# 1NC v. Harvard

## 1NC T

#### Restrictions are prohibitions on action --- the aff is a reporting requirement

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.

#### Restrictions on authority are distinct from conditions

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.

#### Restrictions must be enforceable

Elizabeth Boalt 5, Professor of Law Emeritus, University of California, Berkeley, University of Arkansas at Little Rock School of Law The Journal of Appellate Practice and Process Fall, 20035 J. App. Prac. & Process 473, lexis

Four questions follow: (1) Are discouraging words "restrictions" on citation under Rule 32.1? (2) What difference, if any, does it make? (3) What is the risk of judicial resistance to [\*493] no-citation rules, through discouraging words or other means? and (4) Should discouraging words be forbidden?

1. Are Discouraging Words "Restrictions" under Rule 32.1?

The committee's statement notwithstanding, it is not clear that discouraging words have to be considered "restrictions" on citation under the proposed Rule 32.1. These words may be wholly admonitory - and unenforceable. The Fourth Circuit's rule, for example, states that citing unpublished opinions is "disfavored," but that it may be done "if counsel believes, nevertheless, that [an unpublished opinion] has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well." n129 On the question of what counsel "believes," surely counsel should be taken at her word; counsel's asserted belief that an unpublished opinion has precedential or persuasive value should not be considered a falsifiable fact. Hence no sanction should be available for violating the Fourth Circuit's rule, and the rule's discouraging language in turn would not be a "prohibition or restriction" that was barred by Rule 32.1 as presently drafted.

In the rules of some other circuits, however, the language disfavoring citation of unpublished opinions is unmoored from anyone's "belief" and arguably does impose an objective "prohibition or restriction" determinable by a court. n130 A court might find, for example, that the required "persuasive value with respect to a material issue that has not been addressed in a published opinion" n131 was not present, and hence that the citation was not permitted by the circuit rule.

With what result? It would follow, paradoxically, that the opinion could be cited - because the circuit rule would be struck down under Rule 32.1 as a forbidden "restriction" on citation.

The committee's double-negative drafting thus creates a Hall of Mirrors in which citation of an unpublished opinion [\*494] would be allowed either way. If the local rule's discouraging language is merely hortatory, it is not a "restriction" forbidden by Rule 32.1; but that doesn't matter, because such a rule does not bar the citation in the first place. If, on the other hand, the local rule's language has bite and is a "restriction," then Rule 32.1 strikes it down, and again the citation is permitted.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

## 1NC Politics Link

#### Debt celing will pass- there is politican commitment

Murray, 9/19 (Patty, Senate Budget Committee Chairman, Murray Sees Republican Yielding on Debt-Limit Cap (Transcript) <http://www.bloomberg.com/news/2013-09-19/murray-sees-republican-yielding-on-debt-limit-cap-transcript-.html>)

Senate Budget Committee Chairman Patty Murray said in an interview on Bloomberg Television’s “Political Capital with Al Hunt,” airing this weekend, that she expects Republicans seeking to curb President Barack Obama’s health-care law probably will give in to demands by her fellow Democrats to enact a “clean” bill raising the nation’s debt ceiling. (This is not a legal transcript. Bloomberg LP cannot guarantee its accuracy.) AL HUNT: We begin the show with the chairman of the Senate Budget committee, Senator Patty Murray of Washington. Thank you for being with us, Madam Chairman. PATTY MURRAY: It’s great to be with you, Al. HUNT: Do you agree now with the potential showdown 10 days away that the real big fight is not likely to be over the continuing resolution, the budget, but you’ll probably do something short-term on that? MURRAY: Well, I’ve been surprised at the ballyhoo about a short-term budget agreement, to just keep government running while we deal with the bigger issue of where we’re going to go in the future. And I’m hopeful that those people who feel they have to have a temper tantrum before they do it will get over that very quickly and we can move on, because it is important that we address our budget challenges in the coming year and years as quickly as possible. HUNT: But you don’t think you’re going to do that in the next 10 days? I mean, there will be some sort of short-term resolution, and then you come back to that? MURRAY: I think it’s critically important that we have a short-term resolution and keep government running. However, we’re not going to take hostages in this. The Republicans have gone to their temper tantrum - HUNT: Right, there’s not going to be Obamacare on this. MURRAY: - on Obamacare. No. There’s not going to be a repeal of a law that many, many people are having the advantage to be able to participate within. HUNT: You know, on both the deficit commission and as the chairman of the Budget Committee, you’ve probably dealt with more House Republicans than almost any other Senate Democrat. What do you think is their endgame here? MURRAY: Well, it’s changing. I think there are those Republicans in the House and Senate who very much want to work with us to find a solution to our budget challenges, both the budget deficit and debt that we carry, but also our debt and deficit that we carry in transportation and education and policy and how we can make sure our country is strong in the future.

#### OCO causes contentious debates in congress-last year proves

**Munoz 12** (Carlo, Staff Writer - Defense/Nat'l Security at The Hill. “Obama authorizes new cyber warfare directive” 11-4-12 http://thehill.com/blogs/defcon-hill/policy-and-strategy/267879-report-obama-authorizes-new-cyber-warfare-directive//wyoccd)

The White House has, for the first time, laid out specific ground rules for how and when the U.S. military can carry out offensive and defensive cyber operations against foreign threats. ¶ The guidelines were codified in a new White House directive signed by President Obama in mid-October, according to the The Washington Post. A senior Obama administration official confirmed to The Hill that the president has signed a directive on “cyber operations.”¶ “This step is part of the administration’s focus on cybersecurity as a top priority. The cyber threat has evolved since 2004, and we have new experiences to take into account,” the official said.¶ The senior administration official stressed that the directive does not create new powers for federal agencies or the military. ¶ “The directive establishes principles and processes for the use of cyber operations so that cyber tools are integrated with the fully array of national security tools we have at our disposal,” the official said. “It provides a whole-of-government approach consistent with the values that we promote domestically and internationally as we have previously articulated in the International Strategy for Cyberspace.”¶ The cyber rules of engagement, known inside the White House and Pentagon as Presidential Policy Directive 20, is the latest step by the administration to take the fight to state and non-state actors looking to attack U.S. government and civilian networks. ¶ The new directive also closes a critical policy gap at the DOD on cyber warfare that Congress failed to close earlier this year. ¶ In August, White House chief counterterrorism adviser John Brennan told reporters that the administration was considering exercising presidential authority to impose cybersecurity mandates after lawmakers failed to adopt legislation to implement those measures. ¶ Passing cybersecurity legislation was near the top of Defense Secretary Leon Panetta's legislative to-do list for Congress in the lame-duck session, behind a sequestration deal and approval of a Defense authorization bill. ¶ A cybersecurity bill co-sponsored by Sens. Joe Lieberman (I-Conn.) and Susan Collins (R-Maine) has remained stalled on Capitol Hill for months. ¶ Senate Majority Leader Harry Reid (D-Nev.) has called for a vote on the legislation in November, but observers are not optimistic that a final product will reach the president's desk, given ongoing partisan fighting over the legislation. ¶

#### bama’s pressure is key to break rank and file opposition

Michael O’Brien 9/16, Political Reporter, NBC News, “Obama targets GOP divisions on budget,” http://firstread.nbcnews.com/\_news/2013/09/16/20525744-obama-targets-gop-divisions-on-budget?lite

President Barack Obama appealed to more moderate Republicans on Monday, pleading with them to break with the party’s conservative flank and help avoid a government shutdown at the end of this month.¶ With two weeks to go until the government runs out of funding for many of its day-to-day operations, the president turned up the pressure on Republicans in Congress to produce legislation he could sign to avoid a partial shutdown. In doing so, Obama sought to take advantage of internal Republican divisions who have threatened to force a shutdown unless the president’s signature health care reform law is repealed, or at least delayed.¶ “I cannot remember a time when one faction of one party promises economic chaos when it doesn’t get everything it wants,” Obama said at an event meant to mark the five-year anniversary of the onset of the financial crisis in late 2008. (Obama’s remarks about pending fiscal battles also took a back seat to his comments about a shooting at Washington’s Navy Yard on Monday.)¶ “It was an issue in last year's election, and the candidate who called for repeal lost,” the president said of GOP opposition to his health care law, referencing his tussles in 2012 with Republican presidential nominee Mitt Romney.¶ But the president’s remarks on Monday are mindful of the fact that Republicans, who control the House of Representatives, are at a loss for how to proceed with legislation addressing government operations. The federal government runs out of funding at the end of Sept. 30, and non-essential operations would cease until spending can be restored.¶ A group of hard-lined conservatives have argued for a strategy in which no Republican should vote to extend government spending unless funding for the Affordable Care Act, or Obamacare, is withdrawn. But Democrats have rejected the proposal out-of-hand, and the president is sure to refuse legislation that would gut his most significant domestic achievement as president.¶ Republican leaders are mindful of this political calculus, but are forced to balance legislative strategy against the ideological demands of conservatives who wish to force a renewed fight over Obamacare. (Some of these lawmakers also fear primary challenges in 2014 if they refuse to go along with the defund Obamacare strategy.)¶ Because of those pressures, Republican leaders pulled legislation to extend government spending through mid-December after conservatives balked and Democrats were unwilling to offer up their votes as help.¶ “There are a million options being discussed by a lot of people. When we have something to discuss, I'll let you know,” a somewhat exasperated House Speaker John Boehner, R-Ohio, told reporters late last week.¶ In the short-term, Obama issued an appeal to Republicans who have sided against the defund Obamacare strategy; many of these GOP lawmakers have vocally criticized the strategy favored by conservatives as politically destructive.

#### Failure collapses the economy – goes global and past events don’t disprove

Davidson 9/10

Adam, co-founder of NPR’s “Planet Money,” Our Debt to Society, New York Times, 9/10/13, http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history.¶ Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency.¶ Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.¶ Instead, Robert Auwaerter, head of bond investing for Vanguard, the world’s largest mutual-fund company, told me that the collapse might be more insidious. “You know what happens when the market gets upset?” he said. “There’s a flight to quality. Investors buy Treasury bonds. It’s a bit perverse.” In other words, if the U.S. comes within shouting distance of a default (which Auwaerter is confident won’t happen), the world’s investors — absent a safer alternative, given the recent fates of the euro and the yen — might actually buy even more Treasury bonds. Indeed, interest rates would fall and the bond markets would soar.¶ While this possibility might not sound so bad, it’s really far more damaging than the apocalyptic one I imagined. Rather than resulting in a sudden crisis, failure to raise the debt ceiling would lead to a slow bleed. Scott Mather, head of the global portfolio at Pimco, the world’s largest private bond fund, explained that while governments and institutions might go on a U.S.-bond buying frenzy in the wake of a debt-ceiling panic, they would eventually recognize that the U.S. government was not going through an odd, temporary bit of insanity. They would eventually conclude that it had become permanently less reliable. Mather imagines institutional investors and governments turning to a basket of currencies, putting their savings in a mix of U.S., European, Canadian, Australian and Japanese bonds. Over the course of decades, the U.S. would lose its unique role in the global economy.¶ The U.S. benefits enormously from its status as global reserve currency and safe haven. Our interest and mortgage rates are lower; companies are able to borrow money to finance their new products more cheaply. As a result, there is much more economic activity and more wealth in America than there would be otherwise. If that status erodes, the U.S. economy’s peaks will be lower and recessions deeper; future generations will have fewer job opportunities and suffer more when the economy falters. And, Mather points out, no other country would benefit from America’s diminished status. When you make the base risk-free asset more risky, the entire global economy becomes riskier and costlier.

**Nuclear war**

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

## 1NC CP

**Plan: The President of the United States should issue an executive order to adopt the presumption that cyberattacks will be carried out under the covert action statute.  The President of the United States should issue a declaratory policy stating that the United States will not deploy offensive cyber operations first. The President of the United States should direct appropriate agencies to increase necessary cyber defenses against cyber attacks.**

**Making the covert action regime the presumptive framework for cyberattacks restricts presidential authority, facilitates agency cooperation and oversight, and ensures constitutional legitimacy of future attacks**

**Brecher 12** – J.D. candidate @ University of Michigan   
Aaron, "NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations" 111 Mich. L. Rev. 423 (December) mtc

III. Enacting the Covert Action Regime as Presumptive via Executive Order Cyberattacks present a challenge for U.S. policymakers: they are difficult to locate within a clear legal category and there is a significant risk of uncontrollable consequences associated with their use. As a result, policymakers must choose a paradigm to govern their use that will ensure that the executive branch is held accountable and shares information with legislators. This Part argues that the federal government should adopt the presumption that cyberattacks will be carried out under the covert action statute, and that the best way forward is for the president to issue an executive order making the covert action regime the presumptive framework for cyberattacks. It includes a brief discussion of why a president might willingly constrain her discretion by issuing the proposed executive order. It also shows that while the internal executive processes associated with both military and intelligence legal frameworks help mitigate the risk of cyberattacks’ misuse by the executive, only the covert action regime provides an adequate role for Congress. Finally, this Part argues that the executive order option is preferable to one alternative proposed by scholars—enacting legislation—because of the practical difficulties of passing new legislation. The covert action regime is the best approach for committing cyberattacks under the current law, as it would facilitate cooperation among executive agencies. The debate over which agency and set of legal authorities govern cyberattacks has caused no small amount of confusion.145 Apparently, an Office of Legal Counsel (“OLC”) memorandum declined to decide which legal regime should govern the use of cyberattacks, and the uncertainty has led to interagency squabbles, as well as confusion over how cyberattacks are to be regulated.146 Establishing a presumptive answer would go far toward resolving this dispute. Most importantly, adopting the covert action framework as the presumptive legal regime would be a principled way to help ensure constitutional legitimacy when the president orders a cyberattack.147 There is also reason to believe that presidential power is intimately bound up in credibility, which in turn is largely dependent on the perception of presidential compliance with applicable domestic law.148 A practice of complying with the covert action regime for cyberattacks, both when they do not constitute a use of force and when it is unclear whether they do, is most likely to be in compliance with the law. Compliance with the covert action regime would also encourage covert action procedures in close cases without unduly restricting the executive’s choice to use military authorities in appropriate circumstances.

