# 1NC

### 1

#### The aff is not topical --- introducing armed forces only refers to human troops, not weapons systems such as nuclear weapons --- prefer our interpretation because it’s based on textual analysis, legislative history, and intent of the WPR

Lorber 13 – Eric Lorber, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science. January 2013, "Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?" University of Pennsylvania Journal of Contsitutional Law, 15 U. Pa. J. Const. L. 961, lexis nexis

As is **evident from a** textual analysis, n177 an examination of the legislative history, n178 and **the broad** policy purposes behind the creation of the Act, n179 [\*990] "armed forces" refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," the clear implication is that **only members of the armed forces count for the purposes of the definition under the WPR.** Though not dispositive, **the term "member" connotes a human individual who is part of an organization.** n181 Thus, it appears that the term "armed forces" means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that **expression of one thing (i.e., members) implies the exclusion of others (**such as non-members **constituting armed forces)**. n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative.¶ **An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces**. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [\*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, suggesting that Congress considered the term to apply only to soldiers in the armed forces. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that **Congress conceptualized "armed forces" to mean U.S. combat troops.**¶ **The broad purpose of the Resolution aimed to prevent the large-scale but unauthorized deployments of U.S. troops into hostilities**. n187 While examining the broad purpose of a legislative act is increasingly relied upon only after examining the text and legislative history, here it provides further support for those two alternate interpretive sources. n188 As one scholar has noted, "the War Powers Resolution, for example, is concerned with sending U.S. troops into harm's way." n189 The historical context of the War Powers Resolution is also important in determining its broad purpose; as the resolutions submitted during the Vietnam War and in the lead-up to the passage of the WPR suggest, Congress was concerned about its ability to effectively regulate the President's deployments of large numbers of U.S. troops to Southeast Asia, n190 as well as prevent the President from authorizing troop incursions into countries in that region. n191

#### Vote negative for predictable limits --- nuclear weapons is a whole topic on its own --- requires research into a whole separate literature base --- undermines preparedness for all debates.

### 2

#### There will be a narrow ruling on Bond now but conservative advocates are pushing.

Donnelly 11-5-13

Tom, Constitutional Accountability Center’s Message Director and Counsel and former Climenko Fellow and Lecturer on Law at Harvard Law School, Constitutional law as soap opera: Bond v. United States http://blog.constitutioncenter.org/2013/11/constitutional-law-as-soap-opera-bond-v-united-states/

Colorful facts aside, in the conservatives’ rendering of Bond, the very fabric of the Republic is at stake. George Will has called it the Term’s “most momentous case,” arguing that the Roberts Court must step in to check a “government run amok.” The Heritage Foundation warns that the case challenges a key lesson that “Americans are taught from a young age” – that “our government is a government of limited powers.” And Ted Cruz frames the legal issue as follows: whether the “Treaty Clause is a trump card that defeats all of the remaining structural limitations on the federal government.” A scary proposition, indeed . . . But will the Court even get this far? Ms. Bond’s primary argument is that the chemical weapons treaty and its implementing statute should be read to exclude her conduct – a question of statutory interpretation and hardly the stuff of Tenthers’ dreams. If the Court decides the case on those grounds, Ms. Bond could very well prevail, while the ruling itself could be rather minor. The main reason that this case may prove “momentous” is that leading conservative academics, advocates, and legal groups are pushing the Roberts Court to turn this case from an interesting-but-far-from-historic statutory case into a monumental constitutional one. While the Court denied a request from Professor Nicholas Rosenkranz and the Cato Institute – the main proponents of the treaty-power-as-dangerous-trump-card theory – for time to press their argument during tomorrow’s hearing, the Court generally rejects such requests from amicus curiae, so we can’t read too much into that. And, following other recent cases addressing the scope of federal power – including, most prominently, the Affordable Care Act case – there is every reason to believe that the Court may wade into the important constitutional issues lurking just beneath the surface in Bond. The primary constitutional issue in the case involves the scope of the federal government’s treaty power – a power that was of central interest to George Washington and his Founding-era colleagues – and, in turn, Congress’s power under the Necessary and Proper Clause to pass laws to implement validly enacted treaties. However, in Bond, conservative legal groups have proceeded to turn the Constitution’s text and history on their head, arguing that the Constitution itself requires a ruling that sharply limits federal power and overturns nearly a century’s worth of precedent – dating back to a 1920 ruling by Justice Oliver Wendell Holmes. Indeed, Bond is just one of several cases this Term featuring an aggressive call by conservatives to overturn well-established precedent. Furthermore, a broad ruling by the Court’s conservatives could significantly limit Congress’s power to enact laws under the Necessary and Proper Clause, generally, opening up new challenges to various government programs and regulations. In the past, the right’s constitutional arguments may have gone unanswered. However, increasingly, leading progressive academics and practitioners have begun to stake their own claim to the Constitution’s text and history – the tired battle between the progressive community’s “living Constitution” and Justice Scalia’s “dead Constitution” replaced by new battles between the left and the right over the Constitution’s meaning. Bond is a clear example of this new dynamic. Rather than ceding the Constitution’s text and history to conservative legal groups, progressives have fought back in Bond with originalist arguments of their own in briefs authored by some of the progressive community’s leading lights, including Walter Dellinger, Marty Lederman, and Oona Hathaway. These briefs – as well as one filed by my organization, Constitutional Accountability Center – remind the Court that, in ditching the dysfunctional Articles of Confederation, the Founders sought to create a strong national government with the power to negotiate treaties with foreign nations, pass laws to fulfill those treaty obligations, and, in turn, enhance the young nation’s international reputation. With progressives fully engaged in the battle over the Constitution’s meaning, the question facing the Court in important constitutional cases is now less about whether the Constitution’s text and history should prevail and more about which side’s version rings truer.

#### Aff is a massive change – kills court capital and will be ignored by the President.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties are key to cooperation on every issue – solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 3

#### Court rulings on war powers spillover---that decks the ability to respond to regional wars, prolif and terrorism

Blomquist 10 Robert, Professor of Law, Valparaiso University School of Law, J.D., Cornell Law School

“The Jurisprudence of American National Security Presiprudence” Valparaiso University Law Review 44 (33) 881-894 http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1063&context=vulr

Supreme Court Justices—along with legal advocates—need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks.7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court’s interpretation of national security law-making and decision-making by the President are several pertinent points. First, “Hart and Sacks’ intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together.”8 By implication, therefore, the Court should be mindful of the unique constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish “institutionalized[] procedures for the settlement of questions of group concern”9 and regularize “different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions”10 because “every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others—e.g., courts for ‘judicial’ decisions and legislatures for ‘legislative’ decisions”11 and, extending their conceptualization, an executive for “executive” decisions.12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies.13 While all four are part of “legal arrangements in an organized society,”14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats.16 The Justices should also consult Professor Robert S. Summers’s masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. 17 The most important points that Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role"18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unify of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit."19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision- making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders.20 Third, according to Summers, "a conception of the overall form of the whole functional (legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit."21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS—unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution—may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation.22 [\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations. (1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27 (2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28 (3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30 (4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32 (5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34 [\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39 Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

#### Fourth generation threats is the most accurate description of modern war- escalation is likely if uncontained- executive authority is key to counter these threats

**Li, Georgetown Journal of law public policy, 2009**

(Zheyoa, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare”, 7 Geo. J.L. & Pub. Pol'y 373, lexis, ldg)

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons. 122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945. 123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends. 124It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modern trend toward a new phase of warfighting, the authors argued that:[\*395] In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new theory of war powers. As evidenced by Part III, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise.

#### Presidents will never comply with a direct court refutation of war time policy-he’ll always use extenuating justifications-this wrecks the Court’s institutional strength

**Pushaw, Pepperdine law professor, 2004**

(Robert, Defending Deference: A Response to Professors Epstein and Wells,” Missouri Law Review, lexis, ldg)

Civil libertarians have urged the Court to exercise the same sort of judicial review over war powers as it does in purely domestic cases—i.e., independently interpreting and applying the law of the Constitution, despite the contrary view of the political branches and regardless of the political repercussions.54 This proposed solution ignores the institutional differences, embedded in the Constitution, that have always led federal judges to review warmaking under special standards. Most obviously, the President can act with a speed, decisiveness, and access to information (often highly confidential) that cannot be matched by Congress, which must garner a majority of hundreds of legislators representing multiple interests.55 Moreover, the judiciary by design acts far more slowly than either political branch. A court must wait for parties to initiate a suit, oversee the litigation process, and render a deliberative judgment that applies the law to the pertinent facts.56 Hence, by the time federal judges (particularly those on the Supreme Court) decide a case, the action taken by the executive is several years old. Sometimes, this delay is long enough that the crisis has passed and the Court’s detached perspective has been restored.57 At other times, however, the war rages, the President’s action is set in stone, and he will ignore any judicial orders that he conform his conduct to constitutional norms.58 In such critical situations, issuing a judgment simply weakens the Court as an institution, as Chief Justice Taney learned the hard way.59 Professor Wells understands the foregoing institutional differences and thus does not naively demand that the Court exercise regular judicial review to safeguard individual constitutional rights, come hell or high water. Nonetheless, she remains troubled by cases in which the Court’s examination of executive action is so cursory as to amount to an abdication of its responsibilities—and a stamp of constitutional approval for the President’s actions.60 Therefore, she proposes a compromise: requiring the President to establish a reasonable basis for the measures he has taken in response to a genuine risk to national security.61 In this way, federal judges would ensure accountability not by substituting their judgments for those of executive officials (as hap-pens with normal judicial review), but rather by forcing them to adequately justify their decisions.62 This proposal intelligently blends a concern for individual rights with pragmatism. Civil libertarians often overlook the basic point that constitutional rights are not absolute, but rather may be infringed if the government has a compelling reason for doing so and employs the least restrictive means to achieve that interest.63 Obviously, national security is a compelling governmental interest.64 Professor Wells’s crucial insight is that courts should not allow the President simply to assert that “national security” necessitated his actions; rather, he must concretely demonstrate that his policies were a reasonable and narrowly tailored response to a particular risk that had been assessed accurately.65 Although this approach is plausible in theory, I am not sure it would work well in practice. Presumably, the President almost always will be able to set forth plausible justifications for his actions, often based on a wide array of factors—including highly sensitive intelligence that he does not wish to dis-close.66 Moreover, if the President’s response seems unduly harsh, he will likely cite the wisdom of erring on the side of caution. If the Court disagrees, it will have to find that those proffered reasons are pretextual and that the President overreacted emotionally instead of rationally evaluating and responding to the true risks involved. But are judges competent to make such determinations? And even if they are, would they be willing to impugn the President’s integrity and judgment? If so, what effect might such a judicial decision have on America’s foreign relations? These questions are worth pondering before concluding that “hard look” review would be an improvement over the Court’s established approach. Moreover, such searching scrutiny will be useless in situations where the President has made a wartime decision that he will not change, even if judicially ordered to do so. For instance, assume that the Court in Korematsu had applied “hard look” review and found that President Roosevelt had wildly exaggerated the sabotage and espionage risks posed by Japanese-Americans and had imprisoned them based on unfounded fears and prejudice (as appears to have been the case). If the Court accordingly had struck down FDR’s order to relocate them, he would likely have disobeyed it. Professor Wells could reply that this result would have been better than what happened, which was that the Court engaged in “pretend” review and stained its reputation by upholding the constitutionality of the President’s odious and unwarranted racial discrimination. I would agree. But I submit that the solution in such unique situations (i.e., where a politically strong President has made a final decision and will defy any contrary court judgment) is not judicial review in any form—ordinary, deferential, or hard look. Rather, the Court should simply declare the matter to be a political question and dismiss the case. Although such Bickelian manipulation of the political question doctrine might be legally unprincipled and morally craven, 67 at least it would avoid giving the President political cover by blessing his unconstitutional conduct and instead would force him to shoulder full responsibility. Pg. 968-970

#### Weakening the court prevents sustainable development

**Stein, New South Wales Court of Appeal former judge, 2005**

(Paul Stein, “Why judges are essential to the rule of law and environmental protection”, IUCN Environmental Policy and Law Paper No. 60, online, ldg)

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Lawsuit effectiveness would permanently compromise readiness

**Cohen, National Center for Public Policy Research senior fellow, 2003**

(Bonner, “Environmental Regulations Impede Pentagon Readiness”, <http://news.heartland.org/newspaper-article/2003/03/01/environmental-regulations-impede-pentagon-readiness>, ldg)

