## 2AC

### Imminence

#### --no stripping-- President and DOJ prevents stripping even on policies they oppose

Grove 12 [Tara Leigh,Assistant Professor, William and Mary Law School, The Article II Safeguards Of Federal Jurisdiction, Columbia Law Review March, 2012, L/N]

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

### T – Sig Strikes

#### --no link--The plan should also be interpreted as banning signature strikes- targeted killing should definitionally include signature strikes

Guardian 13 [Jan, translator at the International Monetary Fund, Resident Representative Office in Belarus, “TARGETED KILLINGS: A SUMMARY,” <http://acontrarioicl.com/2013/02/27/targeted-killings-a-summary/>]

Currently there is no legal definition of targeted killings in either international or domestic law.[1] ‘Targeted killing’ is rather a descriptive notion frequently used by international actors in order to refer to a specific action undertaken in respect to certain individuals.¶ Various scholars propose different definitions. Machon, for example, refers to ‘targeted killing’ as an “intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval,”[2] whereas Solis suggests that for there to be a targeted killing (i) there must be an armed conflict, either international or non-international in character; (ii) the victim must be specifically targeted; (iii) he must be beyond a reasonable possibility of arrest; (iv) the killing must be authorized by senior military commanders or the head of government; (v) and the target must be either a combatant or someone directly participating in the hostilities.[3] But whereas some scholars seek to use a human rights-based definition, [4] others propose those which do not entail the applicability of international humanitarian law. [5]¶ However, such definitions are incorrect for several reasons. First of all, the definition of a ‘targeted killing’ has to be broad enough as to cover a wide range of practices and flexible enough as to encompass situations within and outside the scope of an armed conflict, thus, being subject to the application of both international human rights law and international humanitarian law, as opposed to the definition provided by some scholars and even states themselves.[6] Secondly, one should bear in mind that defining an act as an instance of ‘targeted killing’ should not automatically render the illegality of such an act at stake.[7] Moreover, the definition also has to cover situations where such an act is carried out by other subjects of international law, rather than only by states.¶ Therefore, maintaining an element-based approach and synthesizing common characteristics of multiple definitions, it is more advisable to use the one employed by Alston and Melzer, which refers to targeted killings as a use of lethal force by a subject of international law (encompassing non-state actors) that is directed against an individually selected person who is not in custody and that is intentional (rather than negligent or reckless), premeditated (rather than merely voluntary), and deliberate (meaning that ‘the death of the targeted person [is] the actual aim of the operation, as opposed to deprivations of life which, although intentional and premeditated, remain the incidental result of an operation pursuing other aims).[8]

#### --the plan’s precedent would solve—judicial review would spillover to other national security issues

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

More broadly than any one particular issue or case, one of the most remarkable features of our political and legal system since 9/11 is how few of the central issues the courts have addressed on the merits — despite the novelty of many of the legal questions and the high stakes involved. Considerable uncertainty still remains about the proper scope of the Authorization for the Use of Military Force. No court has addressed the circumstances under which targeted killings are lawful. Many issues about the proper procedures to be used for trials before military commissions, and what charges can validly be brought there, remain unanswered. And as Clapper illustrates, courts have had nothing to say about the scope of various surveillance programs. Typically, divisions over judicial review in this area have a characteristic ideological orientation. Civil libertarians, hoping the courts will invalidate programs in the name of individual rights, press courts to reach the merits. More “conservative” national-security proponents, including the government, argue against a judicial role. It is no surprise that Clapper, and cases like it, generate 5-4 decisions that put the conventionally-labelled “conservative” Justices against the “liberal” ones. To those who resist judicial review, the fear is that once courts get into the business of resolving national-security issues on the merits, they are too likely to impose rights-constraints on otherwise effective national-security programs.

### 2AC – T-Restrictions

#### We meet-Due process rights are judicial restrictions on executive authority

Al-Aulaqi Motion to Dismiss Memo 2013 (PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS, files February 5, 2013)

Despite Defendants’ attempt to distinguish the habeas cases, Defs. Br. 12, claims alleging unlawful deprivation of life under the Fifth Amendment’s Due Process Clause are as textually committed to the courts as claims brought under the Suspension Clause. Both are fundamental judicial checks on executive authority. Cf. Boumediene v. Bush, 476 F.3d 981, 993 (D.C. Cir. 1997) (rejecting distinction between the Suspension Clause and Bill of Rights amendments because both are “restrictions on governmental power”), rev’d on other grounds by Boumediene, 553 U.S. 723.

#### C/I – Authority is what the president may do not what the president can do

Ellen Taylor 96, 21 Del. J. Corp. L. 870 (1996), Hein Online

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### C/I --- Restriction is limitation, NOT prohibition

CAC 12,COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case.the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### Their interpretation is flawed

#### A. Over limits-core cases revolve around regulation, not banning topic areas – their interp eliminates topic lit

#### B. Affirmative Ground- ban policy affs are dead against agent counterplans – err aff

#### ---Reasonability-competing interpretations incentivizes T debates instead of substance – the topic is already limited by areas and our aff is squarely in the lit

### 2AC – Special Forces CP

#### Perm – do the counterplan – “targeted killing” does not include Special Forces

Bachmann 13 (Sascha-Dominik, Associate Professor at the University of Bournemouth (UK), research focus on international legal subjects, “Targeted Killings: Contemporary Challenges, Risks and Opportunities”, http://jcsl.oxfordjournals.org/content/early/2013/05/31/jcsl.krt007.full)