**Declaratory policy solves**

**Singer and Wright 13** – director of the 21st Century Defense Initiative @ Brookings and fellow @ Managing Global Order project.  
Peter W. and Thomas, "Obama, own your secret wars" ~<http://www.nydailynews.com/opinion/obama-secret-wars-article-1.1265620~~>February 17 mtc

Irony pervades [President Obama](http://www.nydailynews.com/topics/Barack+Obama)’s place in foreign policy today. He won the Nobel Peace Prize for his efforts to roll back the nuclear bomb, the signature weapon of the 20th century, but he has also broken new ground in the use of revolutionary military technologies — from the armed drone to cyber weaponry — that may well become the signature weapons of the 21st century. As the controversy continues about secret drone strikes and leaked legal documents, Obama promised in his State of the Union address last week to work with Congress to make the drone program, now shrouded in secret, more transparent. But the problem is that a tipping point has already been reached, and it’s not just a matter of playing nice with Congress. A veil of official semi-silence surrounds these new technologies, the policy that guides them and their growing use in what can only be described as not-so-covert operations. When crucial information does come out, it’s most often through leaks to the press. It is time for a new approach. And all that is required of the President is to do the thing that he does perhaps best of all: to speak. Obama has a unique opportunity — in fact, an urgent obligation — to create a new doctrine, unveiled in a major presidential speech, for the use and deployment of these new tools of war. While the Republicans tried to paint the President as weak on security issues in the 2012 elections, history will record instead that his administration pushed into new frontiers of war, most especially in the new class of technologies that move the human role both geographically and chronologically further from the point of action on the battlefield. The U.S. military’s unmanned systems, popularly known as “drones,” now number more than 8,000 in the air and 12,000 on the ground. And in a parallel development, the U.S. Cyber Command, which became operational in 2010, has added an array of new (and controversial) responsibilities — and is set to quintuple in size. This is not just a military matter. American intelligence agencies are increasingly using these technologies as the tips of the spear in a series of so-called “shadow wars.” These include not only the more than 400 drone strikes that have taken place from Pakistan to Yemen, but also the deployment of the Stuxnet computer virus to sabotage Iranian nuclear development, the world’s first known use of a specially designed cyber weapon. Throughout this period, the administration has tried to have it both ways — leaking out success stories of our growing use of these new technologies but not tying its hands with official statements and set policies. This made great sense at first, when much of what was happening was ad hoc and being fleshed out as it went along. But that position has become unsustainable. The less the U.S. government now says about our policies, the more that vacuum is becoming filled by others, in harmful ways. By acting but barely explaining our actions, we’re creating precedents for other states to exploit. More than 75 countries now have military robotics programs, while another 20 have advanced cyber war capacities. Rest assured that nations like Iran, Russia and China will use these technologies in far more crude and indiscriminate ways — yet will do so while claiming to be merely following U.S. footsteps. In turn, international organizations — the UN among them — are pushing ahead with special investigations into potential war crimes and proposing new treaties. Our leaders, meanwhile, stay mum, which isolates the U.S. and drains its soft power. The current policy also makes it harder to respond to growing concerns over civilian casualties. Indeed, Pew polling found 96% levels of opposition to U.S. drones in the key battleground state of Pakistan, a bellwether of the entire region. It is indisputable than many civilians have been harmed over the course of hundreds of strikes. And yet it is also indisputable that various groups have incentives to magnify such claims. Yet so far, U.S. officials have painted themselves into a corner — either denying that any collateral losses have occurred, which no one believes, or reverting to the argument that we cannot confirm or deny our involvement, which no one believes, either. Finally, the domestic support and legitimacy needed for the use of these weapons is in transition. Polling has found general public support for drone strikes, but only to a point, with growing numbers in the “not sure” category and growing worries around cases of targeting U.S. citizens abroad who are suspected of being terrorists. The administration is so boxed in that, even when it recently won a court case to maintain the veil of semi-silence that surrounds the drone strike program, the judge described the current policy as having an “Alice in Wonderland” feel. The White House seems to be finally starting to realize the problems caused by this disconnect of action but no explanation. After years of silence, occasional statements by senior aides are acknowledging the use of drones, while lesser-noticed working level documents have been created to formalize strike policies and even to explore what to do about the next, far more autonomous generation of weapons. These efforts have been good starts, but they have been disjointed and partial. Most important, they are missing the much-needed stamp of the President’s voice and authority, which is essential to turn tentative first steps into established policy. Much remains to be done — and said — out in the open. This is why it’s time for Obama’s voice to ring loud and clear. Much as Presidents Harry Truman and Dwight Eisenhower were able keep secret aspects of the development of nuclear weapons, even as they articulated how and when we would use them, Obama should publicly lay out criteria by which the United States will develop, deploy and use these new weapons. The President has a strong case to make — if only he would finally make it. After all, the new weapons have worked. They have offered new options for military action that are more accurate and proportionate and less risky than previously available methods. But they have also posed many new complications. Explaining our position is about embracing both the good and the bad. It is about acknowledging the harms that come with war regardless of what technology is being used and making clear what structures of accountability are in place to respond. It’s also about finally defining where America truly stands on some of the most controversial questions. These include the tactics of “signature” strikes, where the identity is not firmly identified, and “double tap” strikes, where rescuers aiding victims of a first attack are also brought under fire. These have been reported as occurring and yet seem to run counter to the principles under which the programs have been defended so far. The role of the President is not to conduct some kind of retrospective of what we have done and why, but to lay out a course of the future. What are the key strategic goals and ethical guidelines that should drive the development and use of these new technologies? Is current U.S. and international law sufficient to cover them? There are also crucial executive management questions, like where to draw the dividing line between military and civilian intelligence agency use of such technologies, and how to keep a growing range of covert actions from morphing into undeclared and undebated wars. And, finally, the President must help resolve growing tensions between the executive branch and an increasingly restive Congress, including how to handle situations where we create the effect of war but no U.S. personnel are ever sent in harm’s way. Given the sprawling complexity of these matters, only the President can deliver an official statement on where we stand. If only we somehow had a commander in chief who was simultaneously a law professor and Nobel Peace Prize winner! The President’s voice on these issues won’t be a cure-all. But it will lay down a powerful marker, shaping not just the next four years but the actions of future administrations.

## Advantage 1

### 1NC Cyberwarfare Inevitable

#### Norms fail—cheating and miscalc

Stewart Baker 12, former official at the U.S. Department of Homeland Security and the National Security Agency, 5/1/12, “What Is the Role of Lawyers in Cyberwarfare?,” http://www.abajournal.com/magazine/article/what\_is\_the\_role\_of\_lawyers\_in\_cyberwarfare/

Former Prime Minister Stanley Baldwin summed up Britain’s strategic position in 1932 with a candor no American leader has dared to match in talking about cyberwar: “I think it is well also for the man in the street to realize that there is no power on earth that can protect him from being bombed, whatever people may tell him. The bomber will always get through. ... The only defense is in offense, which means that you have got to kill more women and children more quickly than the enemy if you want to save yourselves.”¶ The British may have been realists about air war, but Americans still hoped to head off the nightmare. The American tool of choice was international law. (Some things never change.) When war broke out on Sept. 1, 1939, President Franklin D. Roosevelt sent a cable to all the combatants seeking express limits on the use of airpower and expressing his view that “ruthless bombing from the air of civilians in unfortified centers of population … has sickened the hearts of every civilized man and woman, and has profoundly shocked the conscience of humanity. ... I am therefore addressing this urgent appeal to every government which may be engaged in hostilities publicly to affirm its determination that its armed forces shall in no event, and under no circumstances, undertake the bombardment from the air of civilian populations or of unfortified cities.”¶ Roosevelt had a pretty good legal case. The Hague Conventions on the Law of War, adopted just two years after the Wright Brothers’ first flight, declared that in bombardments “all necessary steps should be taken to spare as far as possible edifices devoted to religion, art, science, and charity, hospitals, and places where the sick and wounded are collected, provided they are not used at the same time for military purposes.” The League of Nations had recently declared that, in air war, “the intentional bombing of civilian populations is illegal.”¶ But FDR didn’t rely just on law. He asked for a public pledge that would bind all sides. Remarkably, he got it. The horror of aerial bombardment ran so deep in that era that England, France, Germany and Poland all agreed—before nightfall on the same day.¶ What’s more, they tried to honor their pledges. In a June 1940 order for Luftwaffe operations against Britain, Hermann Göring “stressed that every effort should be made to avoid unnecessary loss of life amongst the civilian population.”¶ It began to look like a great victory for the international law of war. All sides had stared into the pit of horrors that civilian bombing would open up. And all had stepped back.¶ It was exactly what the lawyers and diplomats now dealing with cyberwar hope to achieve.¶ But as we know, that’s not how this story ends. On the night of Aug. 24, a Luftwaffe air group made a fateful navigational error. Aiming for oil terminals along the Thames, they miscalculated, instead dropping their bombs in the civilian heart of the city of London.¶ It was a mistake. But that’s not how Churchill saw it. He insisted on immediate retaliation. The next night, British bombers hit targets in Berlin for the first time. The military effect was negligible, but the political impact was profound. Göring had promised that the Luftwaffe would never allow a successful attack on Berlin. The Nazi regime was humiliated, the German people enraged. Ten days later, Hitler told a wildly cheering crowd that he had ordered the bombing of London: “Since they attack our cities, we will extirpate theirs.”¶ The Blitz was on.¶ In the end, London survived. But the extirpation of enemy cities became a permanent part of both sides’ strategy. No longer an illegal horror to be avoided at all costs, the destruction of enemy cities became deliberate policy. Later in the war, British strategists would launch aerial attacks with the avowed aim of causing “the destruction of German cities, the killing of German workers, … the disruption of civilized life throughout Germany … the creation of a refugee problem on an unprecedented scale, and the breakdown of morale both at home and at the battle fronts.”¶ The Hague Conventions, the League of Nations resolution, even the explicit pledges given to President Roosevelt—all these “norms” for the use of airpower had been swept away by the logic of the technology and the predictable psychology of war.¶ So, why do today’s lawyers think that their limits on cyberwar will fare better than FDR’s limits on air war?¶ It beats me. If anything, they have a much harder task. Roosevelt could count on a shared European horror at the aerial destruction of cities. He used that to extract an explicit and reciprocal understanding from both sides as the war was beginning. We have no such understanding, indeed no such shared horror. Quite the contrary, for some of our potential adversaries, cyberweapons are uniquely asymmetric—a horror for us, another day in the field for them. It doesn’t take a high-tech infrastructure to maintain an army that is ready in a pinch to live on grass.¶ What’s more, cheating is easy and strategically profitable. American compliance will be enforced by all those lawyers. Our adversaries can ignore the rules and say—hell, they are saying—“We’re not carrying out cyberattacks. We’re victims too. Maybe you’re the attacker. Or maybe it’s Anonymous. Where’s your proof?”¶ Even if all sides were genuinely committed to limiting cyberwar, as all sides were in 1939, we’ve seen that the logic of airpower eventually drove all sides to the horror they had originally recoiled from. Each side felt that it had observed the limits longer than the other. Each had lawyerly justifications for what it did, and neither understood or gave credence to the other’s justifications. In that climate, all it took was a single error to break the legal limits irreparably.¶ And error was inevitable. Bombs dropped by desperate pilots under fire go astray. But so do cyberweapons. Stuxnet infected thousands of networks as it searched blindly for Natanz. The infections lasted far longer than intended. Should we expect fewer errors from code drafted in the heat of battle and flung at hazard toward the enemy?¶ Of course not. But the lesson for the lawyers and the diplomats is stark: Their effort to impose limits on cyberwar is almost certainly doomed.¶ No one can welcome this conclusion, at least not in the United States. We have advantages in traditional war that we lack in cyberwar. We are not used to the idea that launching even small wars on distant continents may cause death and suffering here at home. That is what drives the lawyers. They hope to maintain the old world. But they’re driving down a dead end.¶ If we want to defend against the horrors of cyberwar, we need first to face them with the candor of a Stanley Baldwin. Then we need to charge our military strategists, not our lawyers, with constructing a cyberwar strategy for the world we live in, not the world we’d like to live in.