Lawsuits brought by such groups as the Center for Biological Diversity and the Natural Resources Defense Council have sought to impose the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammals Protection Act, and other environmental statutes on military bases. The lawsuits, and the restrictions on training that result from them, have come in direct conflict with military readiness: Wide areas of the ocean beach at the Navy’s amphibious base at Coronado, California have been designated as “critical habitat” for two species of shore birds, the Western plover and the least tern. When Navy Seals practice landing their rubber boats during breeding season, they must disrupt their tactical formations to move in narrow lanes, marked by green tape, to avoid disturbing potential nests. The result is what the Navy calls “negative training”--the development of bad habits that, if repeated in combat, will cause casualties. At Fort Hood, Texas, unit commanders are forced to “work around” 66,000 acres, or one-third of the training area, to protect the habitat of the golden-cheeked warbler and the black-capped vireo. The restrictions placed on soldiers’ training reduce the realism of combat exercises and makes them less prepared to cope with real battlefield situations. At Camp Pendleton near San Diego, California, the U.S. Fish & Wildlife Service proposed designating more than 57 percent of the base’s 125,000 acres as critical habitat for the endangered California gnat-catcher. That designation, coupled with existing environmental restrictions at Camp Pendleton, would have rendered the base virtually unusable for realistic combat training. Ultimately, the Clinton administration decided not to designate new critical habitat at Camp Pendleton--a decision currently being challenged by environmental groups in court. ESA Particularly Problematic These examples, to which dozens more could be added, underscore the problems the armed services are facing. The Endangered Species Act is particularly crippling. The courts have held that, under the ESA, critical habitat is intended for species recovery. Rather than military lands being used for military purposes, once critical habitat is designated, such lands must be used first for species recovery. With each lawsuit filed by an environmental group under the ESA, more military land threatens to come under the jurisdiction of the statute. The Department of Defense manages more than 450 installations on some 25 million acres in the U.S., providing sanctuary to roughly 300 species listed as threatened or endangered. Ironically, it is the Defense Department’s good stewardship of its lands that has attracted the species ... and the lawsuits. This, of course, is the fate private landowners have suffered for decades. Instead of being subjected to the ESA, the Pentagon would like to continue its practice of protecting species on military installations through Integrated Natural Resources Management Plans (INRMPs), which are required under the Sikes Act and developed in close cooperation with the Department of Interior and state wildlife agencies. This approach has been endorsed by both the Clinton and the Bush administrations. The widespread presence of threatened and endangered species on military bases attests to the effectiveness of INRMPs. Environmental groups opposed to the Pentagon’s approach point out the President already has the authority under certain environmental statutes to waive environmental requirements in case of war or national emergency. However, many environmental statutes do not provide for wartime waivers, and in most that do the President may apply national security exceptions only if doing so is deemed to be in the “paramount interest” of the United States--the highest standard in the nation’s laws. Moreover, notes the Pentagon, military readiness requires training and testing at all times-- not just during national emergencies. Rather than expecting the President to micro-manage training decisions at scores of military bases around the country, the Pentagon argues, those decisions are best left in the hands of local commanders.

#### Naval power deters great power wars, reassures allies and facilitates cooperation to solve global problems

**England et al., former deputy secretary of defense, 2011**

(Gordon, “The Necessity of U.S. Naval Power”, 7-11, <http://gcaptain.com/necessity-u-s-naval-power?27784>, ldg)

The future security environment underscores two broad security trends. First, international political realities and the internationally agreed-to sovereign rights of nations will increasingly limit the sustained involvement of American permanent land-based, heavy forces to the more extreme crises. This will make offshore options for deterrence and power projection ever more paramount in support of our national interests. Second, the naval dimensions of American power will re-emerge as the primary means for assuring our allies and partners, ensuring prosperity in times of peace, and countering anti-access, area-denial efforts in times of crisis. We do not believe these trends will require the dismantling of land-based forces, as these forces will remain essential reservoirs of power. As the United States has learned time and again, once a crisis becomes a conflict, it is impossible to predict with certainty its depth, duration and cost. That said, the U.S. has been shrinking its overseas land-based installations, so the ability to project power globally will make the forward presence of naval forces an even more essential dimension of American influence. What we do believe is that uniquely responsive Navy-Marine Corps capabilities provide the basis on which our most vital overseas interests are safeguarded. Forward presence and engagement is what allows the U.S. to maintain awareness, to deter aggression, and to quickly respond to threats as they arise. Though we clearly must be prepared for the high-end threats, such preparation should be made in balance with the means necessary to avoid escalation to the high end in the first place. The versatility of maritime forces provides a truly unmatched advantage. The sea remains a vast space that provides nearly unlimited freedom of maneuver. Command of the sea allows for the presence of our naval forces, supported from a network of shore facilities, to be adjusted and scaled with little external restraint. It permits reliance on proven capabilities such as prepositioned ships. Maritime capabilities encourage and enable cooperation with other nations to solve common sea-based problems such as piracy, illegal trafficking, proliferation of W.M.D., and a host of other ills, which if unchecked can harm our friends and interests abroad, and our own citizenry at home. The flexibility and responsiveness of naval forces provide our country with a general strategic deterrent in a potentially violent and unstable world. Most importantly, our naval forces project and sustain power at sea and ashore at the time, place, duration, and intensity of our choosing. Given these enduring qualities, tough choices must clearly be made, especially in light of expected tight defense budgets. The administration and the Congress need to balance the resources allocated to missions such as strategic deterrence, ballistic missile defense, and cyber warfare with the more traditional ones of sea control and power projection. The maritime capability and capacity vital to the flexible projection of U.S. power and influence around the globe must surely be preserved, especially in light of available technology. Capabilities such as the Joint Strike Fighter will provide strategic deterrence, in addition to tactical long-range strike, especially when operating from forward-deployed naval vessels. Postured to respond quickly, the Navy-Marine Corps team integrates sea, air, and land power into adaptive force packages spanning the entire spectrum of operations, from everyday cooperative security activities to unwelcome — but not impossible — wars between major powers. This is exactly what we will need to meet the challenges of the future.

### 4

#### The United States Congress should adopt a retaliatory launch only after detonation nuclear posture. The United States Congress should establish green banks for the purpose of financing alternative energy.

#### No reason the Courts have to establish the posture—the first plank solves the entire first advantage

#### Green banks solves warming—the aff isn’t sufficient.

**Berlin, Coalition for Green Capital policy and planning vice president, 2011**

(Kenneth, “Creating State Green Banks: How New Ways to Finance Clean Energy and Energy Efficiency Projects Can Reduce the Cost of Clean Energy and Replace Expiring Federal Credits and Subsidies”, <http://www.stateinnovation.org/Events/Event-Listing/Policy-Directors-Annual-Meeting-2011.aspx>, DOA: 9-11-12, ldg)

Transitioning to a clean economy will occur only if clean energy and energy efficiency projects are deployed to scale. However, many analysts have described the serious challenge posed by the “deployment valley of death” to new energy technologies. The deployment valley of death problem arises for four basic reasons: (i) most new technologies, even after they become mature enough so there is little technology risk in using the technology, face a long cost curve in which the cost of the technology decrease as the technology reaches scale and is gradually improved; (ii) while renewable energy projects have been dropping in cost, in most cases the delivered cost of energy from clean energy projects is still higher then the delivered cost of energy from existing power generation facilities; (iii) in most states, the utility commission and most political leaders will not support projects that increase more than minimally the delivered cost of electricity; and (iv) it is very unlikely that a cost will be put on carbon emissions on a national level for many years. Thus, despite rapidly dropping costs, new construction in the clean energy industry is still highly dependent on subsidies, grants, and tax credits. In 2010, the federal government provided $14.674 billion in subsides and other support to renewable energy projects and another $14.838 billion to energy efficiency projects (conservation and end use in the chart below). Of this amount, $6.193 billion of the renewable energy funding and $7.854 billion of the conservation and end use programs were provided under ARRA. Because of budget limitations and the end of many programs funded by the American Recovery and Reinvestment Act of 2009 (ARRA), much of this funding is likely to disappear in the near term. One way for states to proceed is to wait and hold back from supporting clean energy projects until new innovation lowers the cost of these projects enough so that they are cost competitive without any further action by states. Although there are some authors who argue for this approach, there is very little history of the introduction of new innovations in the energy industry that are cost competitive on their first days before they are produced at scale. Most new energy technologies, including breakthrough technologies, require an incubation period and incentives to achieve scale despite early cost disadvantages. Others, even after they become cost competitive, face other difficult barriers to entry. In a 2001 study, Shell concluded that in its industry it took on the average 25 years after the commercial introduction of a primary energy form for a cost competitive technology to obtain a 1% worldwide market share. Meanwhile, current wind and solar technologies are decreasing in cost. Support is needed for innovation research – massive support given the low level of energy R&D in America - but that is no substitute for deployment of existing technologies. States that wait for new innovative technologies are likely to lose out on the deployment of clean energy projects. Bringing energy efficiency projects to scale also requires new sources of financing. Energy efficiency projects generate large numbers of jobs, but bringing energy efficiency projects to scale faces daunting challenges. When faced with a choice of spending scare dollars on energy efficiency rather than other uses, most homeowners and small businessmen, and even many large businesses, choose projects other than energy efficiency. As a result, most energy programs subsidize the cost of energy efficiency projects and many experts believe that 100% subsidies or financing of the upfront costs of energy efficiency projects is needed. Providing these funds will be very costly. According to the Energy Information Agency (EIA), in 2010 there were expected to be 82.56 million single family homes and 25.57 million families living in multiple family homes. While the costs of improving a home’s energy efficiency vary by region and technology, reducing residential energy use by 25 percent by 2020 can cost each homeowner over $10,000. Assuming that each homeowner spent $10,000 to achieve about a 25 percent reduction in energy use, it would cost about $108 trillion. Similarly, EIA estimates that there are about 5 million commercial buildings with about 81.2 billion square feet in the U.S. There are also about 11 billion square feet of industrial floor space in the US. At an average premium for green buildings of $3-5 per square foot, it could cost in the neighborhood of $275 - $460 billion to retrofit this space. States should develop a new model to fund clean energy and energy efficiency programs. The model would recognize that federal and state appropriations, tax credits and other incentives and subsidies will be sharply diminished in the years ahead because of the budget crisis at all levels of government. States would suffer sharp economic losses if they were unable to replace these funds and develop strong clean energy and energy efficiency industries in their state. Developing this new model thus requires a new paradigm on how to finance these projects. Green banks are ideally suited to solve these problems because they offer a practical way for states to make available low-cost financing for project developers in their states. First, they can be established from existing state programs with the equivalent of substantial new resources resulting from their ability to leverage funds – one dollar of leveraged funds could support 5, 10 or even more dollars of investment. Because they would be financial institutions providing debt financing, they would be repaid on their loans, putting them in the position to borrow funds and to establish revolving loan funds that would provide funds that could be reinvested without new sources of financing. Green banks, if established as separate institutions, could issue bonds without the full faith and credit of the state and without restrictions facing states which have limited borrowing capacity. Finally, green banks could seek investors with patient long term capital who are seeking a long term conservative rate of return, such as pension fund investors. Such green banks would finance the deployment of clean energy projects with low technology risks, including projects using existing wind and solar technologies. These projects, because of low technology risk and low financing risk, particularly when they have entered into long term power purchase agreements to purchase their output, should be able to attract investors interested in long tem, safe returns and are thus willing to accept rates of return at a conservative level. State green banks could be expanded to cover innovative, risky new technologies and manufacturing facilities, but each of these presents' different risk factors and would require a different funding "window" within the bank. The details of establishing such windows are not discussed in this paper. In addition, the green bank would provide low cost financing for energy efficiency projects.

### Warming

#### Climate is on a natural millennial cycle, not anthropogenic.

NIPCC 2012

Nongovernmental International Panel on Climate Change, More Southern Hemisphere Evidence for Global Millenial-Scale Cycling of Climate, 6-13-2012, Center for the Study of Carbon Dioxide and Climate Change. <http://nipccreport.org/articles/2012/jun/13jun2012a2.html>

Introducing their study, Kemp et al. (2012) write that "millennial-scale climate variability has been a major focus of Quaternary research for the last decade (Clark et al., 1999)," noting that "in the Northern Hemisphere, the pattern of change is now reasonably well understood," citing Mayewski et al. (2004) and Wanner et al. (2008). However, they say that "the Southern Hemisphere remains a problem because of the high spatial variability and low resolution of available records." Nevertheless, they indicate that much evidence for the phenomenon has emerged from Australia, citing the studies of Chivas et al. (1986), De Deckker et al. (1991), Chivas et al. (1993), Gell et al. (1994), Stanley and De Deckker (2002), Turney et al. (2004), Donders et al. (2007) and Gouramanis et al. (2010), as well as from the Southern Ocean, citing Charles et al. (1996), Ninnemann et al. (1999), Gingele et al. (2007) and Moros et al. (2009), while still other evidence comes from Antarctic ice cores (Masson et al., 2000; Masson-Delmotte et al., 2004; Marino et al., 2008; Gabrielli et al., 2010) and from glacial advances (Allen et al., 2010). In an effort designed to either support or contest this growing body of evidence, Kemp et al. developed palaeosalinity records for groundwater-influenced lakes in the Murray Basin of Australia using "an ostracod-based, weighted-averaging transfer function, supplemented with evidence from Campylodiscus clypeus (diatom), charophyte oogonia, Coxiella striata (gastropod), Elphidium sp. (foraminifera), Daphniopsis sp. ephippia (Cladocera), and brine shrimp (Parartemia zietziana) fecal pellets, the δ18O of ostracods, and >130 µm quartz sand counts," together with a chronology based on optically-stimulated luminescence and calibrated radio-carbon ages. From those records, the five UK and Australian researchers determined that the Holocene in Australia "was more variable than previous studies have shown," noting that their work provided evidence for recurrent intervals of low salinity cold periods having an approximate spacing of 1400 ± 550 years, which periodicity they say is "indistinguishable from climatic instabilities with a period of ~1500 ± 500 years observed in glacial and interglacial records from around the world (Mayewski et al., 2004)," which colder periods have come to be known as Bond events, due to the pioneering work of Bond et al. (1997, 2001), who associated them with periods of reduced solar activity. In between these colder periods, of course, are warmer periods, the one that preceded the Current Warm Period being the Medieval Warm Period (MWP), which their data show to have peaked between AD 1040 and 1220, and of which they say "there is supporting evidence for the MWP from tree-ring (Cook et al., 2002) and speleothem (Williams et al., 2005) evidence in New Zealand." In discussing their findings, Kemp et al. state that the lower salinity phases they identified likely represent "cooler intervals with more intense westerly circulation." In addition, they indicate that "evidence suggests that variations in solar output may have caused the position of the westerly flow to vary at centennial to millennial timescales in the late Holocene," citing the work of Varma et al. (2010). And they write that "this interpretation is consistent with climatic excursions during the Holocene recorded in South America (Lamy et al., 2001; Moreno, 2004; Kaiser et al., 2005; Moreno et al., 2009) and in glacial surges in New Zealand's South Island (Gellatly et al., 1988; Suggate, 1990), both linked to varying westerly influence (Fitzharris et al., 1992; Hooker and Fitzharris, 1999), and which are in good agreement with the records obtained here." Thus, the evidence continues to grow ever stronger for a solar-induced millennial-scale cycling of Earth's global climate that is totally independent of anthropogenic CO2 emissions.