An early example of ‘targeted killing’ in the history of armed conflict can be found in the military tactics applied mainly by snipers. Prominent and well-documented examples of sniper warfare can be found in the annals of the Eastern Front during World War II: German and Soviet forces used snipers to annihilate systematically the enemy’s mid-level military leadership: German losses to Soviet snipers were so severe during the battle for Stalingrad in autumn of 1942 that officers as well as non-commissioned officers had to adapt means of camouflage to blend in with their (enlisted) men and in order to avoid being targeted by enemy snipers.21 Operation ‘Neptune Spear’ as well as the alleged Israeli Mossad Operation to kill the Hamas official Mahmud al-Mabhuh in Dubai in 201122 involved the use of Special Forces on the ground, or intelligence operatives/assets respectively, constitute commando operations as well targeting operations in the wider sense. Such tactical capture and kill operations executed by Special Forces assets are not the focus of this short contribution: its focus is solely on targeted killing, as a means of warfare which is executed by using remotely piloted aircraft, UAVs or drones respectively, as weapons platform. Falling outside the scope of targeted killings discussed in this article is the continuing use of Improvised Explosive Devices (IEDs) in Iraq and Afghanistan by the Taliban and other affiliated groups. Targeted terrorism, involving the use of IEDs, suicide bombings or suicide attack squads as impressively shown in the 2011 Mumbai attacks, seem to constitute a hybrid form of unconventional warfare which combines elements of both, assassination and targeted killings in the widest sense. The scope of this article is on targeted killing as a means of warfare and hence does not warrant a further discussion of this form of attacks as a potential example for targeted killings. Targeted killing as a means of killing enemies of a state has been employed most frequently by the USA as part of its overall military strategy against Al-Qaeda and the Taliban.23 While the USA did not ‘invent’ this form of warfare it has taken the lead in advancing its development and overall design in respect of targeting processes, command and control as well as the use of increasingly sophisticated technology.24 The use of drones for executing kinetic, lethal, strikes against hostile and enemy targets has its tangible military benefits in terms of operational capabilities, readiness and its overall availability as a defensive as well as offensive form of warfare. Targeted killing by UCAS can be executed at very short notice and does not require the deployment of and the presence of substantial own forces in the theatre of operations. This availability and flexibility of using drones as a platform for the execution of targeted killings makes this form of warfare (without own casualties) so formidable when responding to present threats at an ad hoc basis. Consequently, both proliferation and expansion of the use of UCAS are increasing.25 Examples hereof are the present discussions in the UK to increase the availability of UAV systems for reconnaissance and combat, the RAF’s decision to relocate its UAV assets from the US to RAF Waddington near Lincoln and to establish a new Unmanned Air Systems Capability Development Centre (UASCDC) there. The overall capabilities of such airborne weapon platform systems has also found supporters among nations who were initially opposed to this form of warfare, such as Germany which for historical as well as political reasons has been known to be more reluctant to the use of force and to participate in combat operations in a more active role.26

#### Limiting only drones causes a shift to cruise missiles – causes worse blowback

Byman 13 (Daniel L. Byman Research Director, Saban Center for Middle East Policy¶ Senior Fellow, Foreign Policy, Saban Center for Middle East Policy “Why Drones Work: The Case for Washington's Weapon of Choice,” http://www.brookings.edu/research/articles/2013/06/17-drones-obama-weapon-choice-us-counterterrorism-byman)

