignities are violated. Just two days after watching a rough cut of The Invisible War, Panetta changed the reporting policies so that the chain of command would be less of a hindrance to those women seeking redress for assault, but that change is hardly enough. Rape and sexual violence still happen at astonishing rates in our armed forces. Fixing the way sexual violence is reported is necessary, of course, and more effective reporting, prosecution, and punishment will hopefully discourage sexual predators. But we’d all rather see the root causes of that violence eliminated altogether. On the very same day that the Pentagon announced changes to the reporting of sexual assaults, the House Armed Services Committee was hearing testimony about Lackland Air Base in Texas, where 796 sexual assaults were reported in 2012 alone. At that hearing, lawmakers criticized Air Force brass for failing to do enough to hold perpetrators accountable, thereby fostering a culture in which sexual assault is horrifically common. As the Times reports, It was unclear why the Joint Chiefs acted now after examining the issue for years, although in recent months there has been building pressure from high-profile lawsuits. [Last November], the American Civil Liberties Union filed a federal lawsuit challenging the ban on behalf of four service women and the Service Women’s Action Network, a group that works for equality in the military. Advocates for servicewomen’s rights applauded the policy change as an overdue move toward gender equality in the armed forces. They’re certainly right to applaud the broadening of women’s opportunities for career advancement. But it’s hard to ignore the brutal fact: The very same women who will now be allowed to risk their lives for their country will also be asked to risk rape at the hands of their own comrades. Until that changes, we cannot begin to tell ourselves that women in our armed forces enjoy anything resembling equality, lifted combat ban or no.

## Contention 2

### Gender Violence Decreasing Now

#### Gender-based violence is substantially decreasing now – recent DOJ statistics and changing societal awareness proves

Eulich 13 (Whitney, Staff @ Christian Science Monitor, "Domestic violence declines," <http://www.mennoworld.org/2013/3/4/domestic-violence-declines/>)

A bruised cheek. A broken bone. Verbal battering. A window shattered in an effort to intimidate. The rate of such violence or abuse between husband and wife — or any two intimate partners — has been on the wane in the U.S., falling by a stunning 64 percent between 1994 and 2010.¶ That finding, from a recent report by the U.S. Department of Justice on intimate partner violence, parallels the overall drop in violent crime during that period. Many in the field cite a broad shift in attitudes that began in the 1980s and ’90s, crediting public awareness campaigns, national legislation protecting victims and training of police and prosecutors to recognize intimate partner violence as a crime rather than a private matter.¶ “There has been an enormous shift in public awareness about domestic violence — the message [to victims] being you are not alone and you can report what is happening to you to law enforcement,” said law professor Suzanne Goldberg, director of Columbia University’s Center for Gender and Sexuality Law. The message to perpetrators, meanwhile, is that violence against an intimate partner “is not a badge of manhood,” she added.¶

### Root Cause Theory Flawed

#### No singular or root causes of human behavior

Aberdeen 3 (Richard, Author and social commentator, Richard Aberdeen, “the way: a theory of root cause and solution” http://freedomtracks.com/uncommonsense/theway.html)

A view shared by many modern activists is that capitalism, free enterprise, multi-national corporations and globalization are the primary cause of the current global Human Rights problem and that by striving to change or eliminate these, the root problem of what ills the modern world is being addressed. This is a rather unfortunate and historically myopic view, reminiscent of early “class struggle” Marxists who soon resorted to violence as a means to achieve rather questionable ends. And like these often brutal early Marxists, modern anarchists who resort to violence to solve the problem are walking upside down and backwards, adding to rather than correcting, both the immediate and long-term Human Rights problem. Violent revolution, including our own American revolution, becomes a breeding ground for poverty, disease, starvation and often mass oppression leading to future violence. Large, publicly traded corporations are created by individuals or groups of individuals, operated by individuals and made up of individual and/or group investors. These business enterprises are deliberately structured to be empowered by individual (or group) investor greed. For example, a theorized ‘need’ for offering salaries much higher than is necessary to secure competent leadership (often resulting in corrupt and entirely incompetent leadership), lowering wages more than is fair and equitable and scaling back of often hard fought for benefits, is sold to stockholders as being in the best interest of the bottom-line market value and thus, in the best economic interests of individual investors. Likewise, major political and corporate exploitation of third-world nations is rooted in the individual and joint greed of corporate investors and others who stand to profit from such exploitation. More than just investor greed, corporations are driven by the greed of all those involved, including individuals outside the enterprise itself who profit indirectly from it. If one examines “the course of human events” closely, it can correctly be surmised that the “root” cause of humanity’s problems comes from individual human greed and similar negative individual motivation. The Marx/Engles view of history being a “class” struggle ¹ does not address the root problem and is thus fundamentally flawed from a true historical perspective (see Gallo Brothers for more details). So-called “classes” of people, unions, corporations and political groups are made up of individuals who support the particular group or organizational position based on their own individual needs, greed and desires and thus, an apparent “class struggle” in reality, is an extension of individual motivation. Likewise, nations engage in wars of aggression, not because capitalism or classes of society are at root cause, but because individual members of a society are individually convinced that it is in their own economic survival best interest. War, poverty, starvation and lack of Human and Civil Rights have existed on our planet since long before the rise of modern capitalism, free enterprise and multi-national corporation avarice, thus the root problem obviously goes deeper than this.

### A2 Gender = Root Cause

#### Gender inequality isn’t the root cause of war and violence – such claims lack empirical support

Goldstein 1 (Joshua, Int’l Rel Prof @ American U, War and Gender, p. 412)

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war one can work for gender justice specifically (perhaps among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book **s**uggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So,”if you want peace, work for peace.” Indeed, **i**f you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

#### No impact to environment

**Easterbrook 3** (Gregg, Senior Fellow – New Republic, “We’re All Gonna Die!”, Wired Magazine, July, http://www.wired.com/wired/archive/11.07/doomsday.html?pg=1&topic=&topic\_set=)

If we're talking about doomsday - the end of human civilization - many scenarios simply don't measure up. A single nuclear bomb ignited by terrorists, for example, would be awful beyond words, but life would go on. People and machines might converge in ways that you and I would find ghastly, but from the standpoint of the future, they would probably represent an adaptation. Environmental collapse might make parts of the globe unpleasant, but considering that the biosphere has survived ice ages, it **wouldn't be the final curtain**. Depression, which has become 10 times more prevalent in Western nations in the postwar era, might grow so widespread that vast numbers of people would refuse to get out of bed, a possibility that Petranek suggested in a doomsday talk at the Technology Entertainment Design conference in 2002. But Marcel Proust, as miserable as he was, wrote Remembrance of Things Past while lying in bed.

#### Their argument is that greater equality in the military somehow solves worldwide patriarchy is idiotic and makes broader feminist movements impossible.