#### No impact --- Ocean ecosystems are resilient

CO2 Science 2008

Marine Ecosystem Response to "Ocean Acidification" Due to Atmospheric CO2 Enrichment, Vogt, M., Steinke, M., Turner, S., Paulino, A., Meyerhofer, M., Riebesell, U., LeQuere, C. and Liss, P. 2008. Dynamics of dimethylsulphoniopropionate and dimethylsulphide under different CO2 concentrations during a mesocosm experiment. Biogeosciences 5: 407-419, http://www.co2science.org/articles/V11/N29/B2.php

Vogt et al. report that they detected no significant phytoplankton species shifts between treatments, and that "the ecosystem composition, bacterial and phytoplankton abundances and productivity, grazing rates and total grazer abundance and reproduction were not significantly affected by CO2 induced effects," citing in support of this statement the work of Riebesell et al. (2007), Riebesell et al. (2008), Egge et al. (2007), Paulino et al. (2007), Larsen et al. (2007), Suffrian et al. (2008) and Carotenuto et al. (2007). In addition, they say that "while DMS stayed elevated in the treatments with elevated CO2, we observed a steep decline in DMS concentration in the treatment with low CO2," i.e., the ambient CO2 treatment. What it means With respect to their many findings, the eight researchers say their observations suggest that "the system under study was surprisingly resilient to abrupt and large pH changes," which is just the opposite of what the world's climate alarmists characteristically predict about CO2-induced "ocean acidification." And that may be why Vogt et al. described the marine ecosystem they studied as "surprisingly resilient" to such change: it may have been a little unexpected.

C02 doesn’t cause heating

Taylor 11 (James, is a senior fellow for environment policy at the Heartland Institute and managing editor of Environment & Climate News. “New NASA Data Blow Gaping Hole In Global Warming Alarmism” <http://www.forbes.com/sites/jamestaylor/2011/07/27/new-nasa-data-blow-gaping-hold-in-global-warming-alarmism/>)

NASA satellite data from the years 2000 through 2011 show the Earth’s atmosphere is allowing far more heat to be released into space than alarmist computer models have predicted, reports a new study in the peer-reviewed science journal Remote Sensing. The study indicates far less future global warming will occur than United Nations computer models have predicted, and supports prior studies indicating increases in atmospheric carbon dioxide trap far less heat than alarmists have claimed. Study co-author Dr. Roy Spencer, a principal research scientist at the University of Alabama in Huntsville and U.S. Science Team Leader for the Advanced Microwave Scanning Radiometer flying on NASA’s Aqua satellite, reports that real-world data from NASA’s Terra satellite contradict multiple assumptions fed into alarmist computer models. “The satellite observations suggest there is much more energy lost to space during and after warming than the climate models show,” Spencer said in a July 26 University of Alabama press release. “There is a huge discrepancy between the data and the forecasts that is especially big over the oceans.” In addition to finding that far less heat is being trapped than alarmist computer models have predicted, the NASA satellite data show the atmosphere begins shedding heat into space long before United Nations computer models predicted. The new findings are extremely important and should dramatically alter the global warming debate. Scientists on all sides of the global warming debate are in general agreement about how much heat is being directly trapped by human emissions of carbon dioxide (the answer is “not much”). However, the single most important issue in the global warming debate is whether carbon dioxide emissions will indirectly trap far more heat by causing large increases in atmospheric humidity and cirrus clouds. Alarmist computer models assume human carbon dioxide emissions indirectly cause substantial increases in atmospheric humidity and cirrus clouds (each of which are very effective at trapping heat), but real-world data have long shown that carbon dioxide emissions are not causing as much atmospheric humidity and cirrus clouds as the alarmist computer models have predicted. The new NASA Terra satellite data are consistent with long-term NOAA and NASA data indicating atmospheric humidity and cirrus clouds are not increasing in the manner predicted by alarmist computer models. The Terra satellite data also support data collected by NASA’s ERBS satellite showing far more longwave radiation (and thus, heat) escaped into space between 1985 and 1999 than alarmist computer models had predicted. Together, the NASA ERBS and Terra satellite data show that for 25 years and counting, carbon dioxide emissions have directly and indirectly trapped far less heat than alarmist computer models have predicted. In short, the central premise of alarmist global warming theory is that carbon dioxide emissions should be directly and indirectly trapping a certain amount of heat in the earth’s atmosphere and preventing it from escaping into space. Real-world measurements, however, show far less heat is being trapped in the earth’s atmosphere than the alarmist computer models predict, and far more heat is escaping into space than the alarmist computer models predict.

Warming won’t cause extinction

Barrett, professor of natural resource economics – Columbia University, ‘7

(Scott, Why Cooperate? The Incentive to Supply Global Public Goods, introduction)

First, climate change does not threaten the survival of the human species.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) will likely take centuries to unfold, giving societies time to adjust. “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, abrupt climate change (such as a weakening in the North Atlantic circulation), though potentially very serious, is unlikely to be ruinous. Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.

Existing carbon triggers the impact

Daniel **Rirdan 12**, founder of The Exploration Company, “The Right Carbon Concentration Target”, June 29, <http://theenergycollective.com/daniel-rirdan/89066/what-should-be-our-carbon-concentration-target-and-forget-politics?utm_source=feedburner&utm_medium=feed&utm_campaign=The+Energy+Collective+%28all+posts%29>

James Hansen and other promi­nent cli­ma­tol­o­gists are call­ing to bring the CO2 atmos­pheric level to 350 parts per million. In fact, an orga­ni­za­tion, 350.org, came around that ral­ly­ing cry. This is far more radical than most politicians are willing to entertain. And it is not likely to be enough. The 350ppm target will not reverse the clock as far back as one may assume. It was in 1988 that we have had these level of car­bon con­cen­tra­tion in the air. But wait, there is more to the story. 1988-levels of CO2 with 2012-levels of all other green­house gases bring us to a state of affairs equiv­a­lent to that around 1994 (2.28 w/m2). And then there are aerosols. There is good news and bad news about them. The good news is that as long as we keep spewing mas­sive amounts of particulate matter and soot into the air, more of the sun’s rays are scattered back to space, over­all the reflec­tiv­ity of clouds increases, and other effects on clouds whose over­all net effect is to cool­ing of the Earth sur­face. The bad news is that once we stop polluting, stop run­ning all the diesel engines and the coal plants of the world, and the soot finally settles down, the real state of affairs will be unveiled within weeks. Once we fur­ther get rid of the aerosols and black car­bon on snow, we may be very well be worse off than what we have had around 2011 (a pos­si­ble addi­tion of 1.2 w/m2). Thus, it is not good enough to stop all green­house gas emis­sions. In fact, it is not even close to being good enough. A carbon-neutral econ­omy at this late stage is an unmit­i­gated disaster. There is a need for a carbon-negative economy. Essentially, it means that we have not only to stop emitting, to the tech­no­log­i­cal extent pos­si­ble, all green­house gases, but also capture much of the crap we have already out­gassed and lock it down. And once we do the above, the ocean will burp its excess gas, which has come from fos­sil fuels in the first place. So we will have to draw down and lock up that carbon, too. We have taken fos­sil fuel and released its con­tent; now we have to do it in reverse—hundreds of bil­lions of tons of that stuff.

#### their authors are just alarmists

#### Lewis 7 (Institute of Economic Affairs, Mar 6, <http://www.lyd.com/lyd/controls/neochannels/neo_ch4260/deploy/gwfalsealarm.pdf>)

The government claim that global warming is more threatening than terrorism is alarmist and unwarranted. It is also suspect as an excuse for mounting taxes and controls. It is strikingly similar to the dire predictions of 40 years ago of an imminent ice age and to other past doom forecasts due to alleged overpopulation, depletion of food and fuel supplies, and chemical pollution. There are serious doubts about the measurements, assumptions and predictions of the Intergovernmental Panel on Climate Change (IPCC), with regard to global CO2 growth, temperature and the role of clouds. Indeed there is a strong case that the IPCC has overstated the effect of anthropogenic greenhouse gases on the climate and downplayed the influence of natural factors such as variations in solar output, El Niños and volcanic activity. The empirical evidence used to support the global warming hypothesis has often been misleading, with ‘scare stories’ promoted in the media that are distortions of scientific reality. The high salience of the climate change issue reflects the fact that many special interests have much to gain from policies designed to reduce emissions through increased government intervention and world energy planning.

### Miscalc

#### Accidental launches won’t happen and wouldn’t escalate

Quinlan 9 [Michael Quinlan, former British Permanent Under Secretary of State for Defence, former Director of the Ditchley Foundation, Visiting Professor at King's College London, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, p. 69]

It was occasionally conjectured that nuclear war might be triggered by the real but accidental or unauthorized launch of a strategic nuclear-weapon delivery system in the direction of a potential adversary. No such launch is known to have occurred in over sixty years. The probability of it is therefore very low. But even if it did happen, the further hypothesis of its initiating a general nuclear exchange is far-fetched. It fails to consider the real situation of decision-makers, as pages 63–4 have brought out. The notion that cosmic holocaust might be mistakenly precipitated in this way belongs to science fiction.

#### No accidental detonation

Quinlan 9 [Michael Quinlan, former British Permanent Under Secretary of State for Defence, former Director of the Ditchley Foundation, Visiting Professor at King's College London, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, p. 67-8]

There have certainly been, across the decades since 1945, many known accidents involving nuclear weapons, from transporters skidding off roads to bomber aircraft crashing with or accidentally dropping the weapons they carried (in past days when such carriage was a frequent feature of readiness arrangements—it no longer is). A few of these accidents may have released into the nearby environment highly toxic material. None however has entailed a nuclear detonation. Some commentators suggest that this reflects bizarrely good fortune amid such massive activity and deployment over so many years. A more rational deduction from the facts of this long experience would however be that the probability of any accident triggering a nuclear explosion is extremely low. It might be further noted that the mechanisms needed to set off such an explosion are technically demanding, and that in a large number of ways the past sixty years have seen extensive improvements in safety arrangements for both the design and the handling of weapons. It is undoubtedly possible to see respects in which, after the cold war, some of the factors bearing upon risk may be new or more adverse; but some are now plainly less so. The years which the world has come through entirely without accidental or unauthorized detonation have included early decades in which knowledge was sketchier, precautions were less developed, and weapon designs were less ultra-safe than they later became, as well as substantial periods in which weapon numbers were larger, deployments more widespread and diverse, movements more frequent, and several aspects of doctrine and readiness arrangements more tense.

#### Even if accidental launch occurs it won’t escalate to full scale conflict

Kislov, Professor of Peace Research at the USSR Academy of Sciences, ’93 (Alexander, “Political Aspects of Minimizing the Risk of Accidental Nuclear War” published in ‘Inadvertent Nuclear War: The Implications of the Changing Global Order’ by Hakan Wiberg, Ib Damgaard Petersen, and Paul Smoker, p 237-244)

A deliberate nuclear war between East and West is out of the question; but what about a war caused by chance factors? **An acciden¬tal or unauthorized launching of a missile or even of several missiles (in itself highly improbable) is unlikely to bring about a full-scale war when neither side has any incentive for it. We assume a very small probability of a very limited** ('automatic' or **unauthorized) reaction and a close-to-zero probability of a very limited authorized 'retaliation'; this is the maximal assumption that is possible if we want to remain realistic. There should thus be no question of an accidental East-West nuclear war**, today or **in a foreseeable future. We may imagine an accidental missile launch or an accidental explosion of some nuclear charge, an accidental nuclear strike or even an accidental nuclear conflict; but an accidental nuclear war for instance between the United States and our country is unimaginable**.