#### Cyberweapons are inev --- US restraint does nothing --- norm setting is utopian

James Lewis 12, Director of the Technology and Public Policy Program at the Center for Strategic and International Studies, “Benefits Are Great, and the Risks Exist Anyway,” Oct 17, NYT, http://www.nytimes.com/roomfordebate/2012/06/04/do-cyberattacks-on-iran-make-us-vulnerable-12/benefits-are-great-and-the-risks-exist-anyway

Nor do cyberattacks against Iran increase the risk of damaging cyberattacks against the United States. It is true that we are defenseless; efforts to make us safer are hamstrung by self-interest, ideology and the gridlock of American politics. But we are no more vulnerable today than we were the day before the news. If someone decides to attack us, they may cite Iran as precedent, but it will only be to justify a decision they had already made.¶ We could ask whether the United States creates more problems for itself when it makes public a new weapon while potential opponents keep it secret. Four other countries can launch sophisticated and damaging cyber attacks -- including China and Russia -- and plan to use them in warfare. Another 30 nations are acquiring cyber weapons, including Iran and North Korea.¶ There is a very old argument for disarmament that holds that if the United States were to renounce some weapons -- usually nuclear weapons -- the world would be a better place. This utopianism has a revered place in American political thinking, but when humans invent weapons they rarely give them up, especially useful weapons whose components are easy to acquire. Cyberattack is now part of warfare, no different from any other weapon. The publicity around Stuxnet may complicate U.S. efforts to get international rules for the use of cyberattack, but the White House decided that tampering with Iran’s nuclear program was more important than possible risk to slow-moving negotiations.

#### Uncontrollability of cyber-war is a neg warrant --- means countries won’t use them

**Barnett 13** (Thomas P.M. Barnett 13, special assistant for strategic futures in the U.S. Defense Department's Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat, March/April 2013, “Think Again: The Pentagon,” Foreign Policy, <http://www.foreignpolicy.com/articles/2013/03/04/the_pentagon?page=full>

As for cyber serving as a stand-alone war-fifighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, I'm deeply skeptical. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- nice to have, but hard to use. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor."¶ Please remember amid all this frenetic scaremongering that the Pentagon is never more frightened about our collective future than when it's desperately uncertain about its own. Given the rising health-care costs associated with America's aging population and the never-ending dysfunction in Washington, we should expect to be bombarded with frightening scenarios of planetary doom for the next decade or two. None of this bureaucratic chattering will bear any resemblance to global trends, which demonstrate that wars have grown increasingly infrequent, shorter in duration, and diminished in lethality. But you won't hear that from the next-warriors on the Potomac.

#### No impact to miscalc - Multiple safeguards prevent accidents and de-targeting means that a weapon would just explode in the ocean

**Slocombe,** Former Undersecretary of Defense, **9**

[Walter, senior advisor for the Coalition Provisional Authority in Baghdad and a former Under Secretary of Defense for Policy, he is a four-time recipient of an award for Distinguished Public Service and a member of the Council on Foreign Relations, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” Presented at the seminar on Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the US-Russia Context in Yverdon, Switzerland, June 21-23 http://www.ewi.info/system/files/Slocombe.pdf]

Let’s start with Technical Failure – the focus of a great deal of the advocacy, or at least of stress on past incidents of failures of safety and control mechanisms.4 Much of the “de-alerting” literature points to a succession of failures to follow proper procedures and draw from that history the inference that a relatively simple procedural failure could produce a nuclear detonation. The argument is essentially that nuclear weapons systems are sufficiently susceptible of pure accident (including human error or failure at operational/field level) that it is essential to take measures that have the effect of making it necessary to undertake a prolonged reconfiguration of the elements of the nuclear weapons force for a launch or detonation to be physically possible. Specific measures said to serve this objective include separating the weapons from their launchers, burying silo doors, removal of fuzing or launching mechanisms, deliberate avoidance of maintenance measures need to permit rapid firing, and the like. . My view is that this line of action is unnecessary in its own terms and highly problematic from the point of view of other aspects of the problem and that there is a far better option that is largely already in place, at least in the US force – the requirement of external information – a code not held by the operators -- to arm the weapons. Advocates of other, more “physical,” measures often describe the current arrangement as nuclear weapons being on a “hair trigger.” That is – at least with respect to US weapons – a highly misleading characterization. The “hair trigger” figure of speech confuses “alert” status – readiness to act quickly on orders -- with susceptibility to inadvertent action. The “hair trigger” image implies that a minor mistake – akin to jostling a gun – will fire the weapon. The US StratCom commander had a more accurate metaphor when he recently said that US nuclear weapons are less a pistol with a hair trigger than like a pistol in a holster with the safety turned on – and he might have added that in the case of nuclear weapons the “safety” is locked in place by a combination lock that can only be opened and firing made possible if the soldier carrying the pistol receives a message from his chain of command giving him the combination. Whatever other problems the current nuclear posture of the US nuclear force may present, it cannot reasonably be said to be on a “hair trigger.” Since the 1960s the US has taken a series of measures to insure that US nuclear weapons cannot be detonated without the receipt of both external information and properly authenticated authorization to use that information. These devices – generically Permissive Action Links or “PALs” – are in effect combination locks that keep the weapons locked and incapable of detonation unless and until the weapons’ firing mechanisms have been unlocked following receipt of a series of numbers communicated to the operators from higher authority. Equally important in the context of a military organization, launch of nuclear weapons (including insertion of the combinations) is permitted only where properly authorized by an authenticated order. This combination of reliance on discipline and procedure and on receipt of an unlocking code not held by the military personnel in charge of the launch operation is designed to insure that the system is “fail safe,” i.e., that whatever mistakes occur, the result will not be a nuclear explosion. Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that even if a nuclear-armed missile were launched, it would go not to a “real” target in another country but – at least in the US 6 case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error.5 These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use.

#### No impact – nukes not on the internet, no skill, and no motivation

**Weimann 04** – (Dec. 2004, Gabriel Weimann is a senior fellow at the United States Institute of Peace and professor of communication at the University of Haifa, Israel, “Cyberterrorism: How Real Is the Threat?” <http://www.usip.org/files/resources/sr119.pdf> )

Amid all the dire warnings and alarming statistics that the subject of cyberterrorism gen- erates, it is important to remember one simple statistic: so far, there has been no recorded instance of a terrorist cyberattack on U.S. public facilities, transportation systems, nuclear power plants, power grids, or other key components of the national infrastructure. Cyber- attacks are common, but they have not been conducted by terrorists and they have not sought to inflict the kind of damage that would qualify them as cyberterrorism. Technological expertise and use of the Internet do not constitute evidence of planning for a cyberattack. Joshua Green (“The Myth of Cyberterrorism,” *Washington Monthly,* November 2002) makes this point after reviewing the data retrieved from terrorists in Afghanistan: When U.S. troops recovered al Qaeda laptops in Afghanistan, officials were surprised to find its members more technologically adept than previously believed. They discovered structural and engineering software, electronic models of a dam, and information on computerized water systems, nuclear power plants, and U.S. and European stadiums.

But nothing suggested they were planning cyberattacks, only that they were using the Internet to communicate and coordinate physical attacks. Neither al Qaeda nor any other terrorist organization appears to have tried to stage a serious cyberattack. For now, insiders or individual hackers are responsible for most attacks and intrusions and the hackers’ motives are not political. According to a report issued in 2002 by IBM Global Security Analysis Lab, 90 percent of hackers are amateurs with limited technical proficiency, 9 percent are more skilled at gaining unauthorized access but do not damage the files they read, and only 1 percent are highly skilled and intent on copying files or damaging programs and systems. Most hackers, it should be noted, try to expose security flaws in computer software, mainly in the operating systems produced by Microsoft. Their efforts in this direction have sometimes embarrassed corpo- rations but have also been responsible for alerting the public and security professionals to serious security flaws. Moreover, although there are hackers with the ability to damage systems, disrupt e-commerce, and force websites offline, the vast majority of hackers do not have the necessary skills and knowledge. The ones who do, generally do not seek to wreak havoc. Douglas Thomas, a professor at the University of Southern California, spent seven years studying computer hackers in an effort to understand better who they are and what motivates them. Thomas interviewed hundreds of hackers and explored their “literature.” In testimony on July 24, 2002, before the House Subcommittee on Govern- ment Efficiency, Financial Management and Intergovernmental Relations, Thomas argued that “with the vast majority of hackers, I would say 99 percent of them, the risk [of cyberterrorism] is negligible for the simple reason that those hackers do not have the skill or ability to organize or execute an attack that would be anything more than a minor inconvenience.” His judgment was echoed in *Assessing the Risks of Cyberterrorism, Cyber* *War, and Other Cyber Threats,* a 2002 report for the Center for Strategic and International Studies, written by Jim Lewis, a sixteen-year veteran of the State and Commerce Depart- ments. “The idea that hackers are going to bring the nation to its knees is too far-fetched a scenario to be taken seriously,” Lewis argued. “Nations are more robust than the early analysts of cyberterrorism and cyberwarfare give them credit for. Infrastructure systems [are] more flexible and responsive in restoring service than the early analysts realized, in part because they have to deal with failure on a routine basis.”

Many computer security experts do not believe that it is possible to use the Internet to inflict death on a large scale. Some pointed out that the resilience of computer systems to attack is the result of significant investments of time, money, and expertise. As Green describes, nuclear weapons systems are protected by “air-gapping”: they are not connected to the Internet or to any open computer network and thus they cannot be accessed by intruders, terrorists, or hackers. Thus, for example, the Defense Department protects sensitive systems by isolating them from the Internet and even from the Pentagon’s own internal network. The CIA’s classified computers are also air-gapped, as is the FBI’s entire computer system. The 9/11 events and the subsequent growing awareness of cyberterror highlighted other potential targets for such attacks. In 2002, Senator Charles Schumer (D-N.Y.) described “the absolute havoc and devastation that would result if cyberterrorists suddenly shut down our air traffic control system, with thousands of planes in mid-flight.” However, argues Green, “cyberse- curity experts give some of their highest marks to the Federal Aviation Authority, which reason- ably separates its administrative and air traffic control systems and strictly air-gaps the latter.” Other sources of concern include subway systems, gas lines, oil pipelines, power grids, communication systems, water dams, and public services that might be attacked to inflict mass destruction. Most of these are managed and controlled by computer systems and are in the private sector—and thus they are more vulnerable than military or govern- ment systems. To illustrate the threat of such attack, a story in the *Washington Post* in June 2003 on al Qaeda cyberterrorism related an anecdote about a teenage hacker who allegedly broke into the SCADA system at Arizona’s Theodore Roosevelt Dam in 1998 and, according to the article, could have unleashed millions of gallons of water, imperil- ing neighboring communities. However, a probe by the computer-technology news site CNet.com revealed the story to be exaggerated and concluded that the hacker could not have endangered lives or property.

## Advantage 2

### 1NC OCO Turn

#### The US has established Cyber Deterrence

Eric Talbot Jensen, ‘12 (Associate Professor, Brigham Young University Law School. , “CYBER DETERRENCE”, Emory law Journal)

Among the most worrisome of hacking incidents are those focused on critical national infrastructure.14 This infrastructure is the backbone of United States’ transportation and economic systems.15 The cost of downtime alone from major attacks on critical national infrastructure “exceeds . . . $6 million per day.”16 The attacks have caused President Barack Obama to recently state, From now on, our digital infrastructure—the networks and computers we depend on every day—will be treated as they should be: as a strategic national asset. Protecting this infrastructure will be a national security priority. We will ensure that these networks are secure, trustworthy and resilient. We will deter, prevent, detect, and defend against attacks and recover quickly from any disruptions or damage.17 President Obama’ s recognition of the role and importance of deterring malicious cyber operations, including cyber attacks, incorporates the traditional notions of deterrence to this modern risk to national security. Deterrence has been a part of Western political security doctrine since ancient Greece18 and played a particularly key role in the post-World War II nuclear world.19 It is equally important in today’s world of cyber operations 20 and will continue to play a key role in the U.S. national security strategy.21 In fact, just as cyber operations offer unique capabilities as tools to accomplish national goals,22 they also present distinctive aspects of deterrence, both in line with traditional notions of deterrence and also some innovative and progressive ways of viewing deterrence.23

#### Offensive Cyber capabilities are key to an effective deterrent

Jari Rantapelkonen & Mirva Salminen, ’13 (“THE FOG OF CYBER DEFENCE”, National Defence University Department of Leadership and Military Pedagogy Publication Series 2 Article Collection n:o 10)

Offensive Weaponry is Required for Credibility and Deterrence¶ Discussion on offensive cyber weaponry should begin. As emphasized, currently there is no credible status for the armed forces and the nation states without cyber capabilities – this includes the offensive capability. The arms race is on and accelerating, even if we would like to turn a blind eye to it. The most frantic contemporary race is about talented individuals. When it comes to the creation of cyber capabilities, the question is not about the number of people one employs but about the talent the employed have. The US, China, Russia and many other countries are actively recruiting promising hackers. So are, most likely, Al Qaeda and other organizations. The real cyber question is about the talent and about creating cyber capabilities with the help of the most talented individuals.¶ It is not very popular or even desirable to talk publicly about offensive cyber weaponry in most countries. However, it has become necessary to explain the logic of offensive cyber capabilities to the general public. Naturally, this has to be done in various ways in different countries due to cultural and national reasons. The reasons why countries are developing offensive weapons and why they need them can be summarized into the following four points.¶ First, if one wishes to be a credible actor both in the military battlefield and in world politics, one must have offensive capabilities – as one must have defensive capabilities and the ability to be resilient. One simply cannot have a credible cyber defence without offensive abilities.¶ Second, in order to achieve and raise her deterrence, one must possess offensive capabilities. The ability to act offensively includes a strong preventive message to the others – provided that they understand it and believe it. Offensive capabilities represent the key component of deterrence.¶ Third, offensive thinking and building offensive weaponry are vital in order to create a strong and credible defence. With just “defence thinking” one will not succeed. One has to have an understanding of how the attacker acts, and one should try to find all possible vulnerabilities in her own defence. It is also a matter of developing one’s defensive potentials, testing the current defence and training one’s forces. All this becomes much more efficient if one can test it with her own capabilities. Without the ability to act as an attacker, no country can build an effective and credible cyber defence.