Mohanty 2003 Chandra Talpade, Professor of Women's and Gender Studies, Sociology, and the Cultural Foundations of Education – Syracuse University, “Under Western Eyes” Revisited: Feminist Solidarity through Anticapitalist Struggles, Signs: Journal of Women in Culture and Society 2002, vol. 28, no. 2 http://www2.hawaii.edu/~dasgupta/Mohantysigns.pdf

I wrote "Under Western Eyes" to discover and articulate a critique of "Western feminist" scholarship on Third World women via the discursive colonization of Third World women's lives and struggles. I also wanted to expose the power-knowledge nexus of feminist cross-cultural schol- arship expressed through Eurocentric, falsely universalizing methodol- ogies that serve the narrow self-interest of Western feminism. As well, I thought it crucial to highlight the connection between feminist schol- arship and feminist political organizing while drawing attention to the need to examine the "political implications of our analytic strategics and principles." I also wanted to chart the location of feminist scholarship within a global political and economic framework dominated by the "First World."3 \*[footnote begins] Here is how 1 defined "Western feminist" then: "Clearly Western feminist discourse and political practice is neither singular or homogeneous in its goals, interests, or analyses. However, it is possible to trace a coherence of account\* resulting from the implicit assumption of 'the West' (in all its complexities and contradictions) as the primary referent in theory and praxis. My reference to 'Western feminism\* is by no means intended to imply that it is a monolith. Rather, I am attempting to draw attention to the similar effects of various textual strategies used by writers which codify Others as non-Western and hence themselves as (implicitly) Western- (Mohaniy 1986, 334). I suggested then that while terms such as First and third World were problematic in suggesting oversimplified similarities as well as flattening internal differences, I continued to use them because this was the terminology available to us then. 1 used the terms with full knowledge of their limitations, suggesting a critical and heuristic rather than non- questioning use of the terms. I come back to these terms later in this essay. [footnote ends] My most simple goal was to make clear that cross-cultural feminist work must be attentive to the micropolitics of context, subjectivity, and struggle, as well as to the macropolitics of global economic and political systems and processes. I discussed Maria Mics's (1982) study of the laccmakcrs of Narsapur as a demonstration of how to do this kind of multilaycrcd, contextual analysis to reveal how the particular is often universally significant—without using the universal to erase the particular or positing an unbridgeable gulf between the two terms. Implicit in this analysis was the use of historical materialism as a basic framework and a definition of material reality in both its local and micro-, as well as global, systemic dimensions. I argued at that time for the definition and recognition of the Third World not just through oppression but in terms of historical complexities and the many struggles to change these op- pressions. Thus I argued for grounded, particularized analyses linked with larger, even global, economic and political frameworks. I drew inspiration from a vision of feminist solidarity across borders, although it is this vision that has remained invisible to many readers. In a per- ceptive analysis of my argument of this politics of location, Sylvia Walby (2000) recognizes and refines the relation between difference and equal- ity of which I speak. She draws further attention to the need for a shared frame of reference among Western, postcolonial. Third World feminists in order to decide what counts as difference. She asserts, quite insight- fully, that Mohanty and other postcolonial feminists arc often interpreted as arguing only for situated knowledges in popularisations of their work. In fact, Mohanty is claiming, via a complex and subtle ar- gument, that she is right and that (much) white Western feminism is not merely different, but wrong. In doing this she assumes a common question, a common set of concepts and, ultimately the possibility of, a common political project with white feminism. She hopes to argue white feminism into agreeing with her. She is not content to leave white Western feminism as a situated knowledge, comfortable with its local and partial perspective. Not a bit of it. This is a claim to a more universal truth. And she hopes to ac- complish this by the power of argument. (Walby 2000, 199) Walby's reading of the essay challenges others to engage my notion of a common feminist political project, which critiques the effects of Western feminist scholarship on women in the Third World, but within a framework of solidarity and shared values. My insistence on the spec- ificity of difference is based on a \ision of equality attentive to power differences within and among the various communities of women. I did not argue against all forms of generalization, nor was I privileging the local over the systemic, difference over commonalities, or the discursive over the material.

**No global spillover** – Statchowistch evidence doesn’t cite any other countries that will actually change. At best the status quo solves because its about any increase of women in combat

### Consequences

#### -- Evaluate consequences – allowing violence for the sake of moral purity is evil

Isaac 2 (Jeffrey C., Professor of Political Science – Indiana-Bloomington, Director – Center for the Study of Democracy and Public Life, Ph.D. – Yale, Dissent Magazine, 49(2), “Ends, Means, and Politics”, Spring, Proquest)

As writers such as Niccolo Machiavelli, Max Weber, Reinhold Niebuhr, and Hannah Arendt have taught, an unyielding concern with moral goodness undercuts political responsibility. The concern may be morally laudable, reflecting a kind of personal integrity, but it suffers from three fatal flaws: (1) It fails to see that the purity of one’s intention does not ensure the achievement of what one intends. Abjuring violence or refusing to make common cause with morally compromised parties may seem like the right thing; but if such tactics entail impotence, then it is hard to view them as serving any moral good beyond the **clean conscience** of their supporters; (2) it fails to see that in a world of real violence and injustice, moral purity is not simply a form of powerlessness; it is often a form of complicity in injustice. This is why, from the standpoint of politics--as opposed to religion--pacifism is always a potentially immoral stand. In categorically repudiating violence, it refuses in principle to oppose certain violent injustices with any effect; and (3) it fails to see that politics is as much about **unintended consequences** as it is about intentions; it is the effects of action, rather than the motives of action, that is most significant. Just as the alignment with “good” may engender impotence, it is often the pursuit of “good” that generates evil. This is the lesson of communism in the twentieth century: it is not enough that one’s goals be sincere or idealistic; it is equally important, always, to ask about the effects of pursuing these goals and to judge these effects in pragmatic and historically contextualized ways. Moral absolutism inhibits this judgment. It alienates those who are not true believers. It promotes arrogance. And it undermines political effectiveness.

### Link Turns

#### The Aff’s depiction of male supremacy reinforces asymmetrical power relations and replicates the logic of victimhood

Bumiller 88 (Kristin, Prof of Poly Sci + Women’s/Gender Studies @ Amherst College, The Civil Rights Society: The Social Construction of Victims, p. 3)

Victims of discrimination often portray the perpetrators of discrimination as tyrants, for example. The interviews reveal that the bonds of the tyrant image are powerful because they allow the subjects to regard their superiors as immature and arrogant **yet justify their own impotence**. The image of the tyrant transforms the exchange between perpetrator and victim into a situation **in which the perpetrator controls and the victim transgresses**. Through detailed examination of responses to discrimination, it becomes clear that these struggles often end in defeat for the victim **because the bonds of victimhood inhibit challenges against the perpetrators**. The victims internalize the power struggle by submitting to the perpetrator’s ruthlessness and to their own anger and confusion. **Contrary to the assumption that antidiscrimination law benefits the victim against the more powerful opponent, the bonds of victimhood are reinforced rather than broken by the intervention of legal discourse.**

#### Reification of the logic of victimhood propels and unleashes the greatest forms of violence

Sengupta 6 (Shuddhabrata, media practitioner, filmmaker and writer with the Raqs Media Collective, "I/Me/Mine—Intersectional Identities as Negotiated Minefields," Signs: Journal of Women in Culture, http://www.journals.uchicago.edu/SIGNS/journal/issues/v31n3/40253/40253.html)

Once you position or foreground a particular circumstance of victimhood, it enables a scotoma, an inability to see oneself as anything other than a victim, **and this, if anything, propels and unleashes the greatest violence**. And so it is that the United States can disperse depleted uranium in faraway lands because Americans have been persuaded that 9/11, a tragedy for the whole world like any tragedy (be it the violence in Kashmir, or Afghanistan, or Palestine, or Rwanda, or Vietnam), comes to be seen as the special, particular tragedy of the American people **and thereby the launching pad for the exclusive claim to the righteous use of force on their behalf by the U.S. government.**

# Block

## XO CP

### Solvency – 2NC – Congress

#### Only the CP solves – the President will refuse the plan’s limitation

Prakash 8 (Saikrishna – Herzog Research Professor of Law, University of San Diego School of Law, “The Executive's Duty To Disregard Unconstitutional Laws”, 2008, Georgetown Law Journal, 96 Geo. L.J. 1613, lexis)

Perhaps most ominously, Presidents might decline to abide by statutes that are meant to constrain presidential authority. Citing a duty to disregard unconstitutional statutes, a President might elude all manner of constraints that Congress imposed upon presidential power. n28 Indeed, such complaints have been made against President George W. Bush. n29 When Congress has tried to tie his hands, the President has declared an unwillingness to abide by such statutory limitations on the grounds that they are unconstitutional.