But even the most unfavorable estimates of drone casualties reveal that the ratio of civilian to militant deaths—about one to three, according to the Bureau of Investigative Journalism—is lower than it would be for other forms of strikes. Bombings by F-16s or Tomahawk cruise missile salvos, for example, pack a much more deadly payload. In December 2009, the United States fired Tomahawks at a suspected terrorist training camp in Yemen, and over 30 people were killed in the blast, most of them women and children. At the time, the Yemeni regime refused to allow the use of drones, but had this not been the case, a drone’s real-time surveillance would probably have spotted the large number of women and children, and the attack would have been aborted. Even if the strike had gone forward for some reason, the drone’s far smaller warhead would have killed fewer innocents. Civilian deaths are tragic and pose political problems. But the data show that drones are more discriminate than other types of force.¶ FOREIGN FRIENDS¶ It is also telling that drones have earned the backing, albeit secret, of foreign governments. In order to maintain popular support, politicians in Pakistan and Yemen routinely rail against the U.S. drone campaign. In reality, however, the governments of both countries have supported it. During the Bush and Obama administrations, Pakistan has even periodically hosted U.S. drone facilities and has been told about strikes in advance. Pervez Musharraf, president of Pakistan until 2008, was not worried about the drone program’s negative publicity: “In Pakistan, things fall out of the sky all the time,” he reportedly remarked. Yemen’s former president, Ali Abdullah Saleh, also at times allowed drone strikes in his country and even covered for them by telling the public that they were conducted by the Yemeni air force. When the United States’ involvement was leaked in 2002, however, relations between the two countries soured. Still, Saleh later let the drone program resume in Yemen, and his replacement, Abdu Rabbu Mansour Hadi, has publicly praised drones, saying that “they pinpoint the target and have zero margin of error, if you know what target you’re aiming at.”¶ As officials in both Pakistan and Yemen realize, U.S. drone strikes help their governments by targeting common enemies. A memo released by the antisecrecy website WikiLeaks revealed that Pakistan’s army chief, Ashfaq Parvez kayani, privately asked U.S. military leaders in 2008 for “continuous Predator coverage” over antigovernment militants, and the journalist Mark Mazzetti has reported that the United States has conducted “goodwill kills” against Pakistani militants who tshreatened Pakistan far more than the United States. Thus, in private, Pakistan supports the drone program. As then Prime Minister Yousaf Raza Gilani told Anne Patterson, then the U.S. ambassador to Pakistan, in 2008, “We’ll protest [against the drone program] in the National Assembly and then ignore it.”¶ Still, Pakistan is reluctant to make its approval public. First of all, the country’s inability to fight terrorists on its own soil is a humiliation for Pakistan’s politically powerful armed forces and intelligence service. In addition, although drones kill some of the government’s enemies, they have also targeted pro-government groups that are hostile to the United States, such as the Haqqani network and the Taliban, which Pakistan has supported since its birth in the early 1990s. Even more important, the Pakistani public is vehemently opposed to U.S. drone strikes.¶ A 2012 poll found that 74 percent of Pakistanis viewed the United States as their enemy, likely in part because of the ongoing drone campaign. Similarly, in Yemen, as the scholar Gregory Johnsen has pointed out, drone strikes can win the enmity of entire tribes. This has led critics to argue that the drone program is shortsighted: that it kills today’s enemies but creates tomorrow’s in the process.¶ Such concerns are valid, but the level of local anger over drones is often lower than commonly portrayed. Many surveys of public opinion related to drones are conducted by anti-drone organizations, which results in biased samples. Other surveys exclude those who are unaware of the drone program and thus overstate the importance of those who are angered by it. In addition, many Pakistanis do not realize that the drones often target the very militants who are wreaking havoc on their country. And for most Pakistanis and Yemenis, the most important problems they struggle with are corruption, weak representative institutions, and poor economic growth; the drone program is only a small part of their overall anger, most of which is directed toward their own governments. A poll conducted in 2007, well before the drone campaign had expanded to its current scope, found that only 15 percent of Pakistanis had a favorable opinion of the United States. It is hard to imagine that alternatives to drone strikes, such as seal team raids or cruise missile strikes, would make the United States more popular.

#### Accountability for Special Forces is necessary

Ambinder 12 (Marc, former reporter for The Atlantic and National Journal, “How The Pentagon’s Top Killers Became (Unaccountable) Spies “, <http://www.wired.com/dangerroom/2012/02/jsoc-ambinder/>)

DR: What does that mean for holding JSOC accountable? This is an extraordinarily secretive military unit.

MA: There are a lot of buried caches in West Virginia and Virginia of JSOC documents. I only say that with some exaggeration. This is obviously a command that had to be secret when it was stood up in part because secrecy is the coin of realm when doing one-off special operations. The problem generally here is that by law, JSOC can’t really collect strategic intelligence or intelligence for its own sake, depending on where they are. In the war zone, in Iraq or Afghanistan, it’s different; they can collect and use intelligence there. But they also operate outside of designated war zones in North Africa, in South America, in Asia, and they use these intelligence collection techniques there as well. It’s under the rubric of what they call “Operational Preparation of the Environment.” Which is to say, any time there’s JSOC operation, you don’t want them to fly in blind, so you have to collect some intelligence. But in practice they really stretch that definition. Elements of JSOC run their own human intelligence sources. I didn’t put this in the book, but I had one former senior JSOC operator describing to me a very elaborate JSOC operation in Beirut where a dozen more human sources were recruited to steal a variety of documents, relating to international narcotics trafficking. Which sounds great, until you remember that it’s not law enforcement officers or the CIA doing it, but the U.S. military doing it. There are legal restrictions on what the CIA can do in terms of covert operations. There has to be a finding, the president has to notify at least the “Gang of Eight” [leaders of the intelligence oversight committees] in Congress. JSOC doesn’t have to do any of that. There is very little accountability for their actions. What’s weird is that many in congress who’d be very sensitive to CIA operations almost treat JSOC as an entity that doesn’t have to submit to oversight. It’s almost like this is the president’s private army, we’ll let the president do what he needs to do. As long as you don’t get in trouble, we’re not gonna ask too many questions. You don’t want the command to brief members of Congress before every operation. On other hand, regular briefings every three months might give some sense of the military intelligence collection that goes on. And when you collect intelligence, it’s not just satellites that’s listen to conversation. You’re making in a lot of cases very difficult, grey, moral choices like the CIA does all the time. There’s an argument to be made — incidentally, it’s one that Republican [Rep.] Mike Rogers, the head of the House intelligence committee agrees with — for more regular briefings from JSOC, to get a more granular sense of how JSOC uses and distributes the money it’s given for intelligence gathering. He understands that a lot of vital strategic intelligence isn’t being collected by CIA, it’s being collected by JSOC, in pursuit of legitimate objectives without oversight.

### 2AC – Constitution Amendment

#### Permutation do both

#### Normal means of a constitutional amendment is delay – the neg must defend normal means, its key to aff offense

Barr 4(Bob, Washington Times. http://www.washtimes.com/commentary/20040418-102137-7612r.htm)

In the American political system, the Constitution was meant to operate like people who freeze their credit cards in a block of ice. That is, when faced with supremely important and emotional decisions involving things like the censorship of unpopular ideas or the seizure of firearms, the Constitution makes us walk to the corner and take a time out. Specifically, we have to get a two-thirds supermajority in both chambers of Congress and then three-quarters of the states to agree. It is an amazingly onerous process. The last amendment to the Constitution — the 27th — which set limits on congressional pay, was initially proposed in the states' petitions to the first Constitutional Congress in the 1780s but only started to move in the 1990s. It took more than two centuries to finally earn a spot alongside free speech and the right not to self-incriminate.