#### Cyber Deterrence is ultimate deterrent- prevents Great Power War

Jari Rantapelkonen & Mirva Salminen, ’13 (“THE FOG OF CYBER DEFENCE”, National Defence University Department of Leadership and Military Pedagogy Publication Series 2 Article Collection n:o 10)

Based on that logic, cyber deterrence should play a similar role in the digitalized world. However, anonymity, advantage of attacks, global reach and interconnectedness greatly reduce the efficiency of cyber deterrence. Simultaneously, there is a lot of suspicion and rumours travelling around: what kind of capabilities the others might have and how they are using them already?¶ In the kinetic world, it is much easier to evaluate the opponent’s capabilities. It is quite easy to make a valid estimate on how many tanks, interceptors or submarines a country possesses. Countries also openly expose their arsenal, for example, in military parades, as well as their operational skills, for example, by organizing large military exercises. In the logic of deterrence, it is even more important to manifest force than to have real capabilities – yet the others have to know it.¶ Awareness Prevents Conflicts¶ Deterrence depends upon effective communication between the state and the entity it wishes to deter. One has to convince the others that if they attack, one has the capability and the capacity to do something about it. This is also the case in the cyber domain. If a country wants to be a credible actor in this domain, it should openly declare its offensive policy and expose its offensive capabilities. The policy acts as the rules for engagement. This is the trend some countries are already moving toward. For example, for the first time since the Second World War, Germany has publicly disclosed that it is developing offensive cyber weapons.5 In addition, in the latest Cyber Strategy of the United States, offensive cyber policy is strongly emphasized, and it has been said in public that the US Defense Advanced Research Projects Agency (DARPA) is focusing its research on offensive cyber capabilities.6 It has also been announced by many countries that a response to a cyber attack is not limited to the cyber domain, which is very understandable. The world needs to start talking openly about offensive cyber capabilities and the readiness levels – just as we discuss missile arsenals, air force, submarine fleets, or doctrines. We talk about great military exercises taking place in the kinetic world, but there is very little public discussion on things happening in cyberspace. Today, countries are aware of and appreciate the kinetic capacities which the others have. This is one reason why there are so few on- going wars in the world. Awareness prevents conflicts – at least, between the nation states – and it raises the threshold for conducting an attack. The defence policy of many countries is based on this assumption – if you have and if you are able to expose strong enough military capability, the likelihood of being attacked decreases.

### 1NC No Impact to Cyberwarfare

#### No impact to cyber warfare – its all hype

**Barnett - March 2013** (Barnett, Thomas P.M. – special assistant for strategic futures in the U.S. Defense Department’s Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat. "Think again: The Pentagon: the military’s Chicken Littles want you to think the sky is falling. Don’t believe them: America has never been safer." Foreign Policy 199 (March-April 2013): 77+. Academic OneFile. Web. 12 Mar. 2013.

"Cyberwar Is the Next Big Thing." You bet. That is, at least as far as D.C.'s Beltway bandits are concerned. There is only one great growth area in the U.S. defense budget today -- besides health care, which now eats up roughly 10 percent of the Pentagon's spending each year. Spending on cyberweapons and network defense has been skyrocketing for years. Over the next five years, the Pentagon alone is set to spend [$18 billion on cyber](http://www.armed-services.senate.gov/Transcripts/2012/03%20March/12-19%20-%203-27-12.pdf) (it requested $3.4 billion for fiscal year 2013), and the Obama administration's 2009 decision to set up U.S. Cyber Command sanctified that emerging "war-fighting domain" and its budgetary standing. Washington's small army of IT contractors couldn't be happier. But is this a good use of taxpayer money? There's no question that the U.S. government and national security establishment in general are pretty bad at network security, and by that I mean both fall far below the standards of the world's best corporations and banks. Most Silicon Valley experts will tell you that, but you'll never hear it from D.C.'s many contractors or the national security cyber offices they serve in parasitic symbiosis. As far as they are concerned, it's the private sector that's light-years behind. As for cyber serving as a stand-alone war-fighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, I'm deeply skeptical. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- nice to have, but hard to use. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor." Please remember amid all this frenetic scaremongering that the Pentagon is never more frightened about our collective future than when it's desperately uncertain about its own. Given the rising health-care costs associated with America's aging population and the never-ending dysfunction in Washington, we should expect to be bombarded with frightening scenarios of planetary doom for the next decade or two. None of this bureaucratic chattering will bear any resemblance to global trends, which demonstrate that wars have grown increasingly infrequent, shorter in duration, and diminished in lethality. But you won't hear that from the next-warriors on the Potomac.

#### No retaliation

**Sanger and Baker 10** – (David E. and [Peter](file:///C:\Users\Downloads\GBS%20HJ%20Tub\Space%20-%202011-2012\Case%20Negs\Peter), April, New York Times “Obama Limits When U.S. Would Use Nuclear Arms”. <http://www.nytimes.com/2010/04/06/world/06arms.html>)

WASHINGTON — [President Obama](http://topics.nytimes.com/top/reference/timestopics/people/o/barack_obama/index.html?inline=nyt-per) said Monday that he was revamping American nuclear strategy to substantially narrow the conditions under which the United States would use [nuclear weapons](http://topics.nytimes.com/top/news/science/topics/atomic_weapons/index.html?inline=nyt-classifier), even in self defense. But the president said in an interview that he was carving out an exception for “outliers like Iran and North Korea” that have violated or renounced the main treaty to halt nuclear proliferation. Discussing his approach to nuclear security the day before formally releasing his new strategy, Mr. Obama described his policy as part of a broader effort to edge the world toward making nuclear weapons obsolete, and to create incentives for countries to give up any nuclear ambitions. To set an example, the new strategy renounces the development of any new nuclear weapons, overruling the initial position of his own defense secretary. Mr. Obama’s strategy is a sharp shift from those adopted by his predecessors and seeks to revamp the nation’s nuclear posture for a new age in which rogue states and terrorist organizations are greater threats than traditional powers like Russia and China. It eliminates much of the ambiguity that has deliberately existed in American nuclear policy since the opening days of the Cold War. For the first time, the United States is explicitly committing not to use nuclear weapons against non-nuclear states that are in compliance with the Nuclear Non-Proliferation Treaty, even if they attacked the United States with biological or chemical weapons, or launched a crippling cyberattack.

#### Defense fails cyber offense is key

Jari Rantapelkonen & Mirva Salminen, ’13 (“THE FOG OF CYBER DEFENCE”, National Defence University Department of Leadership and Military Pedagogy Publication Series 2 Article Collection n:o 10)

Even if we would like to think so, success in the cyber domain is not only a question of defence – at least, not for the nation states. Defence capabilities have to be as preventive as possible in order to reduce the effectiveness of the adversary ́s – whoever it may be – cyber attack. However, despite the best defensive efforts, intrusions will occur. Therefore, one also has to be resilient in the cyber domain, that is, one has to have the ability to withstand attacks and failures, as well as to mitigate harm more than in other domains. The creation of cyber defence capabilities and resilience are pretty easy for the public to accept. Yet, these acts are not enough. Deterrence is also needed, that is, the capabilities and policies to convince the others not to launch a cyber attack against one. Deterrence will only be effective if one can build and demonstrate offensive cyber capabilities. To put this in a clear manner: offensive cyber capabilities are an essential element for the nation-states to succeed in their current and future international and security policies.3 Defence, resilience and offense all contribute to the country’s overall ability to protect herself – one needs them all.

### 1NC A/T: Transition Wars

**No transition wars:**

**Only one transition war in history**

**Macdonald and Parent 11** (Paul, Assistant Professor of Political Science at Williams College, and Joseph, Assistant Professor of Political Science at the University of Miami. “Graceful Decline? The Surprising Success of Great Power Retrenchment”. International Security Spring 2011, Vol. 35, No. 4, Pages 7-44.)

Based on our universe of cases, the predictions of retrenchment pessimists receive little support. In contrast to arguments that retrenchment is rare, we find that great powers facing acute relative decline adopted retrenchment in at least eleven and at most fifteen of the eighteen cases, a range of 61–83 percent. By any accounting, a majority of the countries in these cases retrenched shortly after their ordinal transition. Nor does the evidence support the view that domestic interests constrain retrenchment. Every one of the great powers in our sample that chose to retrench did so within five years of the ordinal transition. This suggests timely responses to external constraints rather than domestic intransigence. Moreover, there does not appear to be a strong connection between regime type and retrenchment. Democracies account for about two-thirds of the great powers in our study, and are slightly more likely to face acute relative declines, accounting for thirteen of our eighteen cases, or 72 percent. Of the twelve democracies, seven retrenched, two did not, and three are debatable, yielding parameters from 58 to 83 percent. There are only three cases of autocracy, which makes comparison among groups difficult, but of these, two retrenched and one case is arguable, producing a range of 67–100 percent.59 In short, evidence at the coarse-grained level tentatively supports the neorealist approach outlined above: during acute relative decline, a significant majority of great powers of differing regime types elected to retrench. Wars, preventive or otherwise, do not appear to be a common fate for declining states, and recovery of lost rank was fairly frequent. Declining great powers found themselves embroiled in an interstate war in only four of the eighteen cases, and in **only one** of these cases—1935 United Kingdom—did the declining power go to war with the power that had just surpassed it in ordinal rank.60 In addition, in six of fifteen cases, declining great powers that adopted a policy of retrenchment managed to rebound, eventually recovering their ordinal rank from the state that surpassed them. These findings suggest that retrenching states rarely courted disaster and occasionally regained their prior position. Further, even if retrenchment was not successful, this does not prove that a preferable policy existed.61 In many cases of decline, there are few restorative solutions available; politics is often a game of unpalatable alternatives. Short of a miracle, it is hard to say what great powers such as Britain, France, or the Soviet Union could have done to stay aloft, even with the benefit of hindsight.

**15 cases it worked**

**Parent and MacDonald 11** (Joseph M. Parent is Assistant Professor of Political Science at the University of Miami. Paul K. MacDonald is Assistant Professor of Political Science at Wellesley College. “The Wisdom of Retrenchment: America Must Cut Back to Move Forward” http://www.ihavenet.com/World-United-States-The-Wisdom-of-Retrenchment-America-Must-Cut-Back-to-Move-Forward-Foreign-Affairs.html)

Even if a policy of retrenchment were possible to implement, would it work? **The historical record suggests it would**. Since 1870, there have been 18 cases in which a great power slipped in the rankings, as measured by its GDP relative to those of other great powers. Fifteen of those declining powers implemented some form of retrenchment. Far from inviting aggression, this policy resulted in those states' being more likely to avoid militarized disputes and to recover their former rank than the three declining great powers that did not adopt retrenchment: France in the 1880s, Germany in the 1930s, and Japan in the 1990s. Those states never recovered their former positions, unlike almost half of the 15 states that did retrench, including, for example, Russia in the 1880s and the United Kingdom in the first decade of the twentieth century.