### A2: Perm – Do Both – Politics

#### Disagreements over authority trigger constitutional showdowns – even if the executive wants the plan – it’s about who decides, not the decision itself

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 75-77)

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

### AT: Cause of Action

#### Their evidence doesn’t assume the counterplan that creates an explicit cause of action for private enforcement

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Even if an executive order has the force and effect of law, courts will not recognize a private cause of action against the government under the executive order unless there is evidence of presidential intent to create a cause of action. 32 For example, in Acevedo v. Nassau County, 33 members of low-income minority groups brought a class action alleging that the General Services Administration had violated an executive order 34 by planning a federal office building without considering the adequacy of low-income housing in the area. 35 The Second Circuit affirmed the district court's dismissal on the ground, inter alia, that the executive order created no right of action, either express or implied. 36 The court found that the order did not expressly grant a cause of action and that the obligations imposed by the order were "so broad and vague" that inferring a private cause of action might engender protracted lawsuits by persons with little at stake. 37 If presidential intent is not explicit, courts frequently will look to the history of the executive order or the administrative scheme established by the order to determine whether there exists an implied right of action. Using this analysis, some courts refuse to allow a cause of action under an executive order based on an "exclusivity [\*666] of remedy" rationale. 38 The Fifth Circuit in Farkas v. Texas Instrument, 39 for example, held that there was no right of action under an executive order because the administrative remedies prescribed by the order were intended to be the exclusive mode of enforcement. 40 Plaintiff asserted that he was discharged in violation of an executive order 41 that forbade government contractors from discriminating against employees or applicants on the basis of national origin. 42 Plaintiff had unsuccessfully pursued his administrative remedies under the order by seeking relief before the President's Committee on Equal Employment Opportunity. 43 The court concluded that the Committee's refusal to grant relief was final and that the President did not contemplate a private cause of action directly under the order "[i]n light of the Order's emphasis on administrative methods of obtaining compliance with the required contractual provisions." 44 It therefore affirmed the district court's dismissal of the discrimination claim for failure to state a cause of action. 45 These decisions illustrate the formidable barriers that plaintiffs must overcome to assert a cause of action directly under an executive order. Courts have been extremely reluctant to infer rights of action when, as is frequently the case, the orders are silent on the subject of private enforcement and establish their own administrative remedial schemes. 46 Instead of looking exclusively to the executive order for a cause of action, courts should look to the APA as an alternative basis for judicial review of an agency's violation of an order.

#### Executive orders can explicitly create judicial review

Ostrow-GW law review-87 55 Geo. Wash. L. Rev. 659, \*

55 Geo. Wash. L. Rev. 659

NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Professor Noyes has proposed a similar analysis of congressional intent in the context of inferring rights of action against private defendants. Noyes, supra note 4, at 862-78. He suggests that the courts, in deciding whether an executive order creates a private right of action, should rarely rely on presidential intent alone. Id. at 838, 876-77. Rather, they should examine the language and legislative history of any statute(s) upon which an executive order is based for evidence of congressional intent to provide a private remedy for violation of an order. Id. at 838, 863-75. Noyes posits that presidential intent is relevant only when Congress has delegated to the President the authority to create a right of action. Id. at 864-65, 876-77. Interestingly, he also suggests that the President has the power, at least theoretically, to create private rights of action for violations of constitutionally authorized executive orders. Id. at 860-62. The inquiry into presidential intent may be justified for such constitutionally based executive orders.

### Object Fiat – 2NC

#### 2. It’s vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place by the executive vs. other branches

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

### A2 Precedent Key

#### Executive self-restraint solves precedent by invoking constitutional limits

Atkinson 13 (L. Rush, JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch limits its own conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be unprompted by judicial command or legislative action, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

### Solvency – Domestic Signal

#### The president is the focal point of American politics – everyone perceives executive action

Fitts 96 (Michael, Professor of Law @ UPenn Law School, “The Paradox Of Power In The Modern State”, University of Pennsylvania Law Review, 144 U. Pa. L. Rev. 827, Lexis)