#### Delay kills legitimacy of drone program – means no solvency for all our internal links

Bell 5/18/12 (Josh, Media Strategist, “Government Asks for Another Delay in Targeted Killing FOIA Lawsuit” <https://www.aclu.org/blog/national-security/government-asks-another-delay-targeted-killing-foia-lawsuit>)

We’ve just learned that the Obama administration has asked the court for another extension for filing briefs in the ACLU’s FOIA lawsuit seeking information about the government’s targeted killing program (see the government’s letter here, and the ACLU’s response opposing the request here). Responding to the news, ACLU Deputy Legal Director Jameel Jaffer said: “We are disappointed and frustrated with the administration's eleventh-hour request for more time to answer a Freedom of Information Act request it should have responded to months ago. The FOIA law was meant to guarantee not just access to information but timely access, and the administration's serial requests for delay are tantamount to a denial of this right. The administration's request for further delay is particularly remarkable because, over the last few weeks, several senior officials have given public speeches about the targeted killing program. The program is plainly not a secret. It should not take the administration months to acknowledge as much to the courts.” Our FOIA request, filed last October, asks for information relating about the targeted killings of three U.S. citizens in Yemen: Anwar al-Awlaki, his 16-year-old son Abdulrahman al-Awlaki, and Samir Khan. The targeted killing program goes beyond the law by claiming unprecedented authority for the executive branch. Releasing information about how the program works is the first step in the process of bringing it in line with the Constitution.

#### Only the plan solves operative legal effect, the counterplan is only symbolic

Strauss-prof law Chicago-01 114 Harv. L. Rev. 1457

One final implication is the most practical of all. If amendments are in fact a sidelight, then it will usually be a mistake for people concerned about an issue to try to address it by amending the Constitution. Their resources are generally better spent on legislation, litigation, or private-sector activities. It is true that the effort to obtain a constitutional amendment may serve very effectively as a rallying point for political activity. A constitutional amendment may be an especially powerful symbol, and it may be worthwhile for a group to seek an amendment for just that reason. But in this respect constitutional amendments are comparable to congressional resolutions, presidential proclamations, or declarations of national holidays. If they bring about change, they do so because of their symbolic value, not because of their operative legal effect. The claim that constitutional amendments under Article V are not a principal means of constitutional change is a claim about the relationship between supermajoritarian amendments and fundamental, constitutionayl change. It should not be confused with the very different claim that judicial decisions cannot make significant changes without help from Congress or the President; n25 and it certainly should not [\*1468] be confused with a global skepticism about the efficacy of political activity generally. The point is that changes of constitutional magnitude - changes in the small-"c" constitution - are not brought about by discrete, supermajoritarian political acts like Article V amendments. It may also be true that such fundamental change is always the product of an evolutionary process and cannot be brought about by any discrete political act - by a single statute, judicial decision, or executive action, or (at the state level) by a constitutional amendment, whether adopted by majoritarian referendum or by some other means. What is true of Article V amendments may be equally true of these other acts: either they will ratify (while possibly contributing to) changes that have already taken place, or they will be ineffective until society catches up with the aspirations of the statute or decision. Alternatively, it may be that majoritarian acts (or judicial decisions), precisely because they do not require that the ground be prepared so thoroughly, can force the pace of change in a way that supermajoritarian acts cannot. A coalition sufficient to enact legislation might be assembled - or a judicial decision rendered - at a point when a society for the most part has not changed, but the legislation, once enacted (or the decision, once made), might be an important factor in bringing about more comprehensive change. The difference between majoritarian legislation and a supermajoritarian constitutional amendment is that the latter is far more likely to occur only after the change has, for all practical purposes, already taken place.

### 2AC – McCutcheon Court Politics

#### No link – the aff happens in the D.C. Circuit

Jaffer, Director-ACLU Center for Democracy, 13 (Jameel Jaffer, Director of the ACLU's Center for Democracy, “Judicial Review of Targeted Killings,” 126 Harv. L. Rev. F. 185 (2013), http://www.harvardlawreview.org/issues/126/april13/forum\_1002.php)