#### No Indo-Pak war-neither one can afford it.

**Hameed, CSIS Crisis, Conflict and Cooperation program fellow,**

(Sadika, “Kashmir Violence Strains India-Pakistan Dialogue”, 9-4, <http://www.worldpoliticsreview.com/articles/13191/kashmir-violence-strains-india-pakistan-dialogue>, ldg)

Regardless of what happens in Afghanistan, there have been positive indicators that neither India nor Pakistan wants to escalate tensions on the Kashmir border. Pakistan and India have made efforts to normalize relations and increase cooperation despite the outstanding disputes in Kashmir, Siachen and Sir Creek. In a recent speech, Pakistani Prime Minister Nawaz Sharif proclaimed his determination to create peace with India, saying that the two countries had for too long wasted their scarce resources on war and large militaries. Sharif is viewed favorably in India and has a long history of reaching out to his Indian counterparts for greater cooperation. Given Pakistan’s grave energy crisis, economic problems and the threat from terrorism, Pakistan can no longer afford antagonism with India. Both countries would benefit from moving forward on trade and economic cooperation despite the occasional cross-border violence. The Pakistani army has made it clear that its most pressing concern is internal security. Some have argued that as the threat from terrorism grows, the Pakistani military could see a renewed Kashmir conflict as a way to funnel extremists away from targeting Pakistani military establishments and cities. This is unlikely for a number of reasons. First, the groups that Pakistan needs to tackle internally challenge the state of Pakistan and not India. They cannot be diverted. Second, the Pakistani security establishment would not likely risk escalating conflicts on multiple fronts by channeling those groups that have historically been used in Kashmir, given India’s clear military superiority and the internal security threats Pakistan faces. India also has an interest in promoting regional security, which will allow its economy to continue to grow. The current round of harsh rhetoric by Indian politicians may be due a desire to avoid being seen as “soft” on Pakistan as Indian elections approach. India is also concerned about the possibility of spillover effects from regional conflicts, in particular on India’s large Muslim population. Perhaps the source of the most tension is that India does not believe that Pakistan is doing enough to curb terrorism—particularly with regard to the Lashkar-e-Taiba (LeT), a group that has historically conducted attacks in India. Although Pakistan has for the first time put together a counterterrorism strategy, it only addresses domestic terrorism and not those groups that attack other countries. But it seems to be in the civilian government’s interest to rein in groups such as LeT. Historically the Pakistani security establishment has had control over LeT, and could direct it as a wing of its foreign policy. If this is still the case, the interests of the Pakistani Inter-Services Intelligence (ISI) and military will determine the group’s future. Since dealing with internal security issues is the main part of their doctrine now, it goes against their interests to actively engage with groups like LeT in Kashmir. However, the splintering of LeT and lack of effective chain of command in the ISI means that the Pakistani security establishment may find it more difficult to control LeT operations than it has in the past. Managing this challenge will require a concerted effort from both the civilian and military apparatus, cooperation that has been scarce in the past but may now be possible due to aligned civilian and military interests in internal stability. While exogenous events could derail the ongoing India-Pakistan peace process, there is hope that after 2014 India and Pakistan will continue to engage cautiously, especially regarding Kashmir. While there may not be much progress in resolving the dispute in the near future, maintaining the status quo remains in both countries’ interests.

#### Low risk of Russian miscalc

Podvig, Research Director at the Center for International and Security Cooperation, ‘6 (Pavel, May, “Reducing the Risk of an Accidental Launch” Science and Global Security, Vol 14, p 75-115, http://iis-db.stanford.edu/pubs/21283/14\_2-3\_\_Podvig.pdf)

This also means that **the decline of the early-warning system after the breakup of the Soviet Union has not seriously affected the role that early warning plays in the command and control system of the Russian strategic forces, which was** rather **limited to begin with. Because the decline has been** a **slow and well understood** process, **the Russian military had an opportunity to further adjust their operational practices to the gradual loss of early-warning capability**. The danger of a miscalculation still exists, for nothing would prevent Russia from attempting to execute **launch onwarning** and issuing the necessary orders. However, **during peacetime there will be a rather strong bias against doing so based on the information provided by the early-warning system**.

#### No risk of accidental launch

Global Security Network – 2/27/09 Top U.S. General Spurns Obama Pledge to Reduce Nuclear Alert Posture, http://gsn.nti.org/siteservices/print\_friendly.php?ID=nw\_20090227\_8682

**Chilton said it is misleading to use the term "hair-trigger" when describing the U.S. arsenal, which he said remains safe from accidental or unauthorized launch. "It conjures a drawn weapon in the hands of somebody**," said the general, speaking at a two-day conference on air warfare. "And their finger's on the trigger. And you're worried they might sneeze, because it is so sensitive." However, **the "reality of our alert posture today," he said, is that "the weapon is in the holster." Continuing the analogy, Chilton said the holster for nuclear weapons "has two combination locks on it," it "takes two people to open those locks," and "they can't do it without authenticated orders from the president of the United States**." At a separate press conference a few minutes earlier, **A ir Force Chief of Staff Gen. Norton Schwartz also sought to "push back a little" on the notion that "these things are very close to launching**." "**That's anything but the case," Schwartz said. "There is a rigorous discipline [and] process involved, should that ever be required, and it is anything but hair trigger."**

#### no command and control problems

Rudney and Stanley – Analysts, National Institute for Public Policy – 2000 Robert and Willis Dealerting proposals for strategic nuclear forces: A critical analysis, Comparative Strategy,19:1,1 — 34

Dealerting advocates have questioned the reliability of control procedures over both

**U.S. and Russian nuclear forces. It should be emphasized that command-and-control systems for U.S. strategic nuclear forces constantly are being updated and improved. Specifically, the airborne E-6 TACAMO ("take charge and move out") system to provide a survivable communications link from the national command authorities (NCA) to the SSBNs is being modernized and is replacing the EC-135 Looking Glass as the aerial platform for U.S. Strategic Command's Airborne National Command Post mission. The** E**-6, a fully hull-hardened, electromagnetic pulse-protected platform, is responsible for receipt, processing, and delivery of emergency action messages to all U.S. strategic forces.**

#### No risk of accidental launch between the US and Russia

Ryabikhin et al , Secretary of the Committee for Global Security and Arms Control, ‘9 (Leonid Ryabikhin – Senior Fellow at the East West Institute, Viktor Koltunov – Deputy Director at the Institute for Strategic Stability of Rosatom, and Eugene Miasnikov – Senior Research Scientist, Center for Arms Control, Energy and Enviro Studies, June 21-23, “De-alerting: Decreasing the Operational Readiness of Strategic Nuclear Forces” Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the U.S.-Russia Context, http://www.ewi.info/system/files/RyabikhinKoltunovMiasnikov.pdf)

**The issue of the possibility of an “accidental” nuclear war itself is hypothetical. Both states have developed and implemented constructive organizational and technical measures that practically exclude launches resulting from unauthorized action of personnel or terrorists. Nuclear weapons are maintained under very strict system of control that excludes any accidental or unauthorized use and guarantees that these weapons can only be used provided that there is an appropriate authorization by the national leadership**. Besides that it should be mentioned that **even the Soviet Union and the United States had taken important bilateral steps toward decreasing the risk of accidental nuclear conflict. Direct emergency telephone “red line” has been established between the White House and the Kremlin in 1963. In 1971 the USSR and USA signed the Agreement on Measures to Reduce the Nuclear War Threat. This** Agreement **established the actions of each side in case of even a hypothetical accidental missile launch and it contains the requirements for the owner of the launched missile to deactivate and eliminate the missile**. Both the Soviet Union and the United States have developed proper measures to observe the agreed requirements.

#### US weapons not on hair-trigger – no risk of accidental launch

Slocombe, Former Undersecretary of Defense for Policy, ‘9 (Walter, June 21-23, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects” Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the U.S.-Russia Context, http://www.ewi.info/system/files/Slocombe.pdf)

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**.

# 2NC

### No Leadership

#### Unilateral action doesn’t solve and countries won’t get on board.

Kreutzer and Loris 2013

David W. Kreutzer, PhD, is Research Fellow in Energy Economics and Climate Change in the Center for Data Analysis and Nicolas D. Loris is Herbert and Joyce Morgan Fellow in the Thomas A. Roe Institute for Economic Policy Studies at The Heritage Foundation Carbon Tax Would Raise Unemployment, Not Swap Revenue 1-8-13 http://www.heritage.org/research/reports/2013/01/carbon-tax-would-raise-unemployment-not-revenue

Unilaterally reducing greenhouse gases would not make a dent on global emissions and, consequently, would do next to nothing to reduce global temperatures. Even if the U.S. were to curb carbon emissions 83 percent below 2005 levels by 2050 (what cap-and-trade bills required), it would reduce global temperatures by only a few tenths of a degree Celsius by the close of the century.[4] This is because future carbon emissions will come overwhelmingly from the developing world (China and India, for example), which shows little appetite for squeezing economic growth for the sake of the environment. A common argument is that if the U.S. leads in reducing emissions, the rest of the world would follow suit. But this is clearly not the case. Despite actions taken by the EPA to regulate carbon dioxide, the developing world has massive expansions planned to increase coal consumption. According to a recent report from the World Resources Institute, there are plans to build nearly 1,200 coal-fired power plants in 59 different countries totaling over 1.4 million megawatts. China and India alone account for 76 percent of the proposals.[5] Developing countries want access to cheap, reliable electricity (especially since many areas do not even have access to electricity) and have more pressing environmental needs. It is simply wishful thinking to assume that these countries would follow America's lead and curb economic growth to reduce greenhouse gas emissions.

## T

### 2NC OV

#### Legislative history proves armed forces are only humans – that’s Lorber. Predictable limits outweigh any of their offense – we had the nukes topic, it was fun but it’s over now. We can’t be expected to research a whole new resolution. Research burden outweighs, err neg there are structural speech time advantages to the aff. That work is not inevitable, their CI means affs which are only about weapons systems would be T.

#### Topical version of the aff – MSUs WPR affirmative, might include weapons but cannot be ONLY about them. We solve all their offense about nukes because those are awesome counterplans in the world of the negative.

### 2NC Ground

Ground – troops are the true controversy

Lorber, JD University of Pennsylvania, January 2013

(Eric, “Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?” 15 U. Pa. J. Const. L. 961, Lexis)

The broad purpose of the Resolution aimed to prevent the large-scale but unauthorized deployments of U.S. troops into hostilities. n187 While examining the broad purpose of a legislative act is increasingly relied upon only after examining the text and legislative history, here it provides further support for those two alternate interpretive sources. n188 As one scholar has noted, "the War Powers Resolution, for example, is concerned with **sending U.S.** troops **into harm's way**." n189 The historical context of the War Powers Resolution is also important in determining its broad purpose; as the resolutions submitted during the Vietnam War and in the lead-up to the passage of the WPR suggest, **Congress was concerned about its ability to effectively regulate the President's deployments of large numbers of U.S. troops** to Southeast Asia, n190 as well as prevent the President from authorizing troop incursions into countries in that region. n191 The WPR was a reaction to the President's continued deployments of these troops into combat zones, and as such suggests that Congress's broad purpose was to prevent the unconstrained **deployment of U.S. personnel**, not weapons, **into hostilities**.

### Limits

#### Restrictions on war powers could include restrictions on any weapons system – nuclear weapons, land mine bans, cluster bombs, chemical weapons – it’s why we need a ‘human’ limit

Lobel, 8 - Professor of Law, University of Pittsburgh Law School (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War” 392 OHIO STATE LAW JOURNAL [Vol. 69:391, <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel_.pdf>)

The third theory—based on the distinction between general rules and specific tactics—also has surface appeal, but is unworkable when applied to specific issues because the line between policy and tactic is too amorphous and hazy to be useful in real world situations. For example, how does one decide whether the use of waterboarding as a technique of interrogation is a policy or specific tactic? Even if it is arguably a specific tactic, Congress could certainly prohibit that tactic as antithetical to a policy prohibiting cruel and inhumane treatment. So too, President Bush’s surge strategy in Iraq could be viewed as a tactic to promote a more stable Iraq, or as a general policy which Congress should be able to limit through use of its funding power. Congress can limit tactical decisions to use particular weapons such as chemical weapons, nuclear weapons, or cluster bombs by forbidding the production or use of such weapons, or simply refusing to fund them.42 Congress could also, however, enact more limited and specific restrictions to prohibit the use of nuclear weapons or land mines in a particular conflict or even a particular theater of war. Indeed, most specific tactics could be permitted or prohibited by a rule. In short, the distinctions between strategies and tactics, rules and detailed instructions, or policies and tactics are simply labels which are virtually indistinguishable. Labeling an activity with one of these terms is largely a distinction without a difference. Accordingly, these labels are not helpful to the real problem of determining the respective powers of Congress and the President.43

#### Broad interpretations cause unmanageable research burdens

Taylor III, now a JD from William and Mary, 2005

(Jarred, “Searching for a More Perfect Union,” https://docs.google.com/document/d/1ypiOXjRVPWzNxDsFVJ0S1n-QfIGtXzp7Y59meEwd-bE/edit?hl=en\_US)

**It would take even the most seasoned scholar years of research and hundreds of pages to** adequately **analyze** the development of **any presidential power** over the course of American history; **war power is** certainly **no exception**. Every President since George Washington has interpreted the martial prerogatives of his office in different ways, and most have set some sort of precedent for succeeding officeholders. Nevertheless, some of the major changes in executive military power bear highlighting.

### Topic Coherence

#### Topic coherence – if their interpretation is correct, then including ‘offensive cyber operations’ in the topic would be redundant and unnecessary, since cyber command falls under the uniformed services – this means their interpretation isn’t predictable

**USSTRATCOM, 13** (“U.S. Cyber Command” current as of August, http://www.stratcom.mil/factsheets/Cyber\_Command/)

USCYBERCOM is a sub-unified command subordinate to U. S. Strategic Command (USSTRATCOM). Service elements include: Army Cyber Command (ARCYBER); Air Forces Cyber (AFCYBER); Fleet Cyber Command (FLTCYBERCOM); and Marine Forces Cyber Command (MARFORCYBER). The Command is also standing up dedicated Cyber Mission Teams to accomplish the three elements of our mission.