I. The Presidency A. The Modern Presidency What is the nature of the presidency in the modern state? Numerous political scientists and legal academics claim that our recent chief executives have inherited a "modern presidency," [33](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n33" \t "_self) which began to develop with Franklin Roosevelt and is structurally distinct from earlier regimes. [34](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n34" \t "_self) Of course, the balance of power among the president, Congress, and the agencies is exceedingly complex, since the amount of bureaucratic activity and legislative oversight has increased greatly over the years. Nevertheless, "the resources of modern presidents [are thought by many to] dwarf those of their predecessors." [35](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n35" \t "_self) Commentators point to three related changes that centralize greater formal power in the institution and increase the informal political assets at the president's command. The first change, which is to some extent considered the most important and defining quality of the modern presidency, is the increased visibility of the president as an individual within the electoral process. Prior to the Roosevelt Administration, the president was viewed more as a member of both a party and a complicated and elite system of government. He was also relatively distant from the population. The modern presidents, in contrast, are elected increasingly as individuals in the primary and general elections on the basis of direct public exposure in the media. This [\*842] evolution, which has occurred over a number of years, is a result of social forces, such as the decline of political parties [36](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n36" \t "_self) and the rise of the media, as well as legal changes, such as the ascendancy of primaries. [37](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n37" \t "_self) Second, once in power, modern presidents have increasingly attempted to take greater formal and informal control of the executive branch, through policy expansion of the OMB and the Executive Office of the President and increased oversight of agencies under Executive Order 12,291 [38](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n38" \t "_self) and its successor orders. Indeed, every president since Roosevelt has attempted to centralize power in the White House to oversee the operations of the executive branch and to make its resources more responsive to his policy and political needs. [39](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n39" \t "_self) [\*843] Finally, and relatedly, the modern presidency has become more centralized and personalized through its public media role - that is, its "rhetorical functions." [40](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n40" \t "_self) Given changes in the press and the White House office, the president has become far more effective in setting the agenda for public debate, sometimes even dominating the public dialogue when he chooses. [41](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n41" \t "_self) Economists would probably attribute the president's ability to "transmit information" to the centralized organization of the presidency - an "economy of scale" in public debate. [42](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n42" \t "_self) At the same time, the president can establish [\*844] a "focal point" around preferred public policies. [43](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n43" \t "_self) This proposition can also be stated somewhat differently. As an institution embodied in a single individual, the president has a unique ability to "tell" a simple story that is quite personal and understandable to the public. As a number of legal academics have shown, stories can be a powerful mode for capturing the essence of a person's situated perspective, improving public comprehension of particular facts, and synthesizing complex events into accessible language. [44](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n44" \t "_self) Complex institutions, such as Congress, have difficulty [\*845] assembling and transmitting information as part of a coherent whole; they represent a diversity - some would say a babble - of voices and perspectives. In contrast, presidents have the capacity to project a coherent and empathetic message, especially if it is tied to their own life stories. In this sense, the skill of the president in telling a story about policy, while sometimes a source of pointed criticism for its necessary simplicity, [45](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n45" \t "_self) may greatly facilitate public understanding and acceptance of policy. [46](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n46" \t "_self) B. The Theory of the Unitary Presidency This picture of the modern presidency is quite consistent with those parts of the legal and political science literatures exploring the advantages of presidential (as opposed to legislative) power and advocating a more unitary or centralized presidency. According to this view, [47](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n47" \t "_self) power and accountability in government and in the executive branch should be moved more toward the top, giving the [\*846] president and his staff greater ability to make decisions themselves or to leave them, subject to oversight, in the hands of expert agency officials. In the legal literature, this position is usually associated with support for strengthening the president's directorial powers over the agencies, unfettered presidential removal authority, and Chevron deference to agency regulations [48](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n48" \t "_self) reviewed by the White House. Similarly, political scientists emphasize the plebiscitarian president's growing informal influence with the agencies and the public, as well as the association between a strong president and the "national" interest. [49](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n49" \t "_self) To be sure, legal proponents of a strong unitary presidency usually do not outline a comprehensive policy defense of the legal position but rely more on doctrinal justifications and related policy arguments. [50](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n50" \t "_self) By synthesizing and integrating the interrelated legal and policy rationales in the legal and political science literatures, however, one can sketch the outlines of a common theory. This analysis suggests that the structure of a more unitary, centralized presidency should enhance the power, legitimacy, and effectiveness of the office, especially as compared to Congress, in three different but related ways. [\*847] First, with respect to the administration of the executive branch, centralized power, or at least the opportunity for the exercise of centralized power, is thought to facilitate better development and coordination of national programs and policies. Because federal government programs interrelate in countless ways, a centralized figure or institution such as the president is seemingly in a good position to recognize and respond to the demands of the overall situation. [51](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n51" \t "_self) For similar reasons, as social and political change accelerates, the president may be well-situated to foresee and implement adaptive synoptic changes - that is, to engage in strategic planning. One of the rationales for the existence of the federal government is the national effect of its policies, which under this view can be reconciled most easily at the top. [52](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n52" \t "_self) To the extent that the president is successful in putting together such programs, he should receive political credit, which would redound to his political strength. [53](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n53" \t "_self) Second, centralized power facilitates greater political accountability by placing in one single individual the public's focus of government performance. If the public had to evaluate electorally the activities of hundreds of different officials in the executive branch, its information about the positions, actions, and effects of government behavior would be extraordinarily limited. [54](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n54" \t "_self) Only those most [\*848] interested in a particular function would be likely to have information about its behavior or attempt to influence that behavior through election, lobbying, or litigation. This is the standard concern with New Deal agencies captured by the so-called iron triangle of Washington politics. [55](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n55" \t "_self) By contrast, placing overall political responsibility in one individual is thought to facilitate broader political accountability. While this oversight can have mixed effects depending on presidential performance, it has the potential for strengthening the president's political support and influence. [56](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n56" \t "_self) Because he is more likely to approximate the views of the median voter, [57](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n57" \t "_self) a unitary president is thought to enjoy a clear majoritarian mandate, as the only elected representative of all "The People." This democratic legitimacy should be, in turn, a major source of his political strength. [58](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n58" \t "_self) As one commentator has [\*849] argued: "Every deviation from the principle of executive unitariness will necessarily undermine the national majority electoral coalition." [59](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n59" \t "_self) Finally, on an elite political level, the existence of a single powerful political actor serves a political coordination function. [60](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n60" \t "_self) A dispersed government with a decentralized political structure has a great deal of difficulty in reaching cooperative solutions on policy outcomes. Even if it does reach cooperative solutions, it has great difficulty in reaching optimal results. Today, there are simply too many groups in Washington and within the political elite to reach the necessary and optimal agreement easily. [61](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n61" \t "_self) A central and visible figure such as the president, who can take clear positions, can serve as a unique focal point for coordinating action. [62](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n62" \t "_self) With the ability to focus public attention and minimize information costs, [63](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n63" \t "_self) [\*850] a president can also be highly effective in overcoming narrow but powerful sources of opposition and in facilitating communication (that is, coordination and cooperation) between groups and branches. [64](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n64" \t "_self) In technical terms, he might be viewed as the "least cost avoider." [65](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n65" \t "_self) The budget confrontation between Clinton and Congress is only the most recent example of the president's strategic abilities. [66](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n66" \t "_self) In this regard, it is not surprising that most studies have found that the president's popularity is an important factor in his ability to effectively negotiate with Congress. [67](http://www.lexis.com/research/retrieve?_m=9682703a4df43dd8c6c8ed5d04f182ce&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzW-zSkAB&_md5=3768c1302f86dc23f5e5b05fdb88112a" \l "n67" \t "_self)

### Politics – XO – 2NC

#### Executive orders save political capital – recent empirics

Warshaw 6 (Professor of Political Science at Gettysburg College, Spring 2006, Extensions, The Administrative Strategies of President George W. Bush)

However, in recent administrations, particularly since the Reagan administration, presidents have often bypassed Congress using administrative actions. They have opted for a strategy through administrative actions that is less time-consuming and clearly less demanding of their political capital. Using an array of both formal and informal executive powers, presidents have effectively directed the executive departments to implement policy without any requisite congressional authorization. In effect, presidents have been able to govern without Congress. The arsenal of administrative actions available to presidents includes the power of appointment, perhaps the most important of the arsenal, executive orders, executive agreements, proclamations, signing statements, and a host of national security directives. More than any past president, George W. Bush has utilized administrative actions as his primary tool for governance.

#### Executive orders avoid backlash – prior framing

Mayer 1 (Ken Mayer 01, Princeton University Press, “With the Stroke of a Pen”, page 90.)

For the same reasons, presidents who have low levels of public approval may be more likely to resort to executive orders. Doing so offers a way of getting around other institutional actors who might be emboldened in their opposition to what they perceive as a weak white house, and also provides presidents with a method of position taking, framing policy questions, or delivering on promises made to key constituencies.

## Warfighting

### Link – Military Deployment

#### Giving power of the military to other branches hurts the president’s authority.

Yoo 01

[John C. Yoo, Law Professor at University of California, Berkeley and Visiting Scholar at the American Enterprise Institute Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, Deputy Assistant U.S. Attorney General in the Office of Legal Counsel, Department of Justice (OLC), during the George W. Bush administration, 9.25.01 http://www.usdoj.gov/olc/warpowers925.htm]

Conducting military hostilities is a central tool for the exercise of the President's plenary control over the conduct of foreign policy. There can be no doubt that the use of force protects the Nation's security and helps it achieve its foreign policy goals. Construing the Constitution to grant such power to another branch could prevent the President from exercising his core constitutional responsibilities in foreign affairs. Even in the cases in which the Supreme Court has limited executive authority, it has also emphasized that we should not construe legislative prerogatives to **prevent the executive branch "from accomplishing its constitutionally assigned functions**." *Nixon v. Administrator of General Servs.*, 433 U.S. 425, 443 (1977).