### 1NC A/T: Economy

**No impact to economic collapse – u.s. isn’t key**

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

# 2NC v. Harvard

## CP

### 2NC Solvency

**Shifting to covert action solves accountability**

**Brecher 12** – J.D. candidate @ University of Michigan   
Aaron, "NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations" 111 Mich. L. Rev. 423 (December) mtc

One lens through which to evaluate the proper domestic legal framework for cyberattacks is whether such operations should rely on intelligence legal authority (called “title 50” authority) or military legal authority (called “title 10” authority).11 Under the military framework, the president is often free to order a wide range of operations without giving advance notice to Congress.12 However, under the intelligence regime, covert actions, which are “activities . . . to influence political, economic, or military conditions abroad, where it is intended that the role of the [U.S. government] will not be apparent or acknowledged publicly,”13 require written findings by the president that the operation is important to U.S. national security and reports made to the congressional intelligence committees.14 Many cyberattacks could conceivably be carried out under either military legal authority or intelligence legal authority. However, the choice of a presumptive legal regime for national security policies could have an important effect on strategy,15 as well as profound implications for the accountability of the executive branch to Congress.16

### 2NC Solvency – Declaratory Policy

**Restraint/Declaratory Policy**

**Belk & Noys 12**

Robert Belk is a Naval aviator and Politico-Military Fellow, studying international and global affairs at the Harvard Kennedy School. In his 16 years of service, he has made four carrier-based deployments and one ground-based deployment to Iraq. Following graduation, he is scheduled to report to the Naval Operations staff in the Pentagon to develop and execute Navy network and cybersecurity policy—AND—Matthew Noyes studies international security policy and is a senior associate with the cybersecurity practice at Good Harbor Consulting. Prior to attending the Harvard Kennedy School, he served for five years as an infantry officer in the US army serving multiple tours in Iraq. Following graduation he plans to continue working on cybersecurity issues. He has a degree in Computer Science and Applied Computational Mathematics from the University of Washington. “On the Use of Offensive Cyber Capabilities: A Policy Analysis on Offensive US Cyber Policy,” 20 March 2012, <http://belfercenter.ksg.harvard.edu/files/cybersecurity-pae-belk-noyes.pdf>, DOA: 8-3-13

Though the strategic consideration for the operation is troubling, consequential factors bring even greater uncertainty. The American people are overwhelmingly in favor of such strikes, because they do not put troops in harm’s way. There is also broad support within Congress for supporting counterterrorism operations. Regarding soft power, however, this operation becomes less appealing. Polls in Ardia and within the region show that targeted killings of suspected terrorists have eroded American influence. It is becoming increasingly more difficult for Ardian politicians to support American priorities, even when they are in line with Ardian aims. Allied nations in the West have condemned American use of targeted killings. If the cyber force were in fact to harm one of the HVT’s family members instead of the HVT, this would have profound implications for U.S. soft power abroad. It is also unknown how our allies would react to killing through the suspected terrorist’s computers, vice through purely military means. Currently, DoD is unaware of any other allied operations concerning this particular HVT. DoD is leery to share this data as the U.S. has been searching for this HVT for many years. This would also be the first use of cyber force and the international implications are unclear. Lastly, the effect of using cyber force on the nature of the Internet is unknown. It is possible that this type of operation is limited enough in scope to have minimal effect. In such a situation, our recommendation would be to refrain from using cyber force for primarily ethical and consequential reasons. First, we believe that the use of force in cyberspace, as a new and unique medium, requires biasing toward prudence. Without a clear ability to determine distinction, the U.S. would fail to uphold the LOAC. This in turn may have serious implications for U.S. strategy in the region as well as for U.S. relations with Western allies. 1) Use of cyber force must conform to all laws governing the use of force. In particular cyber force must conform to the LOAC, especially regarding proportionality and distinction, and the UN Charter. If these factors cannot be assured, cyber force is not the correct weapon. 2) If overt, cyber force should be limited in scope with assurance that any operation has minor if any spillover effects. 3) Cyber force should be coordinated with our allied partners and perhaps legitimized through a multi-national body (NATO at least, U.N. if possible or required). 4) Cyber force should be in concert with traditional military force and as targeted as possible. 5) Catastrophic (i.e. expansive and destructive) use of cyber force should only be considered for retaliatory measures or in conjunction with prolonged, declared, large-scale hostilities. 6) The President should set a declaratory policy that clearly defines what constitutes a use of force and relate this to cyber force. We recommend the following effects based statement, “Any action in cyberspace which directly place at risk the life of U.S. citizens constitutes an armed attack against the U.S, and will be responded to at a time, place, and manner of our choosing in accordance with domestic and international law.

### 2NC A/T: Perm Do Both

**The perm links and the CP doesn’t – Congress wants to avoid any responsibility**

**Zelizer ’11** Julian E. Zelizer, professor of history and public affairs at Princeton University, "War powers belong to Congress and the president", June 27, 2011,<http://www.cnn.com/2011/opinion/06/27/zelizer.war.powers/index.html>

While the speaker has raised an important point, the fact is that all presidents, Democrats and Republicans, have made decisions about sending troops into conflict without a declaration of war. Since President Harry Truman sent troops into Korea in 1950, legislators have let presidents make the initial decision as to whether military force should be used. Although Congress has remained quite active in wartime politics, ranging from its use of hearings to stimulate political debate to the shaping of military budgets, Congress no longer declares war. Before the Korean War, the situation was quite different. As Louis Fischer of the Congressional Research Service wrote, "From 1789 to 1950, lawmakers, the courts, and the executive branch understood that only Congress could initiate offensive actions against other nations." There are many reasons for why presidents usurped so much power. In most areas of government, the legislative branch of government lost some of its power in the 20th century. As government expanded, and as the U.S. gained more of a stake in other parts of the world and with the advent of nuclear weapons, there was a need for quicker decision-making. A greater number of politicians in both parties supported the centralization of power in the White House. Very often Congress was also eager to avoid having to decide whether to declare war so it could force presidents to shoulder the blame when things went wrong. At other times, the party in control of Congress agreed with the president's military agenda so that legislators were happy to delegate their authority, as was the case in 1950 (Korea) and Iraq (2003). But the failure of Congress to fully participate in the initial decision to use military force has enormous costs for the nation beyond the obvious constitutional questions that have been raised. The first problem is that the U.S. now tends to go to war without having a substantive debate about the human and financial costs that the operation could entail. Asking for a declaration of war, and thus making Congress take responsibility for the decision, had required presidents to enter into a heated debate about the rationale behind the mission, the potential for large-scale casualties and how much money would be spent. When presidents send troops into conflict without asking Congress for approval, it has been much easier for presidents to elude these realities. President Lyndon Johnson famously increased the troop levels in Vietnam without the public fully realizing what was happening until after it was too late. Although Johnson promised Democrats when they debated the Gulf of Tonkin Resolution in 1964 that they would only have a limited deployment and he would ask them again if the mission increased, he never did. He used the broad authority granted to him to vastly expand the operations during his presidency. By the end of his time in office, hundreds of thousands of troops were fighting a hopeless war in the jungles of Vietnam. Johnson also continued to mask the budgetary cost, realizing the opposition that would emerge if legislators knew how much the nation would spend. When the costs became clear, Johnson was forced to request a tax increase from Congress in 1967, a request which greatly undermined his support. The second cost of presidents going to war rather than Congress doing so is that major mistakes result when decisions are made so quickly. When there is not an immediate national security risk involved, the slowness of the legislative process does offer an opportunity to force policymakers to prove their case before going to war. Speed is not always a virtue. In the case of Iraq, the president started the war based on the shoddiest of evidence about WMD. The result was an embarrassment for the nation, an operation that undermined U.S. credibility abroad. Even in military actions that have stronger justifications, there are downsides to speed. With President Obama and the surge in Afghanistan, there is considerable evidence that the administration went in without a clear strategy and without a clear objective. With Libya, there are major concerns about what the administration hopes to accomplish and whether we are supporting rebel forces that might be connected with terrorist networks intent on harming the U.S. The third cost has been the cheapening of the decision about using military force. In the end, the decision about whether to send human treasure and expend valuable dollars abroad should be one that is made by both branches of government and one that results from a national dialogue. Requiring Congress to declare war forces voters to think about the decision sooner rather than later. While efficiency is essential, so too is the democratic process upon which our nation is built. The result of the decision-making process that has been used in recent decades is that as a nation too many citizens lose their connection to the war. Indeed, most Americans don't even think twice when troops are sent abroad. The shift of power toward the president has compounded the effects of not having a draft, which Congress dismantled in 1973. Wars sometimes resemble just another administrative decision made by the White House rather than a democratic decision.

**Perm still requires Obama to assemble a legislative coalition**

**Howell, 5** – Associate Professor of Government at Harvard

(William G., Presidential Studies Quarterly, “Unilateral Powers: A Brief Overview,” September 2005, v35n3, p.417, proquest)

Third, it can be just as difficult to convince bureaucrats to execute laws as unilateral directives. If anything, laws may prove more difficult, if only because their mandates tend to be broader and their contents more ambiguous. In order to placate the required supermajorities within Congress, members often fill laws with loopholes and compromises, granting bureaucrats ample opportunities to substitute their own policy preferences for those of their political superiors. As presidents need not assemble a legislative coalition in order to issue a unilateral directive, their orders can be more direct. And as others have effectively argued, possibilities for shirking decline in direct proportion to clarity with which directions are handed down (Huber and Shipan 2002).

### 2NC A/T: Perm DO CP

**Perm do the CP should be rejected for intrisicness and severance**

**1). Severance – severs out of (mechanism) action which is bad because it skews 1NC strategy, since we read a CP based off the assumption it was action by (mechanism)**

**2). Intrinsic – it adds (whatever part of the CP the aff doesn’t do) to the plan text – that makes it impossible to be neg because the aff can just spike out of all aff offense.**

### 2NC A/T: Congress Key

**The CP creates better congressional oversight than statute**

**Brecher 12** – J.D. candidate @ University of Michigan   
Aaron, "NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations" 111 Mich. L. Rev. 423 (December) mtc

Some scholars have proposed a contrary view. On this view, the speed with which cyberspace events can play out makes it important for the legislative role to be clearly established via statutory reform in advance of any cyberattack by the United States.157 Thus, proposals for extensive legislative intervention would help ensure Congress’s appropriate role in deciding whether or not to go to war.158 The notion of congressional participation is well in line with the view of shared constitutional war powers articulated earlier in this Note.159 Moreover, congressional participation comports with an ideal of government decisionmaking where the branch most immediately accountable to voters has been given a chance to express its view. Discussing the covert action regime, Stephen Dycus, professor of law at Vermont Law School, expresses concern that only the smaller group of intelligence committee leaders and the leaders of each House will be informed, and that in general the reporting requirements do not ensure that Congress will obtain the information it needs to play a meaningful role in the discussion.160 Additionally, there are concerns regarding the traditional military activities exception to the reporting requirements in the covert action statute.161 Specifically, the worry is that the military might classify clandestine cyberwarfare activities as “operational preparation of the environment” and thereby skirt the reporting requirements, being accountable instead to the congressional armed services committees—which could create confusion.162 Dycus’s proposed legislative reforms include designating particular congressional committees to receive reports, forming a lead federal agency for cybersecurity, banning automated offensive responsive to a cyberattack, and crafting procedures to aid private networks that come under attack.163 However, this position is flawed because it dismisses the covert action statute as wholly inadequate to protecting the value of congressional participation, and gives short shrift to the non-warlike dimensions of many cyberattacks. The worry that motivates some of the proposals seems to ignore the many examples of cyberattacks—such as manipulation of electronic ballots in a foreign election or disseminating false information through foreign networks to affect media reports—that, outside normal contexts, could not plausibly fall under the military activities exception. Moreover, they underestimate the potential power of a presumption by the executive in favor of the covert action regime. An executive order establishing such a presumptive posture of reporting could go a long way toward bringing Congress into the process. First, an order establishing written findings and congressional reporting as the default rule could cause momentum to settle around title 50 procedures for initiating cyberattacks.164 Also, one scholar has argued that the most effective way to ensure congressional notification might not be changing the actual rules of who is to be notified and when, but rather implementing changes that encourage the executive branch to comply with existing requirements.165

### 2NC A/T: Rollback

#### The executive will circumvent the aff - loopholes, deference and no enforcement – turns the aff – independent solvency takeout

Mitchell, Assistant Professor of Law, George Mason University School of Law, 9

(Jonathan, Jan, “Legislating Clear-Statement Regimes in National- Security Law,” http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=jonathan\_mitchell, accessed 9-17-13, CMM)