### AT: Reasonability

#### Reasonability is impossible – it’s arbitrary and undermines research and preparation

Resnick, assistant professor of political science – Yeshiva University, ‘1

(Evan, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2)

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

## Counterplan

### A/T Perm

#### Courts cant check Executive---multiple obstacles-Congress action key

Menitove-JD Harvard-10 43 U. Mich. J.L. Reform 773

NOTE: ONCE MORE UNTO THE BREACH: AMERICAN WAR POWER AND A SECOND LEGISLATIVE ATTEMPT TO ENSURE CONGRESSIONAL INPUT

III. Mixed Messages: How the Judiciary Has Addressed War Power Notwithstanding a few early Supreme Court decisions defending Congress's predominance over the president in exercising war power, the judiciary has been largely unhelpful in restoring the constitutional Framers' original vision. Initial decisions arising out [\*786] of the Quasi-War with France affirmed Congress's authority, but subsequent holdings - most especially the Supreme Court's decisions in The Prize Cases 61 and United States v. Curtiss-Wright 62 - seemed to imbue the president with extra-constitutional war power authority. 63 By the time litigation arose during the Vietnam and Persian Gulf Wars, the courts timidly refused to decide the issue, claiming the issue to be a nonjusticiable political question. 64 As such, the judiciary does not represent a viable means for mandating the constitutionally required congressional input in war-making decisions. A. The Earliest Supreme Court Cases Pertaining to War Power Affirmed Congress's Authority The earliest Supreme Court cases pertaining to war power arose out of the Quasi-War with France between 1798 and 1800, which, although authorized by congressional statute, was undeclared. Writing in 1800, the Supreme Court noted in Bas v. Tingy, 65 that regardless of whether hostilities were declared or undeclared, the conflict still constituted "war" in the constitutional sense, with the declared war being "perfect" and "general" war and the undeclared war constituting "imperfect" and "limited" war. 66 While the Court did not expressly identify Congress to be the dominant player in war-making decisions, the Court strongly implied this message: Congress is empowered to declare a general war, or congress may wage a limited war; limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations; but if a partial war is waged, its extent and operation depend on our municipal laws [as passed by Congress]. 67 [\*787] The Court was far more explicit in Talbot v. Seeman, 68 an 1801 case also with origins in the Quasi-War with France. In Talbot, the newly-sworn Chief Justice John Marshall confronted a dispute between Captain Silas Talbot, whose American warship (the U.S.S. Constitution) libeled the Amelia, a Hamburgh vessel that had been captured by the French. 69 In finding Captain Talbot's seizure of the Amelia lawful, Justice Marshall held that although war had not been declared against France, Congress had authorized the U.S. Navy to capture French vessels, and since the Amelia was carrying eight carriage guns and in possession of the French, there was sufficient probable cause for Captain Talbot to capture the ship. 70 Most notable is Justice Marshall's explicit statement regarding Congress's war power: The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this enquiry. It is not denied, nor in the course of the argument has it been denied, that congress may authorize general hostilities, in which case the general laws of war apply to our situation; or partial hostilities, in which case the laws of war, so far as they actually apply to our situation, must be noticed. To determine the real situation of America in regard to France, the acts of congress are to be inspected. 71 Justice Marshall more precisely defined his views regarding the balance of war power between the legislative and executive branches in Little v. Barreme, 72 an 1804 case also arising out of the Quasi-War. In Little, Justice Marshall held that in authorizing war, Congress may place limits on the president's conduct. The facts of Little relay the story of Congress authorizing President Adams to seize ships sailing to French ports, with President Adams - contrary to Congress's wishes - issuing an order to capture vessels sailing to or from French ports. 73 Captain George Little seized a Danish ship sailing from a French port, and was subsequently sued for damages. Marshall, in deciding the case, held that Captain Little could [\*788] be held liable for damages, 74 thus ruling that orders issued by the Commander-in-Chief during wartime are still subject to Congress's restrictions. 75 Such a ruling clearly indicates Justice Marshall's belief that, on war-making decisions, Congress reigned supreme over the president. The Court affirmed the notion of congressional war power supremacy in Martin v. Mott, 76 a controversy arising in 1827 in the aftermath of the War of 1812. While some cite this case as support for broad presidential war power, the Court actually imposed limits on the president's authority. 77 In the decision, Justice Story sustained the delegation by Congress to the president of the authority to call up the militia, but the Court carefully constricted the circumstances in which the president could act, noting the president's power to be "a limited power, confined to cases of actual invasion, or of imminent danger of invasion." 78 Furthermore, the Court confirmed that the president did not hold any inherent war power authority; he could only exercise war power when such power was "confided by Congress to the President." 79 These four decisions illustrate early Supreme Court recognition of Congress's dominant role, thus fulfilling the Framers' original vision for the balance of war power. B. Subsequent Decisions Imbued the President with Extra-constitutional War Power Authority In two decisions - one rendered in 1862 pertaining to President Lincoln's conduct at the start of the Civil War, the other decided in 1936 discussing the president's role in foreign affairs - the Supreme Court expanded presidential war power. The Supreme Court addressed Lincoln's order to blockade southern ports and seize ships without Congress's authorization in The Prize Cases, 80 splitting five to four, with the majority sustaining the Union seizures. 81 According to the Court's opinion, the president's inherent authority as Commander-in-Chief justified his action 82 and, even if [\*789] he lacked the constitutional authority to issue the blockade, Congress ratified the blockade via subsequent legislation, thus rendering this military action without Congress's consent a valid exercise of the war power. 83 The Supreme Court further weakened Congress's ability to intervene on the president's foreign affairs activity in United States v. Curtiss-Wright Export Corp. 84 in 1936. Upholding the president's declaration of an arms embargo, the Court noted, "the powers of external sovereignty did not depend upon the affirmative grants of the Constitution" 85 and that "participation [by Congress] in the exercise of the power is significantly limited." 86 Citing "this vast external realm, with its important, complicated, delicate and manifold problems" 87 Justice Sutherland, writing the majority opinion, argued that the president has an inherent power to be "the sole organ of the federal government in the field of international relations." 88 Justice Sutherland further elaborated on this view of presidential supremacy in foreign affairs, focusing specifically on war: He, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. 89 Thus, according to Justice Sutherland's constitutional interpretation, it is the president - and not Congress - who is predominant in exercising war power. In both The Prize Cases and Curtiss-Wright, the Supreme Court has undermined its previous commitment to congressional war power, and provided support to those who support broad presidential war-making authority. [\*790] C. Modern Courts Refuse to Rule on War Power, Declaring the Issue a Nonjusticiable Political Question In more recent decisions, the courts have adopted a different approach, refusing to decide cases concerning war power on grounds that the issue is a nonjusticiable political question. During the Vietnam War, Members of Congress sought assistance from the courts in reasserting their constitutionally-provided war power. However, rather than hear these cases, the judiciary sidestepped the issue, declining to hear cases concerning the constitutionality of the continuation of the war on grounds that the political question doctrine prevented the courts from deciding the issue. 90 During the Reagan and Bush Administrations, courts declined to reach the merits in war powers cases relying on other excuses including mootness, 91 ripeness, 92 standing, 93 the doctrines on judicial prudence and equitable discretion, 94 and the notion that Congress would be a better fact-finder than the courts on this issue. 95 Unlike the early Supreme Court cases, or the subsequent Prize Cases and Curtiss-Wright decisions, the judicial branch over the last thirty years has steered clear of the war powers issue. While the Supreme Court once served as a bulwark in defense of Congress's predominance over the president in administering the war power, subsequent Supreme Court decisions undermined Congress's constitutional authority. The courts have thus revealed themselves as unable to restore the balance of war power to the Framers' original vision. The judiciary's more recent strategy of treating war power as a nonjusticiable political question has unequivocally established that the courts cannot be trusted to protect [\*791] Congress. For this reason, Congress must seek to help itself, acting to pass a legislative war power reform act to ensure that its input is considered when the United States goes to war.

### a/t circumvention

#### The CP avoids the constitutional pitfalls of War Powers Resolution

Menitove-JD Harvard-10 43 U. Mich. J.L. Reform 773

NOTE: ONCE MORE UNTO THE BREACH: AMERICAN WAR POWER AND A SECOND LEGISLATIVE ATTEMPT TO ENSURE CONGRESSIONAL INPUT

3. The Act Represents a Constitutional Exercise of Congress's Authority

A third potential argument against the proposed legislation is that it represents an unconstitutional usurpation of the president's power as Commander-in-Chief. In confronting this argument, it should be noted that the previous cited precedents - the Clark Amendment, Boland Amendment, and Case-Church Amendment - were never held unconstitutional by any court. Furthermore, from an originalist perspective, the War Powers Appropriations Act does not interfere with the president's constitutionally afforded powers. As cited previously, Alexander Hamilton in Federalist No. 69 noted that the president's Commander-in-Chief power amounted to "nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy... ." 164 Hamilton goes on to describe how the duties of declaring war and raising and regulating fleets and armies are under Congress's control. 165 The proposed legislation does not govern the mechanics of troop deployment and withdrawal, instead leaving these responsibilities to the Commander-in-Chief. The Act's only function is to set the rules under which Congress will exercise its Article I, Section 9 power to appropriate funds. While constitutional objections plagued the War Powers Resolution following the 1983 Chadha decision, the War Powers Appropriations Act avoids enacting a legislative veto provision. Because the legislation is couched within Congress's Article I, Section 9 power of the purse, it represents a constitutionally viable means for Congress to engage itself in the decision to make war.

#### ---Specificity in appropriation can minimize Presidential cheating

Tiefer-prof law Baltimore-6 42 Stan. J Int'l L. 291

Article: Can Appropriation Riders Speed Our Exit from Iraq?

There are various methods by which proponents of Iraq war riders can counter presidential undermining: by including standards, loophole-closing requirements, and watchdogs in the provision. First, to the extent congressional provisions have concrete standards, Presidents have less room to minimize their effect. A withdrawal provision that includes dates for some levels of withdrawal, such as completion in no more than two years, will withstand presidential minimizing better than a provision with no such dates. A policy provision with specifics about reducing reservist combat exposure, such as excluding reservists from the kinds of operations that exceed a specific level of casualties in the previous year, will withstand presidential minimizing better than a provision with no such specifics. This is particularly true of terms on aid that require changes in Iraqi governance. A provision with specifics about increasing the Sunni role in governance, such as reserving shares in certain posts for Sunnis, will withstand presidential minimizing better than a provision with no such specifics. So, provision drafters anticipating post-enactment presidential minimizing will include specifics about what they wish, and endure the inevitable criticisms that such detailed provisions constitute "micromanaging," out of awareness that by doing so they have a greater chance of affecting policy.

### Only green tech can solve

Only carbon-negative strategies solve

Lubin, reporter – Business Insider, 10/22/’11

(Gus, <http://articles.businessinsider.com/2011-10-22/news/30309712_1_global-warming-greenhouse-gases-sea-levels>)

We've ignored the climate change gurus for too long, and now it's probably too late to avoid dangerous levels of global warming.

This is the dire conclusion reached by Joeri Rogelj and other scientists in an article published in Nature Climate Chinage (via Science Magazine).

Using the latest data, Rogelj's team modeled 193 proposed emissions plans that were intended to keep global warming below 2°C. They found that most of these plans are already obsolete.

The only plans with any hope of preventing dangerous global warming are those in which global emissions peak during this decade.

The three plans that are "very likely" to work all require heavy use of energy systems that actually remove greenhouse gases from the atmosphere.

### Green Banks Solvency – 2NC

#### 4. Only the CP facilitates innovation-that’s key.

**Victor, UC San Diego IR professor, 2011**

(David, “The Crisis in Clean Energy”, Foreign Affairs; Jul/Aug2011, Vol. 90 Issue 4, p112-12, ebsco, ldg)

THE CLEAN-ENERGY business, like many infant industries, depends on government support. Governments have many ways of affecting innovation, but in the energy industry, the most important ones focus on overcoming two obstacles. The first obstacle is the technology gap, or the short supply of commercially plausible technologies. The U.S. government and some private companies have helped fill this gap by funding basic research and by backing some of its most promising projects, such as the invention of organisms that can create biofuels. The second obstacle is the commercialization gap. New technologies often require massive investments in commercial-scale testing before the private sector can fully fund them on its own. Plugging the commercialization gap is far trickier than plugging the technology gap because the costs are greater and the best policies require government agencies to work alongside private actors without undermining market competition--a delicate balancing act. And it is in this area that the clean-energy industry is most in trouble today. Many innovative ideas bubble up in laboratories and even attract early stage venture capital funding. But these ideas often die because when it comes to testing and deployment, governments throughout the world overwhelmingly support the least risky concepts, which often are the least innovative. Examples include biofuels derived from food crops and onshore wind farms--technologies that absorb the bulk of clean-energy subsidies, steering investors toward existing technologies rather than innovative ones. This pattern has unwittingly created an industry that is unable to scale up and compete with existing energy sources without government help. In the United States, tax credits and depreciation benefits account for more than half the afte rtax returns of conventional wind farms, for instance. Investors in solar energy projects depend on U.S. government subsidies for at least two-thirds of their returns. And the U.S. government lavishes on producers of corn-derived ethanol between $1 and $1.50 per gallon of ethanol produced--just about the costs of production--despite the fact that almost no one considers corn-derived ethanol to be an economically viable fuel that can protect the environment or reduce dependence on oil. In the United States, most clean-energy subsidies come from the federal government, which makes them especially volatile. Every few years, key federal subsidies for most sources of clean energy expire. Investment freezes until, usually in the final hours of budget negotiations, Congress finds the money to renew the incentives--and investors rush in again. As a result, most investors favor low-risk conventional clean-energy technologies that can be built quickly, before the next bust. Historically, most incentives have come as tax credits. During the recent financial crisis, when investors (mainly large banks) lost much of their taxable earnings, investment plummeted and sent the clean-energy market into a tailspin. An emergency scheme called Section 1603, adopted as part of the government's fiscal stimulus plan in early 2009, offered one-year direct cash grants. These were structured to cover a percentage of the costs of shovel-ready projects, which gave beneficiaries few incentives to cut costs so as to make these technologies more competitive for the long haul. Section 1603 pumped over $2.7 billion into the U.S. wind, geothermal, and solar markets in 2010 alone. With hard cash proving more attractive than tax credits, the industry successfully lobbied to extend the scheme through the end of 2011. In parallel with these federal incentives, many U.S. states offer subsidies to clean-energy producers and impose mandates that force electric companies to buy from them. Twenty-nine U.S. states and the District of Columbia have adopted binding renewables portfolio standards, which require that a minimum fraction of the electricity they produce come from renewable sources. (The exact fraction varies by state, as do the rules for what qualifies as "renewable.") Because the states and the federal government rarely work in tandem, the clean-energy market in the United States suffers from a patchwork of varied and volatile policies. This system has unwittingly given investors good reasons to spend largely on conventional renewable-energy technologies that can be developed quickly rather than on innovations that could, once developed at scale, compete with traditional energy sources.