### Link – Congress – 2NC

#### Congressional restrictions snowball – hurt’s the President

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

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, **it limits the President’s discretion** to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64 Yet that restriction seems to be the very kind of limitation on a President’s tactical battlefield command that the commonly accepted premise would not permit. But if Congress can thus limit the purpose of the war against an enemy, why could it not impose other similar restrictions— limiting for example the theater of war, or even the places the military can attack? If the 1991 Persian Gulf Resolution was constitutional—and nobody claimed it was not—Congress could have authorized war against Germany for the purpose of protecting Britain and liberating Western Europe, while not permitting combat operations into Germany or other theaters of action such as the Middle East or North Africa. Congress would never have done so, but the 1991 Persian Gulf authorization suggests that it could have. The 1991 Persian Gulf authorization is not an anomaly; Congress has limited the objects, purposes, and tactics Presidents could use in conducting war

### Spillover – 2NC

#### Spills over to all military action

Howell 7 (William, professor of political science at U-Chicago, and Jon C. Pevehouse, professor of Political Science UW-Madison, “While Dangers Gather : Congressional Checks on Presidential War Powers,” 2007 ed.)

Immersed in all of the uncertainty that precedes war, presidents struggle mightily to assess the possibility that the military's plans will fail, and to evaluate whether Congress in due course either will publicly condemn him and actively work to dismantle the engagement or will affirm its allegiance to him and give him the money and delegated authority he needs to proceed. If Congress will come to the president's aid and ptovide him with political cover, then he may have the assurances he needs to incur the risks involved. On the other hand, if the president looks up at Capitol Hill and sees a swarm of representatives poised to pounce at the first misstep taken, he may instead choose to abandon military options altogether. In chapter 2 of this book, we discuss in some detail how presidents make this calculation.

## **Case**

### Structural Violence

#### Nuke war outweighs structural violence – prioritizing structural violence makes preventing war impossible

Boulding 78 (Ken, is professor of economics and director, Center for Research on Conflict Resolution, University of Michigan, “Future Directions in Conflict and Peace Studies,” The Journal of Conflict Resolution, Vol. 22, No. 2 (Jun., 1978), pp. 342-354)

Galtung is very legitimately interested in problems of world poverty and the failure of development of the really poor. He tried to amalga- mate this interest with the peace research interest in the more narrow sense. Unfortunately, he did this by downgrading the study of inter- national peace, labeling it "negative peace" (it should really have been labeled "negative war") and then developing the concept of "structural violence," which initially meant all those social structures and histories which produced an expectation of life less than that of the richest and longest-lived societies. He argued by analogy that if people died before the age, say, of 70 from avoidable causes, that this was a death in "war"' which could only be remedied by something called "positive peace." Unfortunately, the concept of structural violence was broadened, in the word of one slightly unfriendly critic, to include anything that Galtung did not like. Another factor in this situation was the feeling, certainly in the 1960s and early 1970s, that nuclear deterrence was actually succeeding as deterrence and that the problem of nuclear war had receded into the background. This it seems to me is a most dangerous illusion and diverted conflict and peace research for ten years or more away from problems of disarmament and stable peace toward a grand, vague study of world developments, for which most of the peace researchers are not particularly well qualified. To my mind, at least, the quality of the research has suffered severely as a result.' The complex nature of the split within the peace research community is reflected in two international peace research organizations. The official one, the International Peace Research Association (IPRA), tends to be dominated by Europeans somewhat to the political left, is rather, hostile to the United States and to the multinational cor- porations, sympathetic to the New International Economic Order and thinks of itself as being interested in justice rather than in peace. The Peace Science Society (International), which used to be called the Peace Research Society (International), is mainly the creation of Walter Isard of the University of Pennsylvania. It conducts meetings all around the world and represents a more peace-oriented, quantitative, science- based enterprise, without much interest in ideology. COPRED, while officially the North American representative of IPRA, has very little active connection with it and contains within itself the same ideological split which, divides the peace research community in general. It has, however, been able to hold together and at least promote a certain amount of interaction between the two points of view. Again representing the "scientific" rather than the "ideological" point of view, we have SIPRI, the Stockholm International Peace Research Institute, very generously (by the usual peace research stand- ards) financed by the Swedish government, which has performed an enormously useful service in the collection and publishing of data on such things as the war industry, technological developments, arma- ments, and the arms trade. The Institute is very largely the creation of Alva Myrdal. In spite of the remarkable work which it has done, how- ever, her last book on disarmament (1976) is almost a cry of despair over the folly and hypocrisy of international policies, the overwhelming power of the military, and the inability of mere information, however good, go change the course of events as we head toward ultimate ca- tastrophe. I do not wholly share her pessimism, but it is hard not to be a little disappointed with the results of this first generation of the peace research movement. Myrdal called attention very dramatically to the appalling danger in which Europe stands, as the major battleground between Europe, the United States, and the Soviet Union if war ever should break out. It may perhaps be a subconscious recognition-and psychological denial-of the sword of Damocles hanging over Europe that has made the European peace research movement retreat from the realities of the international system into what I must unkindly describe as fantasies of justice. But the American peace research community, likewise, has retreated into a somewhat niggling scientism, with sophisticated meth- odologies and not very many new ideas. I must confess that when I first became involved with the peace research enterprise 25 years ago I had hopes that it might produce some- thing like the Keynesian revolution in economics, which was the result of some rather simple ideas that had never really been thought out clearly before (though they had been anticipated by Malthus and others), coupled with a substantial improvement in the information system with the development of national income statistics which rein- forced this new theoretical framework. As a result, we have had in a single generation a very massive change in what might be called the "conventional wisdom" of economic policy, and even though this conventional wisdom is not wholly wise, there is a world of difference between Herbert Hoover and his total failure to deal with the Great Depression, simply because of everybody's ignorance, and the moder- ately skillful handling of the depression which followed the change in oil prices in 1-974, which, compared with the period 1929 to 1932, was little more than a bad cold compared with a galloping pneumonia. In the international system, however, there has been only glacial change in the conventional wisdom. There has been some improvement. Kissinger was an improvement on John Foster Dulles. We have had the beginnings of detente, and at least the possibility on the horizon of stable peace between the United States and the Soviet Union, indeed in the whole temperate zone-even though the tropics still remain uneasy and beset with arms races, wars, and revolutions which we cannot really afford. Nor can we pretend that peace around the temper- ate zone is stable enough so that we do not have to worry about it. The qualitative arms race goes on and could easily take us over the cliff. The record of peace research in the last generation, therefore, is one of very partial success. It has created a discipline and that is something of long-run consequence, most certainly for the good. It has made very little dent on the conventional wisdom of the policy makers anywhere in the world. It has not been able to prevent an arms race, any more, I suppose we might say, than the Keynesian economics has been able to prevent inflation. But whereas inflation is an inconvenience, the arms race may well be another catastrophe. Where, then, do we go from here? Can we see new horizons for peace and conflict research to get it out of the doldrums in which it has been now for almost ten years? The challenge is surely great enough. It still remains true that war, the breakdown of Galtung's "negative peace," remains the greatest clear and present danger to the human race, a danger to human survival far greater than poverty, or injustice, or oppression, desirable and necessary as it is to eliminate these things. Up to the present generation, war has been a cost and an inconven- ience to the human race, but it has rarely been fatal to the process of evolutionary development as a whole. It has probably not absorbed more than 5% of human time, effort, and resources. Even in the twenti- eth century, with its two world wars and innumerable smaller ones, it has probably not acounted for more than 5% of deaths, though of course a larger proportion of premature deaths. Now, however, advancing technology is creating a situation where in the first place we are developing a single world system that does not have the redundancy of the many isolated systems of the past and in which therefore if any- thing goes wrong everything goes wrong. The Mayan civilization could collapse in 900 A.D., and collapse almost irretrievably without Europe or China even being aware of the fact. When we had a number of iso- lated systems, the catastrophe in one was ultimately recoverable by migration from the surviving systems. The one-world system, therefore, which science, transportation, and communication are rapidly giving us, is inherently more precarious than the many-world system of the past. It is all the more important, therefore, to make it internally robust and capable only of recoverable catastrophes. The necessity for stable peace, therefore, increases with every improvement in technology, either of war or of peacex