This is why the establishment of a specialized court would more likely institutionalize the existing program, with its elision of the imminence requirement, than narrow it. Second, judicial engagement with the targeted killing program does not actually require the establishment of a new court. In a case pending before Judge Rosemary Collyer of the District Court for the District of Columbia, the ACLU and the Center for Constitutional Rights represent the estates of the three U.S. citizens whom the CIA and JSOC killed in Yemen in 2011. The complaint, brought under Bivens v. Six Unknown Named Agents, seeks to hold senior executive officials liable for conduct that allegedly violated the Fourth and Fifth Amendments. It asks the court to articulate the limits of the government’s legal authority and to assess whether those limits were honored. In other words, the complaint asks the court to conduct the kind of review that many now seem to agree that courts should conduct. This kind of review—ex post review in the context of a Bivens action—could clarify the relevant legal framework in the same way that review by a specialized court could. But it also has many advantages over the kind of review that would likely take place in a specialized court. In a Bivens action, the proceedings are adversarial rather than ex parte, increasing their procedural legitimacy and improving their substantive accuracy. Hearings are open to the public, at least presumptively. The court can focus on events that have already transpired rather than events that might or might not transpire in the future. And a Bivens action can also provide a kind of accountability that could not be supplied by a specialized court reviewing contemplated strikes ex ante: redress for family members of people killed unlawfully, and civil liability for officials whose conduct in approving or carrying out the strike violated the Constitution. (Of course, in one profound sense a Bivens action will always come too late, because the strike alleged to be unlawful will already have been carried out. Again, though, if “imminence” is a requirement, ex ante judicial review is infeasible by definition.) Another advantage of the Bivens model is that the courts are already familiar with it. The courts quite commonly adjudicate wrongful death claims and “survival” claims brought by family members of individuals killed by law enforcement agents. In the national security context, federal courts are now accustomed to considering habeas petitions filed by individuals detained at Guantánamo. They opine on the scope of the government’s legal authority and they assess the sufficiency of the government’s evidence — the same tasks they would perform in the context of suits challenging the lawfulness of targeted killings. While Congress could of course affirm or strengthen the courts’ authority to review the lawfulness of targeted killings if it chose to do so, or legislatively narrow some of the judicially created doctrines that have precluded courts from reaching the merits in some Bivens suits, more than 40 years of Supreme Court precedent since Bivens makes clear that federal courts have not only the authority to hear after-the-fact claims brought by individuals whose constitutional rights have been infringed but also the obligation to do so.

#### Means the court won’t have to spend capital – lower court decisions shield them

GEWIRTZMAN-Law prof NYU-12

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1646&context=aulr>

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B. Percolation’s Constitutional Benefits Percolation’s value remains highly contested, even though very little is actually known about how percolation actually operates within constitutional law or the extent to which the interpretive system benefits from prolonged periods of circuit court exploration and experimentation.134 Percolation’s fans, including several prominent jurists,135 have sung its praises despite the potential for splits and differences among the circuits. Among other things, a robust percolation process allows the Court to use its limited monitoring resources more efficiently,136 minimizes the Court’s expenditures of political capital,137 incentivizes lower court judges to take their job more seriously,138 and lets the Court measure support for a potential ruling among lower court judges, who are ultimately charged with applying the rule and whose allegiance is necessary for the Court to enforce its will.139 Percolation may also result in “better” law by removing the Supreme Court from the equation entirely. There are risks every time the Court decides to intervene in a dispute, including the risk that the Court will magnify and nationalize a localized judicial mistake.140 Indeed, intervention by the high court, even when lower federal courts are divided, can create more problems than it solves due to the potential for division, inconsistency, and compromise in a decision issued by a closely divided, multi-member Court.141 Like the precedent model, percolation claims legitimacy by serving a range of constitutional values, including experimentalism, intra- and inter- branch deliberation, pluralism, and judicial restraint.142

#### Gerrymandering structurally pulls the GOP to the right.

Isenstadt 2013

Alex, Politico, GOP could pay price for gerrymandering, 7-1-13, http://www.politico.com/story/2013/07/gop-could-pay-price-for-gerrymandering-93597.html

No one disputes Republicans used the once-a-decade redistricting process to lock in their House majority — almost certainly through 2014 and possibly until the next round of line-drawing in 2020. But the party could pay a steep price for that dominance. Some top GOP strategists and candidates warn that the ruby red districts the party drew itself into are pushing House Republicans further to the right — narrowing the party’s appeal at a time when some GOP leaders say its future rests on the opposite happening. If you’re looking for a root cause of the recurring drama within the House Republican Conference — from the surprise meltdown on the farm bill to the looming showdown over immigration reform — the increasingly conservative makeup of those districts is a good place to start. The shellacking Republicans took in 2012 has triggered months of consternation that the party is too white, too conservative and too male. But tell that to the increasing number of House Republicans who are safely ensconced with nary a worry that a Democrat might unseat them in the next election. The bigger threat to them is a primary challenge from the right bankrolled by the Club for Growth or another deep-pocketed outside group angry they went soft on a key vote. “It’s obviously easier for a House member to focus on their district. They’re in cycle every day of the year, always on the hot seat, and there’s always a challenger around the corner,” said Matt Schlapp, who served as political director in the George W. Bush White House. Still, Schlapp added, “You want to be sensitive to the district, but you also need to be cognizant of how your party is going to be successful over time.” The clash of priorities between the House rank and file and party brass has been on display for months. In December, House Speaker John Boehner had to pull his Plan B legislation to avert the fiscal cliff before it came to the House floor because it didn’t have enough Republican votes. Last month, 62 Republicans went against Boehner to help sink the farm bill — a measure that typically passes with overwhelming bipartisan support. And most House Republicans appear dead set against an immigration reform bill that cleared the Senate last week with 68 votes — ignoring warnings of GOP leaders that the party is flirting with demographic disaster if they dig in. Gerrymandering and partisanship, of course, aren’t new phenomena in the House. But the post-2010 redistricting process driven by GOP-controlled state legislatures — Republicans wielded line-drawing power in nearly five times as many districts as Democrats — produced significantly more districts that are overwhelmingly conservative. Of the 234 House Republicans, just four now represent districts that favor Democrats, according to data compiled by The Cook Political Report. That’s down from the 22 Republicans who resided in Democratic-friendly seats following the 2010 midterms, prior to the line-drawing. They’re also serving districts that are increasingly white. After redistricting and the 2012 election, according to The Cook Political Report, the average Republican congressional district went from 73 percent white to 75 percent white. And even as Hispanics have emerged as America’s fastest-growing demographic group, only about one-tenth of Republicans represent districts where the Latino population is 25 percent or higher. For Democrats, the GOP conundrum offers a glimmer of hope, with liberal groups trying to tap into the weakness of the party’s brand. House Majority PAC, a prominent Democratic outside group, recently released a Web ad highlighting some of the more silly statements that have come out of the House GOP’s ranks — the vast majority of them from members who occupy overwhelmingly conservative districts. New York Rep. Steve Israel, chairman of the Democratic Congressional Campaign Committee, argued that Republicans in moderate suburban and exurban areas will find themselves under increasing pressure in the months leading up to the midterms. “The problem for many Republicans in these specific districts is that if they’re less partisan, they face a primary from the right. If they protect themselves from a primary by being more partisan, they’re in trouble in the general election,” Israel said. “They’re getting squeezed. We’re going to make sure that hole is very small.”