INTRODUCTION¶ Congress’s national-security legislation will often require clear and specific¶ congressional authorization before the executive can undertake certain actions. One¶ example is section 8(a)(1) of the War Powers Resolution, which prohibits any statute¶ from authorizing military hostilities unless it “specifically authorizes” such hostilities and¶ “states that it is intended to constitute specific statutory authorization within the meaning¶ of this joint resolution.”1 If Congress fails to enact a statute with this specific language,¶ the War Powers Resolution requires the President to “terminate” hostilities within 60¶ days.2 The Foreign Intelligence Surveillance Act of 1978 (“FISA”) also contains a¶ codified clear-statement requirement, which declares that FISA’s procedures are “the¶ exclusive means” for conducting certain forms of electronic surveillance.3 This¶ exclusivity requirement requires statutes to amend FISA or repeal the “exclusive means”¶ provision before they can authorize electronic surveillance. And this establishes a clearstatement¶ regime because the Supreme Court’s precedents disfavor implied repeals,4 and¶ insist that “the intention of the legislature to repeal must be clear and manifest.”5¶ Congress continues to codify additional clear-statement requirements in its recently¶ enacted national-security legislation. The McCain Amendment to the 2005 Detainee¶ Treatment Act, for example, provides that its prohibition on certain forms of cruel,¶ inhuman, or degrading treatment “shall not be superseded,” unless a provision of law¶ “specifically repeals, modifies, or supersedes the provisions of this section.”6 And the¶ FISA Amendments Act of 2008 states that “[o]nly an express statutory authorization for¶ electronic surveillance” may authorize such activities outside of FISA’s strictures.7¶¶¶ These statutes attempt to establish legal answers to the unsettled institutional¶ questions regarding the circumstances in which the President must seek explicit¶ congressional authorization for his actions. They offer an alternative to regimes that¶ allow judges to decide on a case-by-case basis whether to require specific congressional¶ authorization,8 or that allow the executive to act whenever it can find a surface ambiguity¶ in some statute.9 These framework statutes are legislatively-enacted “non-delegation¶ canons,”10 designed to strengthen the bicameralism-and-presentment hurdles that the¶ executive must surmount before it can claim legal authority to act. ¶¶¶ But efforts to legislate clear-statement regimes in national-security law have¶ failed to induce the political branches to comply with codified clear-statement¶ requirements. During the Kosovo War, the Clinton Administration asserted that¶ Congress had authorized the President to continue the Kosovo War beyond the 60-day¶ limit in the War Powers Resolution. But it inferred this congressional “authorization”¶ from a 1999 appropriations statute that neither mentioned the War Powers Resolution nor¶ specifically authorized the conflict.11 The statute simply appropriated $5 billion for a¶ fund used to finance overseas military operations, and provided an additional $300¶ million for military technology needed for the Kosovo campaign.12 The Clinton¶ Administration’s Office of Legal Counsel deployed two tenuous legal arguments to¶ escape the clear-statement regime codified in section 8(a)(1) of the War Powers¶ Resolution. First, it maintained that section 8(a)(1)’s clear-statement requirement would¶ unconstitutionally “bind a later Congress” if it required statutes specifically to reference¶ the War Powers Resolution as a precondition to authorizing military hostilities.13¶ Second, the Clinton Administration insisted that the 1999 Emergency Supplemental¶ Appropriations Act implicitly repealed section 8(a)(1)’s clear-statement requirement, and¶ allowed President Clinton to continue the war without a statute that specifically¶ authorized the hostilities.14 Litigants challenged the Clinton Administration’s argument,¶ but the courts dismissed the case as nonjusticiable.15 And Congress, rather than¶ enforcing section 8(a)(1)’s clear-statement regime by cutting off funds for the Kosovo¶ War or threatening impeachment, quietly facilitated President Clinton’s actions by¶ appropriating funds that he could use to continue the bombing campaign, even as¶ legislators refused to enact the specific authorization that the War Powers Resolution¶ required.16¶¶¶ A similar pattern of events occurred during the NSA surveillance controversy.¶ The Bush Administration claimed that the post-9/11 Authorization for Use of Military¶ Force (“AUMF”) authorized the NSA’s warrantless surveillance program, even though¶ the statute never mentioned FISA or wiretapping and merely authorized the President to¶ use “all necessary and appropriate force” against the 9/11 perpetrators.17 The Bush¶ Administration relied on the same arguments that the Clinton Administration used to¶ establish congressional authorization for the Kosovo War. First, it maintained that¶ FISA’s exclusivity requirement would “tie the hands”18 of future Congresses if it required¶ specific language in statutes that authorize warrantless electronic surveillance. Then it¶ argued that the AUMF implicitly repealed FISA’s restrictions.19 Once again, a court¶ dismissed a lawsuit challenging the Administration’s legal argument,20 leaving the¶ executive free to act without the specific authorization that Congress’s earlier-enacted¶ statutes required. And Congress enabled President Bush to continue the NSA¶ surveillance program by acquiescing and funding the intelligence agencies, even as it¶ failed to enact legislation that specifically authorized the program until 2007. ¶¶¶ The executive branch’s interpretive theories were far reaching, and its approach to¶ constitutional avoidance and implied repeal were irreconciliable with the Supreme¶ Court’s precedents. But they provided some political cover for the President by giving¶ his actions a veneer of legality, and may even have protected executive-branch¶ employees from the fear of criminal liability or political reprisals.21 To prevent the¶ executive from continuing to evade Congress’s codified clear-statement requirements in¶ this manner, many proposals have sought to provide more narrow and explicit clearstatement¶ requirements in Congress’s framework legislation as well as provisions that¶ withhold funding from activities that Congress has not specifically authorized. For¶ example, Senator Specter proposed new provisions to FISA stating that no provision of¶ law may repeal or modify FISA unless it “expressly amends or otherwise specifically¶ cites this title,”22 and that “no funds appropriated or otherwise made available by any¶ Act” may be expended for electronic surveillance conducted outside of FISA.23 Congress¶ failed to enact Senator Specter’s proposal, but it did enact an amendment to FISA that¶ made the clear-statement regime more explicit, specifying that “only an express statutory¶ authorization for electronic surveillance” may authorize electronic surveillance outside of¶ FISA’s procedures.24 And numerous commentators have argued for new provisions in¶ the War Powers Resolution that withhold funds from military ventures that Congress has¶ not specifically authorized.25 Yet such proposals are unable to counter the executive¶ branch’s aggressive interpretive doctrines. Executive-branch lawyers will remain able to¶ concoct congressional “authorization” from vague statutory language by repeating their¶ assertions that codified clear-statement requirements “bind future Congresses” or that¶ ambiguous language in later-enacted statutes implicitly repeals restrictions in Congress’s¶ framework legislation. Future legislators will continue to acquiesce to the President’s¶ unilateralism when it is politically convenient to do so.26 And the federal courts’¶ willingness to enforce clear-statement regimes against the President in national-security¶ law bear no relationship to the codified clear-statement requirements in framework¶ legislation or treaties.27¶¶¶ Congress could produce more effective clear-statement regimes if it precommitted¶ itself against enacting vague or ambiguous legislation from which executive-branch¶ lawyers might claim implicit congressional “authorization” for certain actions. Rather¶ than merely enacting statutes that instruct the executive not to construe ambiguous¶ statutory language as authorizing military hostilities or warrantless electronic¶ surveillance, Congress could establish point-of-order mechanisms that impose roadblocks¶ to enacting such vague legislation in the first place.28 A point-of-order mechanism would¶ empower a single legislator to object to legislation that authorizes military force, or that¶ funds the military or intelligence agencies, and that fails to explicitly prohibit or withhold¶ funding for military hostilities beyond 60 days or warrantless electronic surveillance,¶ unless the bill includes the specific authorizing language that Congress’s framework¶ legislation requires. This device would reduce the likelihood of Congress ever enacting¶ vague or ambiguous legislation that the executive might use to claim “authorization” for¶ extended military hostilities or warrantless electronic surveillance. It would also induce¶ legislators to confront Presidents that act without specific congressional authorization by¶ empowering a single legislator to object to legislation necessary to fund the President’s¶ unauthorized endeavors. Yet the political branches have never established such an¶ enforcement mechanism for the clear-statement requirements in national-security¶ legislation, even though they have established such point-of-order devices to enforce¶ precommitments in framework legislation governing the federal budget process. The¶ result is a regime of faint-hearted clear-statement regimes in national-security law –¶ framework legislation that codifies strongly worded clear-statement rules but that lacks¶ any mechanism to induce compliance by future political actors. This may be a calculated¶ choice by of members of Congress, or it may reflect the President’s influence in the¶ legislative process, but no one should think that simply legislating more narrow or¶ explicit clear-statement requirements, or adding funding restrictions to Congress’s¶ framework legislation, will be able to prevent the executive from continuing to infer¶ congressional authorization from vague or ambiguous statutory language.

### 2NC A/T: Links to Politics

**Doesn’t link to politics –**

**No internal link – our link is about political capital not backlash – there’s no reason Congress would backlash against the plan and no reason that backlash spills over to the rest of the agenda**

**Counterplan lets the president sidestep opposition**

**Mayer 01** (Kenneth, Proff. Of Polt. Science Univ. of Wisconsin, Princeton Univ., “With the Stroke of a Pen: Executive Orders and Presidential Power”, p. 90, http://www.questiaschool.com/read/103282967?title=With%20the%20Stroke%20of%20a%20Pen%3a%20Executive%20Orders%20and%20Presidential%20Power)

Since executive orders are a unilateral presidential tool, presidents may use them to compensate for congressional opposition. This theme arises from histories of the civil rights orders, which have maintained that Democratic presidents used executive orders because they knew that Congress would refuse to pass legislation. Presidents may also use executive orders to preempt legislation or undercut Congress in other ways. When faced with the certain prospect of legislation imposing sanctions on South Africa in 1985, President Reagan successfully fractured a veto-proof coalition of Democrats and moderate Republicans by imposing weaker sanctions by executive order. In doing so, he “managed to avoid a major legislative defeat and the further embarrassment of an almost inevitable veto override,” although Congress overrode Reagan's veto of sanction legislation the following year. Presidents have restructured the intelligence community through executive orders, in part to undermine congressional efforts to reorganize the community via statute. 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.

# 1NR v. Harvard

## Politics

#### – that causes a disease outbreak

Emily Walker, 4-8-2011, "Both Sides Claim Win as Shutdown Averted," Med Page Today, http://www.medpagetoday.com/Washington-Watch/Washington-Watch/25826

The vast majority of employees at the Centers for Disease Control and Prevention (CDC) would be furloughed if the government ceased operations, said an HHS spokesman. Because the CDC tracks new public health threats such as disease outbreaks, the worst-case scenario during a shutdown would be a massive outbreak of a food-borne illness or other communicable disease. The CDC's emergency operation center -- a command center for monitoring and coordinating CDC's emergency response to public health threats in the United States and abroad -- will remain open. The center is currently working on responses to the earthquake and tsunami in Japan. But responses may be delayed, the spokesman said. "If a state were to call us and say 'We need help,' we may not be able to respond quickly," the spokesman said. While emergency workers will continue their jobs, the staff who work to "get people out the door," by booking travel and facilitating meetings, won't be working. "This would prevent us from responding as quickly as we'd like," the spokesman said. In addition, the CDC's ability to detect an outbreak could be jeapordized, he said. "We have a lot of disease surveillance networks. If those are scaled back to just the staff that monitor those networks, it could conceivably lead to us not being able to detect an outbreak as quickly as we'd like to. We simply won't have the manpower we have right now," the HHS spokesman said.

#### Extinction

Quammen 12 David, award-winning science writer, long-time columnist for Outside magazine for fifteen years, with work in National Geographic, Harper's, Rolling Stone, the New York Times Book Review and other periodicals, 9/29, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. Aberrations occur. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through a much larger segment of humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the Next Big One comes, it will likely conform to the same perverse pattern as the 1918 influenza: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be the most horrific pathogen on the planet. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And here's the thing about outbreaks: they **end**. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

**Failure to reach a deal guarantees government shutdown.**

**Farry, 1-19-2011**

[Yanira, Junior Editor – Veterans Today, Military & Foreign Affairs Journal, “GOP-Tea Party Play Chicken With U.S. Credit, Courting Catastrophe,” http://www.veteranstoday.com/2011/01/19/gop-tea-party-play-chicken-with-u-s-credit-courting-catastrophe/]

SHUTTING DOWN GOVERNMENT: If the debt limit is reached, the government is forced to move to a purely cash-flow budget, paying bills with only the tax revenue that comes in. Interest payments on the debt would get paid first, but what is the order of payment after that? Government activities that could fail to be funded range from Social Security and Medicare to military actions in Iraq and Afghanistan. In 1995-96, when House Republicans, led by then-House Speaker Newt Gingrich, refused to raise the debt ceiling for a short time, it caused “two temporary shutdowns of all ‘nonessential’ federal government activities, including a cessation of toxic waste cleanups, disease control activities, and a suspension of many law enforcement and drug control operations,” ultimately costing the U.S. taxpayer more than $800 million. The Clinton Treasury Department was required to employ some creative accounting — “including a temporary use of retirement funds for former government employees” — to stave off even worse outcomes. Analysts at Deutsche Bank have found that such efforts would not work as well today, and the government would “not be able to stave off a government shutdown (or possible suspension of bond payments) for long” if the debt ceiling isn’t raised. But still, some Republicans, such as former Minnesota governor Tim Pawlenty (R), have said this is the route Congress should choose. As Austan Goolsbee, chairman of the Council of Economic Advisers put it, “If we get to the point where we damage the full faith and credit of the United States, that would be the first default in history caused purely by insanity.”