#### War turns structural violence not vice versa

**Goldstein 2001** – IR professor at American University (Joshua, War and Gender, p. 412, Google Books)

First, peace activists face a dilemma in thinking about causes of war and working for peace. Many peace scholars and activists support the approach, “if you want peace, work for justice.” Then, if one believes that sexism contributes to war, one can work for gender justice specifically (perhaps. among others) in order to pursue peace. This approach brings strategic allies to the peace movement (women, labor, minorities), but rests on the assumption that injustices cause war. The evidence in this book suggests that causality runs at least as strongly the other way. War is not a product of capitalism, imperialism, gender, innate aggression, or any other single cause, although all of these influence wars’ outbreaks and outcomes. Rather, war has in part fueled and sustained these and other injustices.9 So, “if you want peace, work for peace.” Indeed, if you want justice (gender and others), work for peace. Causality does not run just upward through the levels of analysis, from types of individuals, societies, and governments up to war. It runs downward too. Enloe suggests that changes in attitudes towards war and the military may be the most important way to “reverse women’s oppression.” The dilemma is that peace work focused on justice brings to the peace movement energy, allies, and moral grounding, yet, in light of this book’s evidence, the emphasis on injustice as the main cause of war seems to be empirically inadequate.

### Impact Defense

#### Patriarchy as root cause is argumentative reductionism – ignores the complexity of human motivation and behavior

Crenshaw 2 (Carrie, PhD in Rhetorical Studies and Prof @ Univ. of Alabama, Former President of CEDA, Perspectives In Controversy: Selected Articles from Contemporary Argumentation and Debate 2002 p. 119-126)

Substantive debates about feminism usually take one of two forms. First, on the affirmative, debaters argue that some aspect of the resolution is a manifestation of patriarchy. For example, given the spring 1992 resolution, “resolved: That advertising degrades the quality of life," many affirmatives argued that the portrayal of women as beautiful objects for men's consumption is a manifestation of patriarchy that results in tangible harms to women such as rising rates of eating disorders. The fall 1992 topic, "resolved: That the welfare system exacerbates the problems of the urban poor in the United States," also had its share of patri- archy cases. Affirmatives typically argued that women's dependence upon a patriarchal welfare system results in increasing rates of women's poverty. In addition to these concrete harms to individual women, most affirmatives on both topics, desiring "big impacts," argued that the effects of patriarchy include nightmarish totalitarianism and/or nuclear annihilation. On the negative, many debaters countered with arguments that the some aspect of the resolution in some way sustains or energizes the feminist movement in resistance to patriarchal harms. For example, some negatives argued that sexist advertising provides an impetus for the reinvigoration of the feminist movement and/or feminist consciousness, ultimately solving the threat of patriarchal nuclear annihilation. Likewise, debaters negating the welfare topic argued that the state of the welfare system is the key issue around which the feminist movement is mobilizing or that the consequence of the welfare system - breakup of the patriarchal nuclear family -undermines patriarchy as a whole. Such arguments seem to have two assumptions in common. First, there is a single feminism. As a result, feminists are transformed into feminism. Debaters speak of feminism as a single, monolithic, theoretical and pragmatic entity and feminists as women with identical motivations, methods, and goals. Second, these arguments assume that patriarchy is the single or root cause of all forms of oppression. Patriarchy not only is responsible for sexism and the consequent oppression of women, it also is the cause of totalitarianism, environmental degradation, nuclear war, racism, and capitalist exploitation. These reductionist arguments reflect an unwillingness to debate about the complexities of human motivation and explanation. They betray a reliance upon a framework of proof that can explain only material conditions and physical realities through empirical quantification. The transformation of feminists, feminism and the identification of patriarchy as the sole cause of all oppression is related in part to the current form of intercollegiate debate practice. By "form," I refer to Kenneth Burke's notion of form, defined as the "creation of appetite in the mind of the auditor, and the adequate satisfying of that appetite" (Counter-Statement 31).

#### Root cause is a lie – patriarchy cannot explain all violence in IR

Martin 90 (Brian, professor of science, technology, and society – University of Wollongong,

<http://www.uow.edu.au/arts/sts/bmartin/pubs/90uw/uw13.html>)

In this chapter and in the six preceding chapters I have examined a number of structures and factors which have some connection with the war system. There is much more that could be said about any one of these structures, and other factors which could be examined. Here I wish to note one important point: attention should not be focused on one single factor to the exclusion of others. This is often done for example by some Marxists who look only at capitalism as a root of war and other social problems, and by some feminists who attribute most problems to patriarchy. The danger of monocausal explanations is that they may lead to an inadequate political practice. The 'revolution' may be followed by the persistence or even expansion of many problems which were not addressed by the single-factor perspective. The one connecting feature which I perceive in the structures underlying war is an unequal distribution of power. This unequal distribution is socially organised in many different ways, such as in the large-scale structures for state administration, in capitalist ownership, in male domination within families and elsewhere, in control over knowledge by experts, and in the use of force by the military. Furthermore, these different systems of power are interconnected. They often support each other, and sometimes conflict. This means that the struggle against war can and must be undertaken at many different levels. It ranges from struggles to undermine state power to struggles to undermine racism, sexism and other forms of domination at the level of the individual and the local community. Furthermore, the different struggles need to be linked together. That is the motivation for analysing the roots of war and developing strategies for grassroots movements to uproot them.