#### The Supreme Court has statistically ruled against Obama more than any other president

McLaughlin, Washington Times, 6/26 (Seth, “Obama administration has lost two-thirds of Supreme Court cases”, http://www.washingtontimes.com/news/2013/jun/26/obama-administration-lost-two-thirds-of-cases-duri/?page=all)

President Obama celebrated the Supreme Court’s decisions Wednesday on gay marriage, but overall it has been a rocky term before the court for his administration, winning just more than a third of the cases in which it was involved. Lawyers said the government traditionally averages about a 70 percent winning percentage before the high court. Its advantages are so great that the Justice Department’s chief Supreme Court attorney, the solicitor general, is dubbed the “10th Justice.” But during the 2012-13 term, which began in October and ended Wednesday, the court rejected Mr. Obama’s arguments on property rights, affirmative action, voting rights and other issues MARKED. “Despite some notable victories, the Obama administration has had an unusually poor batting average at the high court,” said Adam Winkler, a constitutional law professor at UCLA. “Like last year, the Obama administration lost more cases than it won.” By Mr. Winkler’s count, the Obama administration has won 39 percent of the cases in which it has been a party in the litigation, and won 50 percent of the cases in which the government filed a “friend of the court” brief backing one side or the other. Mr. Winkler said a good portion of the administration’s poor batting average can be traced to ideological differences between the Obama administration and the five conservative-leaning Supreme Court justices. Indeed, the administration backed the losing argument in 11 cases that were decided 5-4, and one case that was decided 5-3. “What arguments can you make to a court that is determined to overturn the Voting Rights Act?” Mr. Winkler said. “The court is hostile to the administration’s arguments and the administration is not presenting the best arguments. So there is lot of blame to go around.” Still, not all of the cases were ideological battles. The Obama administration was on the losing end of several 9-0 decisions, including last year when the court held that churches have the right to make employment decisions free from government interference over discrimination laws, and said an Idaho couple could challenge the Environmental Protection Agency over government claims that they could not build a home on private property that was deemed a protected wetland. The nine justices also agreed this month to clear the way for California raisin growers to challenge the constitutionality of a Depression-era farming law that makes them keep part of their annual crop off the market. The losses continued to pile up for Mr. Obama this week after the court went against the wishes of the White House in cases that involved affirmative action in Texas, private property rights in Florida and a challenge to the Voting Rights Act of 1965. Ilya Somin, a constitutional law professor at George Mason University, said it is striking to take into account the number of times the Obama administration has been on the losing end of unanimous decisions. “When the administration loses significant cases in unanimous decisions and cannot even hold the votes of its own appointees — Justices Sonia Sotomayor and Elena Kagan — it is an indication that they adopted such an extreme position on the scope of federal power that even generally sympathetic judges could not even support it,” said Mr. Somin, adding that presidents from both parties have a tendency to make sweeping claims of federal power. “This is actually something that George W. Bush and Obama have in common.” The president scored at least a partial victory Wednesday in perhaps the biggest cases of the term when the court invalidated the 1996 Defense of Marriage Act, which defines marriage for the purpose of federal law as a legal union between one man and one woman. The court also ruled that the supporters of California’s Proposition 8, the ban on gay marriage that voters passed by referendum in 2008, did not have the standing to argue the case in court. Relaying Mr. Obama’s reaction, White House spokesman Jay Carney said the president described the DOMA ruling as “historic” and the Proposition 8 ruling as a “tremendous victory.” The rulings, though, were not complete victories for Mr. Obama’s stances. The court did not decide whether same-sex marriage is a constitutional right or address whether the California law is unconstitutional. “They made an argument in the Prop 8 case; it was rejected,” Mr. Winkler said. “They made an argument in the DOMA case; it was rejected. So they are happy with the results of today’s cases, but their arguments were not accepted by the court.”