#### 4. CP boosts small businesses-they’re key

**Morford, InsideClimate News, 2009**

(Stacy, “Federal Loan Rules Stymie Innovation by Shutting Out Small Businesses”, 3-2, <http://insideclimatenews.org/news/20090302/federal-loan-rules-stymie-innovation-shutting-out-small-businesses>, DOA: 9-11-12, ldg)

In the United States right now, small, innovative companies are ready to launch clean energy projects that could revolutionize the American auto industry. They have proven prototypes and business plans to rejuvenate shuttered factories and put people back to work. All they need is the money to begin work. And there’s the rub. The money is there, but they can’t get it. While the credit crisis has cut off funding from banks, the federal government is sitting on a $25 billion Advanced Technology Vehicles Manufacturing Loan program meant for retooling factories to produce more fuel-efficient vehicles. That money could be an engine for innovation, but small businesses are effectively shut out because the loans require recipients to put up at least 20 percent. To retool a factory for production, 20 percent easily equates to more than $200 million. That 20 percent poison pill penalizes small businesses that are technology-rich but cash-poor, says Ed Furia, a former EPA regional administrator whose company AFS Trinity Power Corp. has developed an extreme hybrid that gets 40 miles per charge and allows an off-the-shelf lithium ion battery to go 150,000 miles, compared to a standard hybrid’s 25,000. “The Obama administration has to take a second look at this legislation," Furia says. "If you think that small businesses are the source of innovation, and if you think that the money for innovation is going to come from this program, then you’re going to have to make it friendly to small business. Don’t just spend it on the big car companies that have resisted developing efficient technologies. In the case of GM, Chrysler, and Ford, we've dumped a ton of money into them and they don’t even have a plan.” Byron Kennard, executive director of the Center for Small Business and the Environment, has been working with the White House Council on Environmental Quality to help the new administration understand how small businesses could be key to solving the country's energy problems – and what Washington needs to do to lift the barriers. Small businesses make up about 80 percent of the clean tech industry, and they have a proven track record of innovation. As Kennard likes to remind lawmakers, “Entrepreneurial booms got us out of the last five recessions.” For entrepreneurs to get the economy out of its latest recession, small businesses need access to credit. They need federal grants, rather than high-cost loans, Kennard says. Federal procurement could help as well by putting new technology to work in government vehicle fleets that need fuel-efficiency upgrades anyway. The first company Kennard mentions when he talks with federal officials about the potential for small businesses to resuscitate the American economy is Furia’s AFS Trinity "because it is green, equipped and ready to go." AFS Trinity’s extreme hybrid technology drew a lot of media attention at the Detroit Auto Show in January for its ability to solve one of the electric vehicle’s biggest problems: battery power. The Achilles heel for electric vehicles and plug-in hybrids is how much acceleration stresses its batteries. As Furia explains, "batteries like to be sipped – they don’t like to be gulped." AFS Trinity re-envisioned the problem and created a combination lithium ion battery-ultracapacitor system. The ultracapacitors store energy electronically, and they don’t wear out. “In our vehicle, the batteries are always coasting. If you have to accelerate, the capacitor can deliver all the energy quite fast – you can go zero to 60 in 6.9 seconds. The capacitor loves to gulp, and it can do it over and over and over again." Furia refers to his company’s extreme hybrids as computers with cars built around them. The XH-150s prototypes are Saturn Vues, but the body could be just about any mid-size SUV. Affordability isn't an issue. Once in production, Furia estimates that the technology would add only about $1,000 to the price of the base vehicle after the new manufacturers hybrid tax credit is applied. The only holdup is money to get started – AFS Trinity doesn’t have $260 million lying around to secure the government loan it needs to take over a factory and start production. Dozens of small, progressive companies face similar challenges. Furia believes the answer for his company could lie in the economic stimulus package. The American Reinvestment and Recovery Act of 2009 set aside $2 billion in grants for advanced battery development. If AFS Trinity can get $200 million from that grant program, it will have enough cash to secure $1.3 billion from the green retooling money. The green retooling money is expected to begin trickling out in April, and Furia is working hard to get his plan in front of the Obama administration.

#### 5. Plan’s incentive is insufficient-only the CP loosens the credit supply.

**Kaminker, Office of the Director OECD Environment Directorate economist, 2012**

(Christopher, “The Role Of Institutional Investors In Financing Clean Energy”, <http://www.oecd.org/insurance/privatepensions/WP_23_TheRoleOfInstitutionalInvestorsInFinancingCleanEnergy.pdf>, DOA: 9-11-12, ldg)

Decarbonising the world’s energy system will require enormous investments. Achieving this economy-wide transformation requires cumulative investment in green infrastructure in the range of USD 36-42 trillion between 2012 and 2030, i.e. approximately USD 2 trillion or 2% of global GDP per year. Today, only USD 1 trillion is being invested annually. As such, a USD 1 trillion investment gap exists which would need to be addressed. 7 In the nearer term and just focusing on the power sector alone, the IEA (2012 forthcoming) projects that USD 6.35 trillion in total investment will be required between 2010-2020 in order to reduce energy related emissions by 50% compared to 2005 levels. Decarbonising the power sector in this manner will require switching from traditional fossil-fuel plants to a mix of renewables, nuclear and fossil-fuel plants equipped with CCS. The investment requirements rise rapidly between 2030 to 2050. These are formidable numbers but well within the capacity of capital markets if the risk-adjusted returns are available. There is already international agreement on the need to increase financing for climate change mitigation and adaptation – including funding for clean energy projects. Indeed in the international climate change negotiations, developed countries have committed to mobilising jointly USD 100 billion per year by 2020 8 - but key questions remain regarding what financial flows might count towards this commitment and how this will be delivered in practice. 9 At the same time, traditional sources of private finance for infrastructure projects, including clean energy, are becoming more constrained in their capacity to provide long term capital. For example, it has become more difficult to obtain bank loans with the long maturities required by infrastructure projects as commercial banks face capital and liquidity constraints. The new Basel III banking regulations are expected to have a very negative impact on the type of long-term project financing required to fund clean technology. The new requirements will force banks to hold more equity on their balance sheets for higher risk lending and it is predicted that the long-term capital commitments associated with clean energy infrastructure projects could become too expensive for banks to finance. Current expectations are that conditions for bank loans and refinancing will likely become much less favourable and more expensive. Some of the finance community have stressed that there is a need for detailed appraisal of the implications of Basel III for banks ability to provide long-term project finance; and further consideration of whether there are ways for this impact to be ameliorated via modifications to the Basel III regulations. Indeed, following the financial crisis, some of the banks most active in the infrastructure financing sector more broadly have largely withdrawn from the market, essentially due to liquidity issues and the fact that these loans consume a lot of capital but are relatively low in profits. 10 In addition, the Dodd Frank Wall Street Reform and Consumer Protection Act passed by the US Congress in 2010 could potentially restrict investment in private equity and venture capital firms and other types of privately offered funds which may have an impact on US banks‟ ability to fund the development of clean tech companies. 11 The demise of AAA-rated monoline insurance companies 12 has also frozen capital markets for infrastructure, depriving the infrastructure market of a limited but valuable source of financing (by 2010 only one monoline insurer was issuing new policies and none had retained a AAA credit rating). 13 This gap has been partially filled by multi-lateral lending institutions increasing their support to the infrastructure sector during the crisis, but by themselves they cannot offer a solution to the „infrastructure gap‟ more broadly or all the funds required for clean energy projects more specifically.

### Opop

Technological advances will solve any resource shortage problems and population growth will slow down. Plus, population is self-regulating – if the world can’t cope the subsequent famines will decrease the population anyway.

Michael Zey, professor at the School of Business Administration at Montclair University and executive director of the Expansionary Institute and internationally recognized expert on the economy, society and management, as well as author. Seizing the Future, 1998 p185-87

In fact, perhaps the time has arrived for the species to reconsider the very concept of density altogether. The Macroindustrial society’s stu­pendous ability to construct artificial islands, underground cities and city-buildings, obliterates timeworn and obsolete notions of “popula­tion” density in much the same way that skyscrapers rewrote earlier concepts of overcrowding. In fact, when people want more land, it is within their ability to go out and create it. Israelis are reclaiming the Negev Desert through the use of hydroponics, the agricultural tech­nique that recycles all water and nutrients, is nonpolluting, and needs little land and no soil at all. Holland has been reclaiming land from the sea for centuries. Between 1951 and 1971, India’s total cultivated land acreage in­creased by 20 percent. In fact, it would surprise most Westerners bom­barded with dire media predictions about that country’s fate to discover that India is not now densely populated. Measured by the number of persons per acre of arable land, Japan and Taiwan, neither of which can be considered suffering from malnourishment, are about five times as densely populated as India. So it would seem that the argument that a growing population will outdistance the supply of food, materials, and energy cannot withstand empirical scrutiny. Nonetheless advocates of zero growth periodically revive such alarmist arguments, exploiting fears harbored deep inside the human psyche since the dawn of the human species: mass starva­tion, drought, and ecological Armageddon. The arguments can be safely ignored. The world population, which at present stands at about 5 billion persons, will peak over the next century and a half at around twice that. What conditions must prevail for a population to add another 5 billion individuals to its ranks? For one, its members must be sufficiently healthy to reach puberty, must be physically resilient enough to bear healthy children, and must re­main in good health to care for the children and to produce goods and services to support this next generation. In a sense, the zero-growth advocates have turned the argument on its head to produce a concept that is ultimately illogical. How could a starving, unhealthy, disease-ridden society, which we supposedly will become if we keep increasing our population, even sustain itself to double in size? Such societal breakdowns—famine, drought, and plague—are the very factors that prevented humanity from reaching any sizable population level until A.D. 1800, after 30,000-plus years of attempted expansion. In other words, our expansion from 5 billion to 11 billion, instead of being a harbinger of shortages and deterioration, will be proof positive that the Macroindustrial revolution has delivered what it promised—a healthy, well-fed, technologically advanced global society that supports 5 billion more people than lived on the planet at the era’s inception! In truth, the decision to consider the newborn child as a mouth to feed instead of a being whose brain will contribute to the world’s knowl­edge and whose hands will help build the universe more reflects the observer’s own prejudices and pessimism than any reality we know. From the above, it is obvious that the technological breakthroughs and material improvements of the Macroindustrial Era will sustain a much larger population. At the same time, that growing population will contribute the labor and creativity necessary to support the continued progress of the species. As we have seen, these advances in the agricultural, energy, and materials fields demonstrate the species’ ability to overcome the restrictions of nature and to recast the concept of limits and boundlessness. The implications of these advances are many. We can finally see the light at the end of the tunnel in terms of eliminating hunger and malnutrition from the face of the planet.

#### No one cares enough to stop overpopulation, even if they have the ability

Boris Johnson, MP for Henley, 10-25-2007, Telegraph UK, Global over-population is the real issue

There was a time, in the 1960s and 1970s, when people such as my father, Stanley, were becoming interested in demography, and the UN would hold giant conferences on the subject, and it was perfectly respectable to talk about saving the planet by reducing the growth in the number of human beings. But over the years, the argument changed, and certain words became taboo, and certain concepts became forbidden, and we have reached the stage where the very discussion of overall human fertility — global motherhood — has become more or less banned. We seem to have given up on population control, and all sorts of explanations are offered for the surrender. Some say Indira Gandhi gave it all a bad name, by her demented plan to sterilise Indian men with the lure of a transistor radio. Some attribute our complacency to the Green Revolution, which seemed to prove Malthus wrong. It became the received wisdom that the world's population could rise to umpteen billions, as mankind learnt to make several ears of corn grow where one had grown before. And then, in recent years, the idea of global population control has been more or less stifled by a pincer movement from the Right and the Left. American Right-wingers disapprove of anything that sounds like birth control, and so George W. Bush withholds the tiny contribution America makes to the UN Fund for Population Activities, regardless of the impact on the health of women in developing countries. As for the Left, they dislike suggestions of population control because they seem to smack of colonialism and imperialism and telling the Third World what to do; and so we have reached the absurd position in which humanity bleats about the destruction of the environment, and yet there is not a peep in any communiqué from any summit of the EU, G8 or UN about the population growth that is causing that destruction.