#### Patriarchy not the root cause—inseparable from regional conflict and structural conditions

Stansell 10 (Christine, Professor of history at Princeton and the University of Chicago, “Global Feminism in a Conservative Age: Possibilities and Pieties Since 1980”, in Dissent, April 1st Edition, pg. 51-52)

But at the same time, the use of patriarchy as the one-size-fits-all paradigm and the dichotomy of injured women/male aggressor was totally inadequate. Sex-specific violence was inextricable from the plague of wars and insurgencies that laid waste to large parts of the world. Rape, torture, mutilation, and female captivity and enslavement were standard procedures of marauding militias and terrorist bands in Africa, from Liberia and Sierra Leone to Congo, northern Uganda, Rwanda, Sudan, and Somalia. Coerced labor in the sex trade—what came to be called sexual slavery—was entangled with poverty, official corruption, labor flows across borders, and forced migration. Violence was inseparable from politics and reactionary religious regimes and parties: Muslim fundamentalists in Afghanistan, Nigeria, Pakistan, Saudi Arabia, and Iran consolidated power by implementing draconian interpretations of sharia to harass, brutalize, and murder girls and women who allegedly violated codes of sexual propriety, newly invented or recently resurrected.

### Consequentalism

#### -- Governments must weigh consequences

Harries 94 (Owen, Editor and Founder – National Interest and Senior Fellow – Centre for Independent Studies, “Power and Civilization”, The National Interest, Spring, Lexis)

Performance is the test. Asked directly by a Western interviewer, “In principle, do you believe in one standard of human rights and free expression?”, Lee immediately answers, “Look, it is not a matter of principle but of practice.” This might appear to represent a simple and rather crude pragmatism. But in its context it might also be interpreted as an appreciation of the fundamental point made by Max Weber that, in politics, it is “the ethic of responsibility” rather than “the ethic of absolute ends” that is appropriate. While an **individual** is free to treat human rights as absolute, to be observed whatever the cost, **governments** **must always weigh consequences** and the competing claims of other ends. So once they enter the realm of politics, human rights have to take their place in a hierarchy of interests, including such basic things as national security and the promotion of prosperity. Their place in that hierarchy will vary with circumstances, but no responsible government will ever be able to put them always at the top and treat them as inviolable and over-riding. The cost of implementing and promoting them will always have to be considered.

#### -- Extinction mandates consequentialism

Bok 88 (Sissela, Professor of Philosophy – Brandeis College, Applied Ethics and Ethical Theory, Ed. Rosenthal and Shehadi, p. 202-203)

The same argument can be made for Kant’s other formulations of the Categorical Imperative: “So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means”; and “So act as if you were always through actions a law-making member in a universal Kingdom of Ends.” No one with a concern for humanity could consistently will to risk eliminating humanity in the person of himself and every other or to risk the death of all members in a universal Kingdom of Ends for the sake of justice. To risk their collective death for the sake of following one’s conscience would be, as Rawls said, “irrational, crazy.” And to say that one did not intend such a catastrophe, but that one merely failed to stop other persons from bringing it about would be beside the point when the end of the world was at stake.For although it is true that we cannot be held responsible for most of the wrongs that others commit, the Latin maxim presents a case where we would have to take such a responsibility seriously—perhaps to the point of deceiving, bribing, even killing an innocent person, in order that the world not perish.

## Politics

### Econ Outweighs – Probability

#### Probability -- conflict now is highly likely given other economic stressors

Mootry 9 (Primus, B.A. Northern Illinois University “Americans likely to face more difficult times” - The Herald Bulletin, http://www.theheraldbulletin.com/columns/local\_story\_282184703.html?keyword=secondarystory)

These are difficult times. The direct and indirect costs associated with the war on Iraq have nearly wrecked our economy. The recent $700 billion bailout, bank failures, and the failure of many small and large businesses across the nation will take years — perhaps decades — to surmount. Along with these rampant business failures, we have seen unemployment rates skyrocket, record numbers of home foreclosures, an explosion of uninsured Americans, and other economic woes that together have politicians now openly willing to mention the "D" word: Depression. These are difficult days. We have seen our international reputation sink to all time lows. We have seen great natural disasters such as hurricanes Ike and Katrina leaving hundreds of thousands of citizens stripped of all they own or permanently dislocated. In all my years, I have never seen a time such as this. To make matters worse, we are witnessing a resurgence of animosities between the United States and Russia, as well as the rapid growth of India and China. As to the growth of these two huge countries, the problem for us is that they are demanding more and more oil — millions of barrels more each week — and there is not much we can say or do about it. In the meantime, if America does not get the oil it needs, our entire economy will grind to a halt. In short, the challenges we face are complex and enormous. Incidentally, one of the factors that makes this time unlike any other in history is the potential for worldwide nuclear conflict. **There has never been a time in** the long **history** of man **when**, through his own technologies — and his arrogance — he can destroy the planet. Given the tensions around the world, **a mere spark could lead to global conflagration.**[This evidence has been gender paraphrased].

### Turns Democracy/Equality

#### Key to equality

**Acemoglu et al 8** (Daron, Professor of Economics – Massachusetts Institute of Technology, “Income and Democracy,” The American Economic Review, Vol. 98, No. 3, pp. 808–842. JSTOR)

One of the most notable empirical regularities in political economy is the relationship between income per capita and democracy. Today, all OECD countries are democratic, while many of the non–democracies are in the poor parts of the world, for example sub–Saharan Africa and Southeast Asia. The positive cross–country relationship between income and democracy in the 1990s is depicted in Figure 1, which shows the association between the Freedom House measure of democracy and log income per capita in the 1990s.1 This relationship is not confined solely to a cross–country comparison. Most countries were nondemocratic before the modern growth process took off at the beginning of the nineteenth century. Democratization came together with growth. Robert J. Barro (1999, 160), for example, summarizes this as follows: "Increases in various measures of the standard of living forecast a gradual rise in democracy. In contrast, democracies that arise without prior economic development...tend not to last."2 This statistical association between income and democracy is the cornerstone of the influential modernization theory. Lipset (1959) suggested that democracy was both created and consolidated by a broad process of "modernization" which involved changes in "the factors of industrialization, urbanization, wealth, and education [which] are so closely interrelated as to form one common factor. And the factors subsumed under economic development carry with it the political correlate of democracy" (80). The central tenet of the modernization theory, that higher income per capita causes a country to be democratic, is also reproduced in most major works on democracy (e.g., Robert A. Dahl 1971; Samuel P. Huntington 1991; Dietrich Rusechemeyer, John D. Stephens, and Evelyn H. Stephens 1992).

### Spending PC

#### Obama is leveraging his political clout for immigration reform passage

Miller 12/25/13 (Emily, Wash Times, "MILLER: Obama’s dangerous immigration reform agenda and amnesty," http://www.washingtontimes.com/news/2013/dec/25/obamas-immigration-reform-agenda-may-lead-amnesty/?page=all)

Before leaving on his 17-day vacation in Hawaii, President Obama declared that one of his top priorities for 2014 will be immigration reform, with amnesty. He knows that congressional Republicans feel pressure to do something to woo Hispanic voters.¶ Mr. Obama will leverage those political forces for the midterm elections, even though he doesn’t even enforce the existing immigration laws.¶ Mr. Obama held a rare press conference Friday before hopping on Air Force One for the direct flight to Honolulu. It was in an attempt to buck up his plummeting poll numbers after a year of failures.¶ “Immigration reform, probably the biggest thing that I wanted to get done this year, we saw progress. It passed the Senate with a strong bipartisan vote,” he asserted.¶ The president said that House Speaker John A. Boehner made a commitment “to try to move forward legislation early next year,” and that there were merely “a few differences here and there” between the two political parties on the issue. Senate Majority Leader Harry Reid piled on the pressure. “I think that John Boehner will conference with the Senate. Why wouldn’t he? He’ll have a lot of pressure from his members now that the election is getting closer,” the Nevada Democrat told The Hill newspaper. “Some of his members are in very marginal districts, where they need to do something on immigration.”