#### Restrictions on authority are a loss that spills over to the debt ceiling

**Parsons, LA Times, 9-12-13**

(Christi, “Obama's team calls a timeout”, <http://www.latimes.com/nation/la-na-obama-congress-20130913,0,2959396.story>, ldg)

After a week in which President Obama narrowly averted a bruising defeat on Capitol Hill over a military strike on Syria, the decision had the feeling of a much-needed timeout. The messy debate over a resolution to authorize military force put a harsh light on the president's already rocky relationship with Congress. Despite a charm offensive earlier this year, complete with intimate dinners and phone calls, Obama faced contrary lawmakers in both parties, a climate that is certain to persist through the next round of legislative fights, if not to the end of his second term. In deciding to seek approval for military action, Obama banked on the long-standing deference to the commander in chief on matters of national defense. But by the time he pressed "pause" on the intense White House lobbying effort, he was finding as much defiance as deference. Although the White House cast the issue as a matter of national security and a crucial test of U.S. power, dozens of lawmakers from both parties were set to deliver a rare rebuke to a president on foreign policy. Even Democratic loyalists seemed unswayed by appeals to preserve the prestige of the presidency — and this president. Hawkish Republicans offering to reach across the aisle to support the president said they found the White House distant and uninterested. The canceled picnic punctuated a week of aggravated feelings. "We obviously have divided government. We have sometimes contentious, sometimes very effective relations with Congress. But we keep at it," said White House spokesman Jay Carney, who denied the picnic cancellation had anything to do with the state of relations between the two branches of government. On Capitol Hill, the week's episode strained Obama's traditional alliance with his fellow Democrats, many of whom were wary of another military involvement, unclear about the president's plans for a missile strike and surprised by his decision to ask them to vote on it. "Not only was it a hard ask, but it was not a well-prepared ask," said Sen. Sheldon Whitehouse (D-R.I.). "His willingness to back away from the ultimatum and pursue the disarmament proposal was extremely welcome, and I think that helped all of us in our relationship with him." Obama's relationship with his Republican critics was not helped. As lawmakers look ahead to the rest of the fall agenda, including the coming budget battles, the administration's performance this week will not be easy to forget, some said. "It's just more lack of confidence that they know what they're doing," said Sen. Tom Coburn (R-Okla.). "There's only so much political capital," said Sen. Rob Portman (R-Ohio). Democrats defended the president, blaming Republicans for a "knee-jerk" opposition to any initiative tied to this White House, a phenomenon that Obama aides regularly cite but that the president appears to have disregarded in his decision to put a use-of-force resolution before Congress. "Historically, when it comes to military force, Republicans and conservatives have led that. Now they're opposed to it," said Sen. Richard J. Durbin (D-Ill.). In a private meeting this week, Durbin said, Obama himself joked that "a lot of Republicans on Capitol Hill are discovering their inner doves on Syria." The next set of negotiations will be far more predictable and on familiar territory. By the end of the month, the president and Congress must agree on a plan to continue funding the government, or it will shut down. And by mid-October, they will have to agree to raise the debt limit, or risk a default. The White House has said it won't negotiate on the debt limit, as it did twice before, counting on the public and business groups to pressure Republicans. Democrats were hopeful the budget issues would put the White House back on more solid political footing. "I think the public has a heck of a lot more confidence in the president on economics and budget than [in] the House Republicans," said Sen. Carl Levin (D-Mich.). That may be wishful thinking, said Ross Baker, a political science professor at Rutgers University, who studies the Senate. "These things carry over. There's no firewall between issues," he said. "Failure in one area leads to problems in other areas." The debate over the war in Syria may be on an extended pause, although prospects of Obama returning to Congress to ask for a use-of-force authorization seem slim. A bipartisan group of senators is drafting an amended authorization, but the group is not expected to fully air its proposal until diplomatic talks conclude. There were some signs that the debate may have won the president some empathy, if not support. At a private lunch with Republican senators this week, Obama asked them not to undermine him on the world stage. Sen. Ron Johnson of Wisconsin, who is part of a group of GOP senators working with the White House on fiscal issues, said the appeal resonated.

#### The plan would trade off with Congress’s ability to avert the shutdown - GOP has momentum and will, but they need literally every hour to get it done

Frank James, 9-13-2013, “Congress Searches For A Shutdown-Free Future,” NPR, http://www.npr.org/blogs/itsallpolitics/2013/09/13/221809062/congress-searches-for-a-shutdown-free-future

The only thing found Thursday seemed to be more time for negotiations and vote-wrangling. Republican leaders recall how their party was blamed for the shutdowns of the mid-1990s and earnestly want to avoid a repeat, especially heading into a midterm election year. Cantor alerted members Thursday that during the last week of September, when they are supposed to be on recess, they will now most likely find themselves in Washington voting on a continuing resolution to fund the government into October. It looks like lawmakers will need every hour of that additional time. While talking to reporters Thursday, Boehner strongly suggested that House Republicans weren't exactly coalescing around any one legislative strategy. "There are a lot of discussions going on about how — about how to deal with the [continuing resolution] and the issue of 'Obamacare,' and so we're continuing to work with our members," Boehner said. "There are a million options that are being discussed by a lot of people. When we have something to report, we'll let you know."

### Pol cap

#### Obama’s push ensures compromise to avoid default

Kuhnenhenn 9/8

Jim, “Issues test Obama’s persuasion, mobilizing skills”, <http://www.salon.com/2013/09/08/issues_test_obamas_persuasion_mobilizing_skills/>, MCR

Win or lose, **Obama and lawmakers** then would **run headlong into a debate over the budget**.¶ **Congress will have a limited window** to continue government operations before the new budget year begins Oct. 1.¶ **Congressional leaders probably will agree to hold spending at current budget levels** for about two months or three months. That would delay a confrontation with the White House and pair a debate over 2014 spending levels with the government’s need to raise its current $16.7 trillion borrowing limit. The Treasury says the government will hit that ceiling in mid-October.¶ **Obama has been adamant** that **he will not negotiate over the debt limit**. He says a similar faceoff in 2011 hurt the economy and caused Standard & Poors to lower its rating of the nation’s debt, which made it more expensive to borrow.¶ **White House** officials say they **ultimately have leverage because** they believe **Republicans would be punished politically for playing brinkmanship and threatening the nation with a** default.¶ The **White House is counting on pressure from traditional Republican** allies, particularly in the business sector. “It is insane not to raise the debt ceiling,” U.S. Chamber of Commerce President Thomas Donohue said last week on C-SPAN. Donohue pledged to find primary challengers against lawmakers who threaten a default.

**Obama will have to spend capital on debt ceiling**

**Bull & Younglai, 9/5** (Alister Bull and Rachelle Younglai, 9/5/2013, “Analysis: Battle over Fed - Summers' opponents seek to sway Obama,” <http://www.reuters.com/article/2013/09/05/us-usa-fed-summers-analysis-idUSBRE98414R20130905)>)

Still, some Washington veterans are perplexed that Obama is apparently willing to bypass Yellen, who is also viewed as well qualified, and are concerned that Obama risks an unnecessary congressional fight at a time when he could spend his political capital more wisely.

As well as battling for authorization to punish the use of chemical weapons by Syrian President Bashar al-Assad, **the White House must** currently also **persuade lawmakers to raise the U.S. debt ceiling and forge an agreement to fund the federal government for the fiscal year beginning in October.**

**"Does** Barack **Obama want to play political football with the Congress on everything all fall?" asked** David **Rothkopf, a former Clinton administration official** who is now president of Garten Rothkopf, an international advisory firm.

### Uniqness

#### A. Obama and Boehner cooperating

JAKE SHERMAN and JOHN BRESNAHAN , 9/20 (Obama calls Boehner, rules out debt negotiations, <http://www.politico.com/story/2013/09/barack-obama-john-boehner-debt-negotiations-97153.html#ixzz2fUBFP4JH>)

“Given the long history of using debt limit increases to achieve bipartisan deficit reduction and economic reforms, the speaker was disappointed but told the president that the two chambers of Congress will chart the path ahead,” a Boehner aide said in an email. “It was a brief call.” (Also on POLITICO: Senate turns to CR that defunds Obamacare) This is not a new position for Obama, or a new response from Boehner. The two men have negotiated in the past to raise the nation’s debt cap, but Obama now sees any more negotiations as unwise. The president’s position is that Congress should raise the $16.7 trillion debt ceiling without any accompanying budget changes or reforms — a so-called “clean” debt ceiling increase. Yet it’s unclear if such a hike could pass in the House or the Senate.

#### B. empirecailly republicans will cave in

Mario Trujillo. 09/19 (Sen. Murray sees 'no deals on the debt ceiling', <http://thehill.com/blogs/on-the-money/budget/323541-murray-seesno-deals-on-the-debt-ceiling>)

Sen. Patty Murray (D-Wash.) said Republicans would likely relent and raise the debt ceiling, judging by past experience. Murray, chairwoman of the Senate Budget Committee, said Republicans will first attempt to tie a debt-ceiling vote to a “mishmash” proposal chock full of Tea Party priorities. But she said she sees “no deals on the debt ceiling.” “I am confident that they will come together with some mishmash policy of everything in the bag they've ever promised to the Tea Party, attach it to the debt ceiling, and try and send it over,” she said in an interview on Political Capital with Al Hunt to air Friday. When asked if Republicans would ultimately capitulate, Murray said, “They did last time.” Republicans agreed on a plan earlier this year to delay a battle on the debt limit. In 2011, the agreement to raise the debt ceiling brought about a failed plan to hammer out a debt-reduction package and led to the sequester. Murray also said she is hopeful that Republicans “who feel they have to have a temper tantrum before” they agree to a plan to fund the government will get over it quickly so Congress can move on. Murray reiterated President Obama’s position that he will not haggle over the debt ceiling, admitting he has before. “He won't,” she said. “I think he has before, but he is not going to repeal ObamaCare.” The Treasury Department says Congress must raise the limit around mid-October before the U.S. begins defaulting on its debt. House Republicans have said they will likely vote to raise the debt ceiling along with a number of GOP priorities, including approving construction of the Keystone XL pipeline and delaying ObamaCare. Murray said she understands that raising the debt ceiling does not sound appealing to the public and is not popular in polling. But inaction would be devastating, she said. “We've been through this before, and our credit was downgraded,” she said. “Wall Street was devastated by our inaction, inability to raise the debt ceiling to pay our bills. How is it good for our economy to do that? I do not understand the rhetoric around the debt limit.”

#### C. business pressures

**Cowan and Lowder 9/13** Richard and David, Reuters, Analysis: House Republicans go for broke in fiscal battles, 9/13/13, <http://www.reuters.com/article/2013/09/13/us-usa-congress-debt-ceiling-analysis-idUSBRE98C04620130913>

There are risks for Democrats and Obama too. While polling results showed the public more upset with Republicans then Obama after the "fiscal cliff" fight that led to across-the-board budget cuts, Obama's Gallup approval rating started on a downward trend then from which it has yet to recover, with other polls suggesting that Americans hold all parties in Washington as well as the president responsible for "gridlock."

With the deadlines fast-approaching, the maneuvering is well underway.

The White House announced that Obama would speak to the Business Roundtable group of big-company chief executives next week. White House spokesman Jay Carney did not offer any details about what Obama will say, but he has used business groups in the past to pressure Congress to avoid fiscal brinkmanship.

"We will never accept anything that delays or defunds" Obamacare, Carney stressed again on Thursday.

In the U.S. Capitol, the top four Republican and Democratic leaders of the Senate and House met in the office of House of Representative Speaker John Boehner on Thursday to try to plot out a happy ending to their government spending and debt limit challenges.

Afterward, Boehner told reporters "there are a million options that are being discussed by a lot of people."

But while Republicans control the House, Boehner does not control Republicans.

HIGH-STAKES MANEUVER

The intra-party fight on such a high-stakes maneuver as coupling Obamacare changes to the debt limit hike is seen as pushing negotiations on the legislation right up to the October or November deadline.

#### D. Obama push

**Pace 9/12** (Julie, AP White House correspondent, Syria debate on hold, Obama refocuses on agenda, The Fresno Bee, 9/12/13,<http://www.fresnobee.com/2013/09/12/3493538/obama-seeks-to-focus-on-domestic.html>

WASHINGTON — With a military strike against Syria on hold, President Barack Obama tried Thursday to reignite momentum for his second-term domestic agenda. But his progress could hinge on the strength of his standing on Capitol Hill after what even allies acknowledge were missteps in the latest foreign crisis.

"It is still important to recognize that we have a lot of things left to do here in this government," Obama told his Cabinet, starting a sustained White House push to refocus the nation on matters at home as key benchmarks on the budget and health care rapidly approach.

"The American people are still interested in making sure that our kids are getting the kind of education they deserve, that we are putting people back to work," Obama said.

The White House plans to use next week's five-year anniversary of the 2008 financial collapse to warn Republicans that shutting down the government or failing to raise the debt limit could drag down the still-fragile economy. With Hispanic Heritage Month to begin Monday, Obama is also expected to press for a stalled immigration overhaul and urge minorities to sign up for health care exchanges beginning Oct. 1.

Among the events planned for next week is a White House ceremony highlighting Americans working on immigrant and citizenship issues. Administration officials will also promote overhaul efforts at naturalization ceremonies across the country. On Sept. 21, Obama will speak at the Congressional Black Caucus Gala, where he'll trumpet what the administration says are benefits of the president's health care law for African-Americans and other minorities.

Two major factors are driving Obama's push to get back on track with domestic issues after three weeks of Syria dominating the political debate. Polls show the economy, jobs and health care remain Americans' top concerns. And Obama has a limited window to make progress on those matters in a second term, when lame-duck status can quickly creep up on presidents, particularly if they start losing public support.