### 2AC – State Secrets

#### N/U – state secrets privilege has already been reduced – Jewel v NSA

DailyKos 13 (“State Secrets, Slightly Rolled Back”, <http://www.dailykos.com/story/2013/07/09/1222315/-State-Secrets-Slightly-Rolled-Back>)

In 2012, back in district court, the government moved to dismiss, for sovereign immunity, and on State Secrets grounds. In Jewel v. NSA, under the Ninth Circuit, a frequently cited opinion is the Ninth Circuit Mohamed v Jeppesen Dataplan. In 2002, Binyam Mohamed was flown to a secret prison in Morocco. While there, he got regular slicings of his penis, by a scalpel, among other treatment. In 2010, the Ninth Circuit said he had no judicial redress for this. Even the most fundamental issues of justice cannot be heard, in the United States, if state secrets are at stake. It was an extreme ruling in American jurisprudence. In December 2005, following press revelations, President George W. Bush held a press conference to defend the NSA spying. He chose to acknowledge details of the spying program. In June 2013, following press revelations, President Barack Obama held a press conference to defend the NSA spying. He chose to acknowledge details of the spying program. No President has ever held a press conference to defend the slicing of Binyam Mohammed's penis, or to acknowledge details about it. This makes a difference in our current legal system. And such are the legal and political issues of our day. The district court has released an opinion in Jewel v. NSA. In this case, State Secrets assertions have been slightly rolled back. There are two styles of State Secrets. Reynolds. A standard about denying specific evidence in the case. The state secrets privilege is a common law privilege that permits the government to bar the disclosure of information if “there is a reasonable danger” that disclosure will “expose military matters which, in the interest of national security, should not be divulged.” United States v. Reynolds, 345 U.S. 1, 10 (1953). Opinion Totten. If the government has done something especially embarrassing and illegal, the whole case can be barred from proceeding. Alternatively, the state secrets privilege may be invoked to bar litigation of the matter in its entirety where “the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential, and respecting which it will not allow the confidence to be violated.” Totten v. United States, 92 U.S. 105, 107 (1875). Where the very subject matter of the lawsuit is a matter of state secret, the action must be dismissed without reaching the question of evidence. This opinion rolls back from the extreme version of a states secrets bar on the whole lawsuit. Judgments about state secrets are more balanced and considered. In determining whether the privilege attaches, the Court may consider a party’s need for access to the allegedly privileged materials. See Reynolds, 345 U.S. 19 at 11. Lastly, the “ultimate question to be resolved is how the matter should proceed in light of the successful privilege claim.” Because the New York Times and Guardian revelations have made the government publicly defend the program, the case as a whole can proceed. Totten does not apply. Given the multiple public disclosures of information regarding the surveillance program, the Court does not find that the very subject matter of the suits constitutes a state secret. In other words, the government’s many attempts to assuage citizens’ fears that they have not been surveilled now doom the government’s assertion that the very subject matter of this litigation, the existence of a warrantless surveillance program, is barred by the state secrets privilege. Government ability to deny specific evidence will still exist. Reynolds is still in play. However, here, the Court finds there would be significant evidence that would be properly excluded should the case proceed. The case thus becomes a matter of the amount of evidence that can be disclosed.

## 1AR

### Allied Coop

#### And, Nuclear terrorism attacks escalate and cause extinction. [yellow wasn’t in 1ac]

**Morgan, Hankuk University of Foreign Studies, 2009**

(Dennis, World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race Futures, Volume 41, Issue 10, December, ldg)

In a remarkable website on nuclear war, Carol Moore asks the question “Is Nuclear War Inevitable??” In Section , Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian “dead hand” system, “where regional nuclear commanders would be given full powers should Moscow be destroyed,” it is likely that any attack would be blamed on the United States” Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal “Samson option” against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even “anti-Semitic” European cities In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, taking a savage toll upon the environment and fragile ecosphere as well. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or “lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the “use them or lose them” strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to “win” the war. In other words, once Pandora's Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, “everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors” In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In “Scenarios,” Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or non-nuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons

### T

#### Yeah not nearly enough time – XO solves all ban affs, functional limits check all the stupid shit he says. They’re a race to the bottom.

#### ---Judical restrictions on war powers include constitutional rights protections

Steele 76 (Sr. Dist. Judge Steel, Kovach v. Middendorf 424 F.Supp. 72, 76 -77 (D.C.Del. 1976)), from a 1976 case from a federal trial court in Delaware)

Defendants argue that in both its two year and four year aspects this case presents a political and not a judicial question within the constitutional power of the Court to decide. Defendants point out that Congress alone has the power under the Constitution “(T)o provide and maintain a Navy”, Art. I, s 8, Cl. 13 and “(T)o make \*77 Rules for the Government and Regulation of the . . . naval Forces”. Art. I, s 8, Cl. 14. Defendants argue that the Constitution has placed the power exclusively in Congress to legislate and in the President to execute in all areas relating to the conduct of the Navy, and that decisional responsibilities in those areas are beyond the constitutional limits of judicial power. Defendants rely primarily upon Orloff v. Willoughby, 345 U.S. 83, 93-94, 73 S.Ct. 534, 97 L.Ed. 842 (1953) and Gilligan v. Morgan, 413 U.S. 1, 93 S.Ct. 2440, 37 L.Ed.2d 407 (1973) to support this view. Neither of these cases nor the others referred to by plaintiffdiscuss the issue whether courts, under the power constitutionally conferred upon them, may impose restrictions upon legislative or executive decisions made in the exercise of their war powers if those decisions infringe upon constitutionally protected rights. That courts have the power to do so is settled. Kennedy v. Mendoza-Martinez, 372 U.S. 144, 164-165, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). See United States v. MacIntosh, 283 U.S. 605, 622, 51 S.Ct. 570, 75 L.Ed. 1302 (1931)

#### ---Constitutional rights are restrictions

Boumediene Appellete Brief 2005 (Boumediene v. Bush 476 F.3d 981, 993, 375 U.S.App.D.C. 48, 60 (C.A.D.C.,2007)- Appellate brief)