#### Obama pushing hard for passage

Fox News 12/23/13 ("Obama, top Dems now appear to be pushing for comprehensive immigration reform," http://www.foxnews.com/politics/2013/12/22/obama-top-dems-now-appear-to-be-pushing-for-comprehensive-immigration-reform/)

President Obama and his top Democrats on Capitol Hill appear to have reset their sights on the Republican-controlled House passing comprehensive immigration reform, instead of a step-by-step process, as lawmakers leave Washington for the Christmas holiday break.¶ The president on Friday appeared to urge the House to back the comprehensive, bipartisan immigration bill the Senate passed this summer -- a departure from recent comments that suggested Obama was OK with the lower chamber’s apparent piecemeal plan.¶ “The Senate bill has the main components of comprehensive immigration reform that would boost our economy, give us an opportunity to attract more investment and high-skilled workers who are doing great things in places like Silicon Valley and around the country,” Obama said in the year-end press conference. “So let’s go ahead and get that done.”¶ Though Obama has pressed House Republicans hard in the final months of 2013 on immigration reform, his remarks this week appear in contrast to him saying in November that he had no problem with House leaders carving the immigration bill into, say, five pieces.

### Obama Push Key

#### Obama working to push through agenda items – key to immigration passage compromise

WSJ 12/30/13 (Wall Street Journal, “Obama Seeks Way to Right His Ship,” <http://online.wsj.com/news/articles/SB10001424052702304361604579290264084633016>)

Mr. Obama's main consolation is that Republicans continue to fare even worse in public estimation. Indeed, his political high point in 2013 came when congressional Republicans shot themselves in the foot by allowing the government to shut down in October in a dispute over funding the president's health law. Republican leaders were so singed by the experience that they moved swiftly this month to strike the compromise budget plan that will keep the government funded through next year. Then, House Speaker John Boehner (R., Ohio) forcefully quashed complaints by the party's tea-party wing that the new deal didn't cut spending sufficiently. The emergence of a large bloc of House Republicans who voted in favor of that compromise has created the possibility that Mr. Obama may be able to work out at least a few deals on other issues. "The jury's still out on whether or not the budget agreement was a one-off or a sign of things to come," says Rep. Chris Van Hollen of Maryland, the top Democrat on the House Budget Committee. Mr. Van Hollen says an early test will come when the parties try to reach an understanding to raise the debt ceiling, due to be hit around the beginning of March. If there is a new phase of cooperation, he says, that might open the door to deals on more infrastructure spending, corporate tax reform and, crucially, an overhaul of immigration laws. Rep. Kevin McCarthy, the third-ranking Republican in the House, says the budget deal "does allow us to get more done," but adds that compromises are more likely between House and Senate leaders than with the White House. He predicts much of Mr. Obama's effort in the new year will be on keeping Democratic supporters from abandoning him as he tries to get his new health program working better. That brings Mr. Obama to his key strategic choice: Does he focus on trying to craft compromises with Republicans to show skeptical voters he is making Washington work? Or does he work around Congress, striking out on his own with executive actions, while attacking the GOP for failing to cooperate? The question of whether more deals with congressional Republicans are possible is "perhaps the question when it comes to predicting how 2014 will play out," says a senior White House official. "Our approach will be to test as much as possible for principled compromise where Republicans are willing, but also to push ahead with nonlegislative solutions where Congress stonewalls." Some observers wonder whether the president's decision in recent days to hire former White House chief of staff John Podesta, who has championed a muscular use of executive actions to pursue Democratic policies, suggests he is preparing for more confrontations with congressional Republicans.

### Link

#### **Plan’s a perceived loss – that saps capital and collapses unity**

Loomis 7 Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.

#### Presidential war power battles expend capital – it’s immediate and forces a trade-off

O’Neil 7 (David – Adjunct Associate Professor of Law, Fordham Law School, “The Political Safeguards of Executive Privilege”, 2007, 60 Vand. L. Rev. 1079, lexis)

a. Conscious Pursuit of Institutional Prerogatives The first such assumption is belied both by first-hand accounts of information battles and by the conclusions of experts who study them. Participants in such battles report that short-term political calculations consistently trump the constitutional interests at stake. One veteran of the first Bush White House, for example, has explained that rational-choice theory predicts what he in fact experienced: The rewards for a consistent and forceful defense of the legal interests of the office of the presidency would be largely abstract, since they would consist primarily of fidelity to a certain theory of the Constitution... . The costs of pursuing a serious defense of the presidency, however, would tend to be immediate and tangible. These costs would include the expenditure of political capital that might have been used for more pressing purposes, [and] the unpleasantness of increased friction with congressional barons and their allies. n182 Louis Fisher, one of the leading defenders of the political branches' competence and authority to interpret the Constitution independently of the courts, n183 acknowledges that politics and "practical considerations" typically override the legal and constitutional principles implicated in information disputes. n184 In his view, although debate about congressional access and executive privilege "usually proceeds in terms of constitutional doctrine, it is the messy political realities of the moment that usually decide the issue." n185 Indeed, Professor Peter Shane, who has extensively studied such conflicts, concludes that their successful resolution in fact depends upon the parties focusing only on short-term political [\*1123] considerations. n186 When the participants "get institutional," Shane observes, non-judicial resolution "becomes vastly more difficult." n187

#### Even if Obama supports, eliminating the women in combat exclusion costs political capital

Korb et al 1/28/13 (Lawrence, Alex Rothman, Max Coffman, Senior Fellow + research assistants @ Center for American Progress, "Barack Obama’s historic transformation of the American military," http://thegrio.com/2013/01/28/barack-obamas-historic-transformation-of-the-american-military/2/)

This past week, Secretary of Defense Leon Panetta announced that the Pentagon will drop its ban on women serving in combat. With this historic announcement, coming just a year and a half after the repeal of “Don’t Ask, Don’t Tell,” the Obama administration has once again sent a clear message that the United States is committed to fielding a military that reflects the fundamental American values of fairness and equal opportunity.¶ And just days into his second term, President Obama has reinforced his legacy; he will be remembered for transforming our armed forces more profoundly than any president since Harry Truman, who desegregated the U.S. military and provided a permanent place in the military for women.¶ By repealing “Don’t Ask, Don’t Tell” and opening all combat positions to women, the Obama administration has eliminated two of the most egregious examples of modern government-sanctioned discrimination. But these decisions were not based in political correctness or moral probity—dropping these unnecessary and discriminatory restrictions is in our national interest. With the overturning of these bans, the American military will no longer lose talented service members due to their gender or sexual orientation, and our armed forces will be stronger due to their diversity.¶ Yet these reforms did not come easily, nor are they without political risk, as President Clinton discovered when he tried to end the ban on gays in the military. The U.S. military is highly resistant to change, and to achieve these reforms, the Obama administration had to expend considerable political capital and assemble a wide alliance of committed experts and advocates to overcome significant resistance from some active and retired military officers as well as social conservatives in the Congress. Still, these changes will stand the test of history, and by more fully opening the force to minority groups, President Obama has put a commitment to equality, inclusive government, and military readiness at the heart of his legacy.