### A/T Erosion

#### Nuke winter turns famine

Starr 2008

Steven, Associate member of the Nuclear Age Peace Foundation Director of Clinical Laboratory Science Program, University of Missouri-Columbia, Catastrophic Climatic Consequences of Nuclear Conflict, International Network of Engineers and Scientists Against Proliferation, Bulletin 28 April 2008, http://www.inesap.org/bulletin-28/catastrophic-climatic-consequences-nuclear-conflict

Nuclear detonations within urban and industrial areas would ignite immense mass fires which would burn everything imaginable and create millions of tons of thick, black smoke (soot). This soot would ultimately be lofted into the stratosphere. There it would absorb and block sunlight from reaching the lower atmosphere where greenhouse gases mainly reside, and thus act to reduce the natural greenhouse effect.4 The profound darkness and global cooling predicted to be result of this process (along with massive amounts of radioactive fallout and pyrotoxins,5 and ozone depletion) was first described in 1983 as nuclear winter.6 Joint research by Western and Soviet scientists led to the realization that the climatic and environmental consequences of nuclear war, in combination with the indirect effects of the collapse of society, could produce a nuclear winter which would cause famine for billions of people far from the war zones.7 These predictions led to extensive international research and peer review during the mid-1980s. A large body of work which essentially supported the initial findings of the 1983 studies was done by such groups as the Scientific Committee on Problems of the Environment (SCOPE),8 the World Meteorological Organization,9 and the U.S. National Research Council of the U.S. National Academy of Sciences.10 The idea of nuclear winter, published and supported by prominent scientists, generated extensive public alarm and put political pressure on the U.S. and the U.S.S.R. to terminate a runaway nuclear arms race which, by 1986, had created a global nuclear arsenal of more than 65,000 nuclear weapons. Unfortunately, this was anathema to the nuclear weapons establishment and thus nuclear winter created a backlash among many powerful conservative groups, who undertook an extensive media campaign to brand it as “bad science” and the scientists who discovered it as “irresponsible.” Critics used various uncertainties in the studies and the first climate models (which are relatively primitive by current standards) as a basis to denigrate and reject the concept of nuclear winter. In 1986, the Council on Foreign Relations published an article by scientists from the National Center for Atmospheric Research (NCAR), who predicted drops in global cooling about half as large as those first predicted by the 1983 studies and described this as a ‘nuclear autumn.’ Subsequent widespread criticism, in such publications as the Wall Street Journal and Time Magazine, often used the term “nuclear autumn” to imply that no important climatic change would result from nuclear war. In 1987, the National Review called nuclear winter a “fraud.” In 2000, Discover Magazine published an article which described nuclear winter as one of “The Twenty Greatest Scientific Blunders in History.”11 Sadly enough, for almost two decades this smear campaign limited serious discussion and prevented further studies of nuclear winter – and such criticism will continue.12 Yet the basic findings of the nuclear winter research, that extreme climatic changes would result from nuclear war, were never scientifically disproved and have been strengthened by the latest studies.

## Warming

### No warming war

#### No water wars

Tertrias 2011

Bruno, Dr. Bruno Tertrais is a Senior Research Fellow at the Fondation pour la recherche strate´gique (Foundation for Strategic Research), and a TWQ editorial board member, The Climate Wars Myth, The Washington Quarterly Summer 2011, http://www.twq.com/11summer/docs/11summer\_Tertrais.pdf

An avatar of the notion of climate war is that of future wars over water. Such wars have been forewarned since the late 1980s, but the theme has gained popularity since the end of the Cold War.27 If some commentators are to be believed, ‘‘the lines of battle are already being drawn for the water wars of the future.’’28 It is true that the map of predicted water stress at the 2025—2030 horizon reveals a close match with the map of major geopolitical risks: the Arabian Peninsula and Central Asia are among the regions which are most likely to be affected. Warming will not change anything about the global availability of water resources, but will probably induce changes in the geographical distribution of precipitation. However, this will not necessarily be for the worse: in many regions, the resource for agriculture will increase.29 Other regions will see more droughts. However, recent studies have shown that climate change whatever its origin has only a small part of responsibility for water crises: population increase is by far the main cause.30 Will the melting of Himalayan glaciers lead to a severe water crisis in South Asia, one of the most dangerous parts of the world? On this point, the IPCC included a serious error in its 2007 report, due to a series of confusions. The text claims that these glaciers could be reduced by 80 percent in 2035. The date came from a 2005 report by the World Wildlife Fund (WWF), for which primary sources were press articles and unpublished communications. (The WWF report now includes a correction retracting its claims.)31 As to the proportion of glaciers which could disappear by that time, it came from a 1996 UNESCO Report, which mentioned a possible 80 percent reduction of the global total of non-polar ice (not just Himalayan glaciers), but by the year 2350, not 2035.32 Resorting to non-peer-reviewed publications is also what led the IPCC to wrongly claim, based on an unsubstantiated assertion included in the Stern Report, that water availability in South Asia was highly dependent on glacier melt.33 But recent studies have shown that Himalayan glacier melt accounts for only three to 25 percent of the volume of rivers in South Asia: monsoons and local seasonal snow melt are by far their main sources.34

#### No instability

Tertrias 2011

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There are no data to support the vague idea that climate change can have a key role in triggering collective violence\_that is, be the proverbial straw that breaks the camel’s back, as argued by an alarmist study (citing once again the example of Darfur).48 Climate is ‘‘one of myriad factors in a complex causal web underlying conflict,’’ and the environment is just ‘‘one of manifold and nonessential causal factors’’ which may lead to war.49 The main causes of contemporary conflict are societal, not natural (in the broadest sense of the term, i.e., including man-made).50 Conflicts are borne out of human choices and mistakes. Could regional previsions of the impact of climate change at least inform policymakers and planners about the areas of the world which are more likely\_ all things being equal\_to suffer from them? The answer is no. Regional effects are extremely difficult to predict with the degree of probability which can be useful for planning.51 The IPCC itself underscores that current models do not have the ability to deliver useful previsions at a higher scale than the continental one.52 Nobody knows, for instance, whether African monsoons will move northwards (with positive effects on agriculture) or southwards (with negative effects). Here, as noted by a contributor to the IPCC, ‘‘there is complete disagreement between the various models.’’53 And when the IPCC attempts to give regional previsions on the evolution of agricultural output, for instance, it is in a way which does not buttress the case for alarmism. Its 2007 report mentions a possible reduction by 50 percent of rain-fed agricultural output in some African countries in 2020. But the sole source it cites to support this claim is a report produced for a Canadian non-governmental organization in which it is mentioned that (unpublished) studies evoke this scenario for three Maghreb countries.54 There are indeed, it seems, some causal links between climate and warfare. But they are of a seasonal nature: ‘‘nations address seasonal climate change in terms of where they fight, rather than through when or whether disputes occur. . . . Fighting moves to higher latitudes in the summer, and lower latitudes during the cooler months of the year.’’55 The stakes of climate change are important and that is why this area should not be the object of intellectual fantasies or fashions. It is appropriate for defense and security planners to monitor the evolution of the scientific and political debate on its possible consequences. But there is no objective reason today to list climate change as a key issue for defense and security planning.

### No extinction---ext

Experts agree

Hsu 10 (Jeremy, Live Science Staff, July 19, pg. <http://www.livescience.com/culture/can-humans-survive-extinction-doomsday-100719.html>)

His views deviate sharply from those of most experts, who don't view climate change as the end for humans. Even the worst-case scenarios discussed by the Intergovernmental Panel on Climate Change don't foresee human extinction. "The scenarios that the mainstream climate community are advancing are not end-of-humanity, catastrophic scenarios," said Roger Pielke Jr., a climate policy analyst at the University of Colorado at Boulder. Humans have the technological tools to begin tackling climate change, if not quite enough yet to solve the problem, Pielke said. He added that doom-mongering did little to encourage people to take action. "My view of politics is that the long-term, high-risk scenarios are really difficult to use to motivate short-term, incremental action," Pielke explained. "The rhetoric of fear and alarm that some people tend toward is counterproductive." Searching for solutions One technological solution to climate change already exists through carbon capture and storage, according to Wallace Broecker, a geochemist and renowned climate scientist at Columbia University's Lamont-Doherty Earth Observatory in New York City. But Broecker remained skeptical that governments or industry would commit the resources needed to slow the rise of carbon dioxide (CO2) levels, and predicted that more drastic geoengineering might become necessary to stabilize the planet. "The rise in CO2 isn't going to kill many people, and it's not going to kill humanity," Broecker said. "But it's going to change the entire wild ecology of the planet, melt a lot of ice, acidify the ocean, change the availability of water and change crop yields, so we're essentially doing an experiment whose result remains uncertain."

Previous temperature spikes disprove the impact

Singer, PhD physics – Princeton University and professor of environmental science – UVA, consultant – NASA, GAO, DOE, NASA, Carter, PhD paleontology – University of Cambridge, adjunct research professor – Marine Geophysical Laboratory @ James Cook University, and Idso, PhD Geography – ASU, ‘11

(S. Fred, Robert M. and Craig, “Climate Change Reconsidered,” 2011 Interim Report of the Nongovernmental Panel on Climate Change)

Research from locations around the world reveal a significant period of elevated air temperatures that immediately preceded the Little Ice Age, during a time that has come to be known as the Little Medieval Warm Period. A discussion of this topic was not included in the 2009 NIPCC report, but we include it here to demonstrate the existence of another set of real-world data that do not support the IPCC‘s claim that temperatures of the past couple of decades have been the warmest of the past one to two millennia. In one of the more intriguing aspects of his study of global climate change over the past three millennia, Loehle (2004) presented a graph of the Sargasso Sea and South African temperature records of Keigwin (1996) and Holmgren et al. (1999, 2001) that reveals the existence of a major spike in surface air temperature that began sometime in the early 1400s. This abrupt and anomalous warming pushed the air temperatures of these two records considerably above their representations of the peak warmth of the twentieth century, after which they fell back to pre-spike levels in the mid-1500s, in harmony with the work of McIntyre and McKitrick (2003), who found a similar period of higher-than-current temperatures in their reanalysis of the data employed by Mann et al. (1998, 1999).

### at: your science bad

#### Prefer our authors –

#### A subpoint – confirmation bias

Hoffman 2012

Doug L., adjunct Professor of Computer Science at Hendrix College and the University of Central Arkansas, focus in modeling of complex systems, New Climate Models Fall Short, 5-29-2012, The Resilient Earth, http://theresilientearth.com/?q=content/new-climate-models-fall-short

Lastly, I would like to mention an interesting piece of commentary that appeared in Nature in the same issue as the Tollefson report. In “Beware the creeping cracks of bias,” Daniel Sarewitz, co-director of the Consortium for Science, Policy and Outcomes at Arizona State University, talks about one of those subjects that is usually taboo in scientific circles: the threat to science by researcher's own bias. Sarewitz issued this blunt warning: “Alarming cracks are starting to penetrate deep into the scientific edifice. They threaten the status of science and its value to society. And they cannot be blamed on the usual suspects — inadequate funding, misconduct, political interference, an illiterate public. Their cause is bias, and the threat they pose goes to the heart of research.” Though Sarewitz is specifically concerned with biomedical research, his warning should be taken as a general one. All areas of scientific endeavor can be affected by peer pressure, by group think, by consensus. When an idea becomes generally accepted, there is a natural tendency for the scientific community to respond positively to new results that reinforce current thinking. Conversely, papers that present a negative result, attacking or diminishing the currently held theory, often find a cold welcome and may not be published at all. Bias is natural and pervasive, and antithetical to good science. Here is how Sarewitz describes it: How can we explain such pervasive bias? Like a magnetic field that pulls iron filings into alignment, a powerful cultural belief is aligning multiple sources of scientific bias in the same direction. The belief is that progress in science means the continual production of positive findings. All involved benefit from positive results, and from the appearance of progress. Scientists are rewarded both intellectually and professionally, science administrators are empowered and the public desire for a better world is answered. The lack of incentives to report negative results, replicate experiments or recognize inconsistencies, ambiguities and uncertainties is widely appreciated — but the necessary cultural change is incredibly difficult to achieve. The presence of bias in the global warming debate should be obvious to the most casual of observers. The paucity of published articles that contradict the existing paradigm, the reliance on “consensus” when arguing for the accepted dogma and the ad hominin attacks on scientists bold enough to decry the AGW party line all highlight the bias of the climate science community. Yet as we have seen above there are still gaping holes in our knowledge of Earth's climate system. The old models have been shown to be inadequate and the new ones are not in agreement—unsurprising given that aerosol effects are only crudely estimated and we still do not understand the carbon cycle in sufficient detail. All of this confronts climate science with some fundamental questions. “In the end, the climate community must confront a basic question about models,” reports Tollefson. Michael Winton, a modeler at the GFD puts it more succinctly: “If you made a model and it matched the observations perfectly, would you claim success?” What can be said for a model that matches recent climate fluctuation accurately but does so for the wrong reasons? More fundamentally, how do you know what the right answer is? As we have seen in the past, the right answer is decided by “consensus,” which is to say by the bias and expectations of the clique of climate scientists. “A biased scientific result is no different from a useless one,” states Sarewitz, “neither can be turned into a real-world application.” Yet that is precisely what the IPCC modelers are claiming, that we should accept the uncertain output of incomplete models, created to satisfy the bias of the greater climate science community, as a factual representation of the Earth system. Starting in 2013, the IPCC will strive to achieve consensus, basically the same consensus they promoted in the previous report, but all they will be doing is codifying the bias of a group of scientists with no real answers.