\*993 \*\*60 As against this line of authority, the dissent offers the distinction that the Suspension Clause is a limitation on congressional power rather than a constitutional right. But this is no distinction at all. Constitutional rights are rights against the government and, as such, are restrictions on governmental power. See H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 534, 69 S.Ct. 657, 93 L.Ed. 865 (1949) (“Even the Bill of Rights amendments were framed only as a limitation upon the powers of Congress.”). FN12 Consider the First Amendment. (In contrasting the Suspension Clause with provisions in the Bill of Rights, see Dissent at 995-96, the dissent is careful to ignore the First Amendment.) Like the Suspension Clause, the First Amendment is framed as a limitation on Congress: “Congress shall make no law ....” Yet no one would deny that the First Amendment protects the rights to free speech and religion and assembly.

#### Authority includes ability to act without judicial review

John C. Eastman 6, Prof of Law at Chapman University, PhD in Government from the Claremont Graduate University, served as the Director of Congressional & Public Affairs at the United States Commission on Civil Rights during the Reagan administration, “Be Very Wary of Restricting President's Power,” Feb 21 2006, http://www.claremont.org/publications/pubid.467/pub\_detail.asp]

Prof. Epstein challenges the president's claim of inherent power by noting that the word "power" does not appear in the Commander in Chief clause, but the word "command," fairly implied in the noun "Commander," is a more-than-adequate substitute for "power." Was it really necessary for the drafters of the Constitution to say that the president shall have the power to command? Moreover, Prof. Epstein ignores completely the first clause of Article II -- the Vesting clause, which provides quite clearly that "The executive Power shall be vested in a President." The relevant inquiry is whether those who ratified the Constitution understood these powers to include interception of enemy communications in time of war without the permission of a judge, and on this there is really no doubt; they clearly did, which means that Congress cannot restrict the president's authority by mere statute.¶ Prof. Epstein's own description of the Commander in Chief clause recognizes this. One of the "critical functions" performed by the clause, he notes, is that "Congress cannot circumvent the president's position as commander in chief by assigning any of his responsibilities to anyone else." Yet FISA does precisely that, assigning to the FISA court a core command authority, namely, the ability to authorize interception of enemy communications. This authority has been exercised by every wartime president since George Washington.

### CP

#### Most recent amendment took 200 years to approve.

**Hanlon, 2k** (Michael C, J.D., University of Virginia, 2000. 16 J. L. & Politics 663. Lexis)

What makes the Twenty-seventh Amendment special is not its language. Rather, the amendment is unique in that, unlike the other amendments to the Constitution, the Congressional Pay Amendment took longer than the previous record of four years, from the time of its passage by Congress, to gain ratification by three-fourths of the states. 3 In fact, this most recent amendment to the Constitution took more than 202 years to achieve approval by the requisite number of states. 4 Congress proposed what is now the Twenty-seventh Amendment on September 25, 1789, as part of a package of twelve proposed amendments. 5 Ten of these proposed amendments were ratified by 1791, and became our Bill of Rights. The other two proposals, including the congressional pay measure, languished in the ratification pipeline for the next two centuries.

#### In the context of political strategies, the drawn out nature of the amendment process is a germane consideration. Fiating out of this undermines real world debates over Judicial decisions and constitutional amendments. This undermines topic specific education and fairness by excluding crucial affirmative offense from the debate.

Baker-Director Con Law Center at Drake-00 10 Widener J. Pub. L. 1

Constitution-amending certainly is no sport for the short-winded. According to the account of one of the historic champions of the Nineteenth Amendment, the effort to guarantee women the franchise took 72 years and included 56 state-referenda campaigns, 480 state-legislative campaigns, 47 state- constitutional conventions, 277 state-party conventions, 30 national-party conventions, and 19 campaigns before 19 successive Congresses--just to get the measure before the states for ratification. n99 Most issues of public policy are too evanescent or too closely contested to achieve and sustain the necessary supermajorities at the national and state levels. Such issues neither merit nor permit constitutional amendment. That is how most issues in our constitutional democracy properly are left to ordinary politics--to simple and temporary majorities of the legislative branches to determine and to change through the ordinary legislative process. Democracy, after all, "is a method of finding proximate solutions for insoluble problems." n100 We must keep trying to do right by ourselves and others.

### Ssd

#### CIPA solves any risk of the impact which is about leaks – this evidence is comparative

Benjamin McKelvey 11, J.D., Vanderbilt University Law School, November 2011, “NOTE: Due Process Rights and the Targeted Killing of Suspected Terrorists: The Unconstitutional Scope of Executive Killing Power,” Vanderbilt Journal of Transnational Law, 44 Vand. J. Transnat'l L. 1353

During discovery, security-cleared defendants and defense counsel are allowed to review classified evidence.231 Also, defendants in possession of classified evidence for use at trial are allowed to utilize this evidence using a similar procedure that protects against public release.232 Legislation modeled on CIPA and applied to the context of targeted killing would allow a case like Aulaqi to proceed in federal court. Rather than dismiss the entire suit out of deference to the state secrets privilege, a CIPA-style procedure would allow a court and the defendant to review the government charges without endangering sensitive intelligence sources. If the government reveals compelling evidence that confirms the specific and imminent nature of a threat from a suspected terrorist, as it claimed in Aulaqi, then a court can at least review this evidence before granting summary judgment.