Obama already is grappling with some of the lowest approval ratings of his presidency. A Pew Research Center/USA Today poll out this week put his approval at 44 percent. That's down from 55 percent at the end of 2012.

Potential military intervention in Syria also is deeply unpopular with many Americans, with a Pew survey finding that 63 percent opposing the idea. And the president's publicly shifting positions on how to respond to a deadly chemical weapons attack in Syria also have confused many Americans and congressional lawmakers.

"In times of crisis, the more clarity the better," said Sen. Lindsey Graham, R-S.C., a strong supporter of U.S. intervention in Syria. "This has been confusing. For those who are inclined to support the president, it's been pretty hard to nail down what the purpose of a military strike is."

For a time, the Obama administration appeared to be barreling toward an imminent strike in retaliation for the Aug. 21 chemical weapons attack. But Obama made a sudden reversal and instead decided to seek congressional approval for military action.

Even after administration officials briefed hundreds of lawmakers on classified intelligence, there appeared to be limited backing for a use-of-force resolution on Capitol Hill. Rather than face defeat, Obama asked lawmakers this week to postpone any votes while the U.S. explores the viability of a deal to secure Syria's chemical weapons stockpiles.

That pause comes as a relief to Obama and many Democrats eager to return to issues more in line with the public's concerns. The most pressing matters are a Sept. 30 deadline to approve funding to keep the government open — the new fiscal year begins Oct. 1 — and the start of sign-ups for health care exchanges, a crucial element of the health care overhaul.

On Wednesday, a revolt by tea party conservatives forced House Republican leaders to delay a vote on a temporary spending bill written to head off a government shutdown. Several dozen staunch conservatives are seeking to couple the spending bill with a provision to derail implementation of the health care law.

The White House also may face a fight with Republicans over raising the nation's debt ceiling this fall. While Obama has insisted he won't negotiate over the debt limit, House Speaker John Boehner on Thursday said the GOP will insist on curbing spending.

### At negotiations

#### Deal likely now- Obama needs to stand firm- caving on negotiations is enough to trigger the impacts

WP, 9-19-2013 <http://www.washingtonpost.com/opinions/eugene-robinson-obama-must-not-yield-on-obamacare-debt-ceiling-or-shutdown/2013/09/19/f5b44616-2157-11e3-966c-9c4293c47ebe_story.htm>

Republicans in the House are like a bunch of 3-year-olds playing with matches. Their hapless leaders don’t have the sense to scold them and send them to their rooms — which means President Obama has to be the disciplinarian in this dysfunctional family.¶ Mature adults in the GOP should have explained reality to these tantrum-throwing tykes long ago: It simply is not within their constitutional power to make Obamacare go away. They can scream at the top of their lungs, roll around on the floor, hold their breath until they turn blue, waste everybody’s time with 41 useless votes — whatever. All they can really do is hurt themselves or others.¶ Yet here we are, with Speaker John Boehner (Ohio) cowed into letting his members threaten to shut down the government unless they are allowed to stay up all night watching television and eating candy. Also, unless the Senate and Obama agree to nullify health-care reform before it fully takes effect.¶ I happen to believe that Obamacare is a great accomplishment, providing access to medical insurance to millions of Americans who lack it and bringing the nation much closer to universal health care. It’s an imperfect law, to be sure, but it could be made much better with the kind of constructive tinkering that responsible leaders performed on Social Security and Medicare.¶ Even if Obamacare were tremendously flawed, however, it would be wrong to let a bunch of extremist ideologues hold the country hostage in this manner. If Republicans want to repeal the reforms, they should win the Senate and the presidency. If not, they’re welcome to pout and sulk all they want — but not to use extortion to get their way.¶ At issue is not just the threat of a federal shutdown, which will happen Oct. 1 unless Congress passes a continuing resolution to fund government operations. The debt ceiling has to be raised before the Treasury hits its borrowing limit, which will happen around Oct. 18. If House Republicans don’t kill or neutralize Obamacare with the funding bill, they are ready to threaten the nation — and the global economy — with a potentially catastrophic default.¶ The proper response — really, the only response — is to say no. And mean it.¶ Obama is, by nature, a reasonable and flexible man, but this time he must not yield. Even if you leave aside what delaying or defunding Obamacare would mean for his legacy — erasing his most significant domestic accomplishment — it would be irresponsible for him to bow to the GOP zealots’ demands.¶ The practical impact of acquiescing would be huge. Individuals who have been uninsured are anticipating access to adequate care. State governments, insurance companies and health-care providers have spent vast amounts of time and money preparing for the law to take effect. To suddenly say “never mind” would be unbelievably reckless.¶ The political implication of compromising with blackmailers would be an unthinkable surrender of presidential authority. The next time he says “I will do this” or “I will not do that,” why should Congress or the American people take him seriously? How could that possibly enhance Obama’s image on the world stage?¶ Obama has said he will not accept a budget deal that cripples Obamacare and will never negotiate on the debt ceiling. Even if the Republicans carry through with their threats — and this may happen — the president has no option but to stand his ground.¶ You don’t deal with bullies by making a deal to keep the peace. That only rewards and encourages them. You have to push back.¶ The thing is, this showdown is a sure political loser for the GOP — and smart Republicans know it. Boehner doesn’t want this fight and, in fact, should be grateful if Obama hangs tough and shows the crazies the limits of their power. Most Republicans in the Senate don’t want this fight. It’s doubtful that even a majority of House Republicans really, truly want this fight, no matter what they say publicly.¶ But irresponsible demagogues — I mean you, Sen. Ted Cruz (R-Tex.) — have whipped the GOP base into a frenzy of unrealistic expectations. House members who balk at jumping off the cliff risk being labeled “moderate,” which is the very worst thing you can call a Republican — and the most likely thing to shorten his or her political career.¶ The way to end this madness is by firmly saying no. If Boehner won’t do it, Obama must.

#### Loss of PC forces Obama to negotiate over debt ceiling preconditions – causes extended battle

Chait, 13

Jonathan Chait, commentator and writer for New York magazine. He was previously a senior editor at The New Republic and a former assistant editor of The American Prospect. He also writes a periodic column in the Los Angeles Times, New York Magazine, 4/26/13, <http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html>

"Obama's mistake wasn't the design of sequestration. It was finding himself in that negotiation to begin with. Earlier this year, Obama refused to negotiate over the debt ceiling, and Republicans caved and raised it. If he had done that in 2011, they would probably have done the same thing. Instead, Obama took their demand to reduce the deficit at face value and thought, Hey, I want to reduce the deficit, too — why don't we use this opportunity to strike a deal? As it happened, Republicans care way, way, way more about low taxes for the rich than low deficits, which made a morally acceptable deal, or even something within hailing distance of a morally acceptable deal, completely impossible. "By the point at which Obama figured this out in 2011, the debt ceiling loomed and it was too late to credibly insist he wouldn't negotiate over it. Sequestration was a pretty good way to escape fiscal calamity. The mistake was getting jacked up over the debt ceiling in the first place." http://nymag.com/daily/intelligencer/2013/04/democrats-lost-sequestration-two-years-ago.html[17] In 2011 though, the GOP had a little more political capital and the President considerably less so he may have had to negotiate. Overall, though the point is well taken: Obama was right not to negotiate this year and it's hard to argue that he-or the Democrats- should have agreed to this. However, time will tell and I'd like to be proved wrong. And even if they made a mistake, as Chait points out maybe they'll realize their blunder and do better next time.

### Link debate

#### CO legislation is unpopular in Congress—triggers fights against Obama—crowds out the debt ceiling

**-takes forever  
-committee delays  
-Congress defers to the president on security questions  
Brecher 12** – J.D. candidate @ University of Michigan  
(Aaron, "NOTE: Cyberattacks and the Covert Action Statute: Toward a Domestic Legal Framework for Offensive Cyberoperations" 111 Mich. L. Rev. 423)

Finally, while urging Congress to clarify the law governing cyberattacks may be advisable, one should consider the reality that such legislation is very difficult to pass. Congress is notoriously slow to act and legislation is difficult to push through the arduous process to enactment. There are numerous stages in the process at which a bill, even on an issue of significant importance, can be stalled or killed.170 For example, a bill may not be considered by its corresponding committee in either House, may be bogged down with amendments that cause it to lose support, or be subject to the Senate filibuster, among other “vetogates.”171 In the case of clarifying the appropriate procedures for conducting a cyberattack, there may be concern that such legislation, either by imposing substantive constraints or reporting requirements, will improperly burden the president on a national security issue of increasing importance. Congress as an institution tends to acquiesce to presidential prerogative in national security matters.172 Further, given that Congress has recently addressed cyberattacks in legislation, albeit in an unhelpfully vague provision,173 the possibility of expansive legislative clarification in the near future seems even more remote.

**Congress won’t get behind the issue because it is publicly contentious**

**Bradbury 11** (Steven G. Bradbury\*, Partner, Dechert, LLP. This speech was delivered as the Keynote Address at the Harvard National Security Journal Symposium, Cybersecurity: Law, Privacy, and Warfare in a Digital World, Mar 4. 2011, <http://harvardnsj.org/wp-content/uploads/2011/02/Vol.-2_Bradbury_Final1.pdf>)

Public Internet. What about trying to expand our intrusiondetection system out to the public Internet itself, to scour the vast streams of data that flow through the public peering points and across the gateways of the major backbone networks? Some have argued that that’s the only way to achieve sufficient protection for vital U.S. computer networks. But this is where I think I would draw the line. I don’t see an easy way to dispel the legitimate privacy interests of the millions of users of the public Internet. We can’t insist that they all consent to having their communications monitored, and I don’t think the public would support such a policy. Even if Congress in theory could enact some kind of sweeping legislation to impose such a regime — for example, by requiring that all ISPs be licensed and making EINSTEIN-like user agreements a condition of licensing — that’s not realistic. The Internet culture would rise up in revolt, and Congress won’t want to suppress the freedom and vibrancy of the Internet and risk squelching the golden goose of e-commerce.

#### Congressional restrictions kill PC- Obama’s first term proves other objectives outweigh SOP questions

**Ackerman and Hathaway 11** (Bruce and Oona, Sterling Professor of Law and Political Science, Yale Law School; Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School; LIMITED WAR AND THE CONSTITUTION: IRAQ AND THE CRISIS OF PRESIDENTIAL LEGALITY, 109 Mich. L. Rev. 447, lexis)

President Bush had now transformed a war authorized by Congress into a war authorized by the president alone. Gone was Saddam's "continuing" threat to the national security of the United States. Gone were the U.N. Security Council resolutions. In their place, the president presented Congress with a fait accompli - a document that committed the country to fight the war for three more years. n115 But would the new administration go along with this unconstitutional power play? Only months before, Senators Obama, Biden, and Clinton had endorsed a resolution demanding the submission of any new Iraq agreement to Congress for approval. n116 Now that they were president, vice president, and secretary of state, they could make their earlier resolution into reality.¶ As they pondered their next steps, developments in Iraq provided an ironic commentary. The new Iraqi constitution, like our own, required the chief executive to submit the bilateral agreements to the country's parliament for ratification. In stark contrast to President Bush, Prime Minister Maliki followed constitutional requirements, providing the Iraq assembly with an opportunity to deliberate upon and approve the bilateral agreement. n117 Did Iraq's embryonic democracy have an important constitutional lesson to teach the oldest democracy in the world? n118¶ [\*475] While campaigning for the presidency, Senators Obama and Clinton appeared to think so. But on January 20th, President Obama and Secretary of State Clinton silently acquiesced in their predecessor's usurpation of congressional authority. They made no public effort to reconcile this decision with their previous protests. Their silent acceptance of Bush's agreement with Iraq - effectively ratifying it - had obvious political advantages: when Obama announced his determination to withdraw combat troops by August 2010, Republicans were in no position to denounce the administration's plans as tantamount to surrender, for the pronouncement was consistent with the plan announced in the agreement negotiated by President Bush. n119¶ Congress joined in this act of collective amnesia - with politics, once again, serving as the obvious motivation. The Democrats in control of both houses had better things to do than embarrass their new president with constitutional objections to the ongoing military effort in Iraq. They were preparing themselves for the coming struggle over the stimulus package, health care reform, financial reform, and other high-priority initiatives. No one was prepared to fight for Congress's right to approve an agreement that was already in place and was serving as the basis of the country's war in Iraq.¶ Nor were minority Republicans inclined to act as the nation's constitutional conscience. This would not only involve a direct attack on Bush's earlier actions. It would (implicitly) suggest that President Obama had the constitutional prerogative to repudiate the Bush agreement and opt for a speedier pullout in Iraq - a policy few if any Republicans in Congress supported.¶ Political imperatives were now trumping the institutional logic of the separation of powers. n120 Both political parties had an interest in allowing President Obama to silently ratify President Bush's transformation of a limited war into an unlimited conflict. With no one contesting the matter, the media failed to note the odd disjunction posed by Iraq's turn to parliamentary participation and Washington's embrace of executive unilateralism.