### Inevitable

That means 6 degree warming’s inevitable

**AP 9** (Associated Press, Six Degree Temperature Rise by 2100 is Inevitable: UNEP, September 24, <http://www.speedy-fit.co.uk/index2.php?option=com_content&do_pdf=1&id=168>)

Earth's temperature is likely to jump six degrees between now and the end of the century even if every country cuts greenhouse gas emissions as proposed, according to a United Nations update. Scientists looked at emission plans from 192 nations and calculated what would happen to global warming. The projections take into account 80 percent emission cuts from the U.S. and Europe by 2050, which are not sure things. The U.S. figure is based on a bill that passed the House of Representatives but is running into resistance in the Senate, where debate has been delayed by health care reform efforts. Carbon dioxide, mostly from the burning of fossil fuels such as coal and oil, is the main cause of global warming, trapping the sun's energy in the atmosphere. The world's average temperature has already risen 1.4 degrees since the 19th century. Much of projected rise in temperature is because of developing nations, which aren't talking much about cutting their emissions, scientists said at a United Nations press conference Thursday. China alone adds nearly 2 degrees to the projections. "We are headed toward very serious changes in our planet," said Achim Steiner, head of the U.N.'s environment program, which issued the update on Thursday. The review looked at some 400 peer-reviewed papers on climate over the last three years. Even if the developed world cuts its emissions by 80 percent and the developing world cuts theirs in half by 2050, as some experts propose, the world is still facing a 3-degree increase by the end of the century, said Robert Corell, a prominent U.S. climate scientist who helped oversee the update. Corell said the most likely agreement out of the international climate negotiations in Copenhagen in December still translates into a nearly 5-degree increase in world temperature by the end of the century. European leaders and the Obama White House have set a goal to limit warming to just a couple degrees. The U.N.'s environment program unveiled the update on peer-reviewed climate change science to tell diplomats how hot the planet is getting. The last big report from the Nobel Prize-winning Intergovernmental Panel on Climate Change came out more than two years ago and is based on science that is at least three to four years old, Steiner said. Global warming is speeding up, especially in the Arctic, and that means that some top-level science projections from 2007 are already out of date and overly optimistic. Corell, who headed an assessment of warming in the Arctic, said global warming "is accelerating in ways that we are not anticipating." Because Greenland and West Antarctic ice sheets are melting far faster than thought, it looks like the seas will rise twice as fast as projected just three years ago, Corell said. He said seas should rise about a foot every 20 to 25 years.

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### AT: Uncertainty

#### More evidence – Judiciary wrecks foreign affair certainty and flexibility

Ku and Yoo 6 (Julian, Professor of Law, University of California at Berkeley School of Law (Boalt Hall); Visiting Scholar, American Enterprise Institute and John, Professor of Law, University of California at Berkeley School of Law, “Article: HAMDAN v. RUMSFELD: THE FUNCTIONAL CASE FOR FOREIGN AFFAIRS DEFERENCE TO THE EXECUTIVE BRANCH,” Lexis)

A. Institutional Competence: The Judiciary While courts are the primary institutions in the U.S. system for interpreting and applying laws, some of their key institutional characteristics undercut their ability in the foreign affairs law context. In particular, courts have access to limited information in foreign affairs cases and are unable to take into account the broader factual context underlying the application of laws in such areas. These limitations are not a failing. They are part of the inherent design of the federal court system, which is intended to be independent from politics, to allow parties to drive litigation in particular cases, and to receive information in highly formal and limited ways. While these characteristics are helpful for the purposes of neutral decisionmaking, they also may render courts less effective tools in resolving ambiguities in laws designed to achieve national goals in international relations. Courts do not actively gather information about a particular case or a particular law. Rather, that information is provided to them by the contending parties, in many cases through the expensive process of discovery. Any information provided to the court for evidentiary purposes must survive rules that impose tests for relevance, credibility, and reliability that are designed to ensure fairness toward the contending parties. In the criminal [\*200] context, such information is further limited to prevent violating a defendant's constitutional rights. By contrast, the executive branch itself collects a wide variety of information through its own institutional experts and a wide global network of contacts without the necessity of strict rules of evidentiary exclusion. While this information may be presented to the executive branch at any time, a court generally cannot account for new information except in the context of a new case. 71 Courts also cannot update statutory mandates to reflect new information, but instead must continue to enforce policies even when they are no longer appropriate. For instance, once the political branches have enacted a statute or approved a treaty, the courts cannot alter or refuse to execute those laws, even if the original circumstances that gave rise to the statute or treaty have changed or even if the national interest would be harmed. 72 Aside from the judiciary's information-gathering limitations, there are strong reasons to doubt the ability of the members of the federal judiciary to resolve effectively foreign affairs laws ambiguities. Judges are not chosen based on their expertise in a particular field. Federal judges, with a few minor exceptions, handle a wide variety of cases without any subject matter specialties. None, for instance, is chosen because of his or her expertise on matters relating to foreign affairs or foreign affairs laws. Courts are also highly decentralized. With 94 district courts and 667 judges, differing interpretations of ambiguous foreign affairs laws could result in broad conflicts between different judicial districts. Although the appellate process can eventually unify inconsistent interpretations, the process is notoriously slow and limited. The Supreme Court itself hears about 70-85 cases a year compared to the estimated 325,000 appeals that are filed from district court decisions annually. As a result, the system is poorly designed for achieving a speedy and unified interpretation of an ambiguous statute, treaty, or rule of customary international law. Such inflexibility surely advances the goals of a domestic legal system in uniformity, predictability, and stability in the interpretation and application of federal law. For these reasons, deference [\*201] doctrines do not require judicial abdication to the executive branch. Rather, they typically allow the courts to make the initial judgment about the proper meaning of a statute or treaty. Where such statutes or treaties are ambiguous or broadly phrased, however, a continued resort to a rigid, slow, inflexible and decentralized decisionmaking process based upon limited information is hard to justify. This is not to say that courts could not interpret ambiguous statutes if necessary. Rather, the central question is, from a comparative institutional perspective, whether there is reason to think that courts would be equal or superior to other branches of government in resolving ambiguities in laws designed to achieve national foreign policies. B. Executive Branch Competence If the judiciary is not the ideal institution for resolving ambiguities in foreign affairs laws, the deference doctrines may still not be worth following if the executive branch does not possess any advantages over the courts. We believe, however, that the executive branch has superior institutional competence that justifies the existence of the deference doctrines. As Chevron recognized, 73 the executive branch possesses two institutional characteristics that make it superior to courts in the interpretations of certain kinds of laws. First, executive agencies usually possess expertise in the administration of certain statutes, particularly those in complex areas. Second, the executive branch is subject to greater political accountability than the judiciary, and the electorate could ultimately change unwanted interpretations. 74 As Justice Stevens himself explained in Chevron, "Judges are not experts in the field, and are not part of either political branch of the Government." 75 While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices - resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities. [\*202] One way to think about the executive branch's comparative advantage is in terms of the likelihood of errors. Agencies which possess greater expertise over a complex and technical statute are less likely to depart from Congressional intent in their interpretations of those statutes, especially ambiguous provisions in those statutes. While agencies may well incur greater costs in making those decisions, such costs reflect the likelihood that they will seek a broader set of information about their legal interpretation than that presented to courts. Indeed, unlike courts, the executive branch is designed to develop specialized competence. In the area of foreign policy, the executive branch is composed of large bureaucracies solely focused on designing and implementing foreign policy. The more common criticism of the executive branch is that it is likely to manipulate its expertise in the service of political goals. While this may seem like a criticism, it is actually a virtue in the context of resolving ambiguities in laws implicating foreign affairs. Such laws nearly always implicate broad policy decisions or political values and the political nature of the executive branch gives it advantages in making such decisions. If Congress leaves ambiguities in a foreign affairs statute, for instance, it is reasonable to assume it would prefer such ambiguities to be resolved by the more politically responsive institution. Indeed, it is doubtful that there is substantial popular support for transferring authority to the judiciary in cases where the law relates to how to deal with a serious external threat. 76

### AT: No Deference

#### Legitimacy is on the brink---collapses threatens the rule of law

Burke 8/23 (Kevin Burke is a partner in Sidley's New York office. He litigates class actions and other complex disputes in the areas of securities, LLP, “How Low Public Trust Threatens the Legitimacy of Court Decisions,” http://proceduralfairnessblog.org/2013/08/23/how-low-public-trust-threatens-the-legitimacy-of-court-decisions/)

Trust is an essential component of procedural fairness, which, in turn, has been shown to be a key source of legitimacy for decision-makers. All public institutions now face serious skepticism from the public about their trustworthiness. However, a trust deficit – and the resulting lack of legitimacy – are of particular threat to the judiciary. Legitimacy is essential if courts are to be respected and, indeed, if court orders are to be obeyed. Simply put, failure to maintain and enhance the legitimacy of court decisions imperils the judiciary as an institution and the vital role assigned to the judiciary in our Constitutional tradition. The threat is real. Today, 75% of the American public thinks judges’ decisions are, to a moderate to significant extent, influenced by their political or personal philosophy. Of course, judges have a range of philosophical views and exercise discretion, so some differences of opinion among judges are to be expected. But 75% of the American public also believes judges’ decisions are, to a moderate to significant extent, influenced by their desire to be appointed to a higher court. Two recent articles explain the potentially grave implications. First, Politico recently published a contribution by law professors Charles Geyh and Stephen Gillers advocating for a bill to make the Supreme Court adopt a code of ethics. They argue: [I]t would be a mistake for the Court to view the [ethics] bill as a challenge to its power. It is rather an invitation. No rule is thrust on the justices. Under the … bill, the justices are asked to start with the code governing other federal judges, but are then free to make ‘any amendments or modifications’ they deem ‘appropriate.’ A response that says, in effect, ‘We won’t do it because you can’t make us’ will hurt the court and the rule of law. Second, Linda Greenhouse, a regular commentator on the New York Times Blog “Opinionator,” recently wrote this post about the Foreign Intelligence Surveillance Court entitled Too Much Work?. Greenhouse writes: As Charlie Savage reported in The Times last month, Chief Justice John G. Roberts Jr. has used that authority to name Republican-appointed judges to 10 of the court’s 11 seats. (While Republicans in Congress accuse President Obama of trying to “pack” the federal appeals court in Washington simply by filling its vacant seats, they have expressed no such concern over the fact that the chief justice has over-weighted the surveillance court with Republican judges to a considerably greater degree than either of the two other Republican-appointed chief justices who have served since the court’s creation in 1978.) What do these two pieces mean for judges? Both articles highlight how the judiciary itself, if not careful, can contribute to the erosion of public trust in our decisions. To be sure, the erosion of the legitimacy of judicial decisions is not entirely the fault of the Supreme Court, nor of judges in general. The media, for example, often refers to which President appointed a judge as a shorthand way to explain a decision. But that is, in part, why Ms. Greenhouse’s piece is important. The Chief Justice is recognized as a brilliant man. He and every other judge in the United States know the inevitable shorthand the media will use to describe judges and to explain their decisions. And so the Chief Justice, the members of the United States Supreme Court, indeed every judge in this country needs to be particularly sensitive to what we are doing that might either advance trust in courts or contribute to the erosion of the legitimacy of our courts. The bottom line is: Appearances make a difference. There will be decisions by judges at every level of court that test the public’s trust in our wisdom. It is therefore imperative that judges act in a manner that builds a reservoir of goodwill so that people will stand by courts when a decision is made with which they disagree. There may have been an era when trust in the wisdom and impartiality of judicial decisions could be taken as a given. But if there was such an era, we no longer live in it. Trust and legitimacy today must be earned.

#### Previous decisions did not invalidate policies-just the institutional arrangement-the plan changes this

**Scheppele, Princeton public affairs professor, 2012**

(Kim Lane, “The New Judicail Deference”, Boston University Law Review, January, lexis, ldg)

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides—the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won. Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases—and they prevailed overwhelmingly in their claims, especially at the Supreme Court—but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question. Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead. [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives. Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference. This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted—often bold, ambitious, and brave solutions—nonetheless fail to address the plights of the specific individuals who brought the cases. This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions give the government leeway to tackle urgent threats without having to change course right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something—an appearance not entirely false in the long run—while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

### AT: Expertise

### Court Link

Entin 12 (Jonathan L. Entin is Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University, “War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations,” http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf)

In addition, the litigation process takes time. Of course, the Pentagon Papers case was resolved in less than three weeks after the New York Times published its first article on the subject.117 Ordinarily, however, the judicial process proceeds at a much statelier pace. Consider another landmark case, albeit one that dealt with domestic issues. Cooper v. Aaron118 was decided approximately one year after President Eisenhower dispatched federal troops to enforce the desegregation of Little Rock Central High School in the face of massive resistance encouraged by Arkansas Governor Orval Faubus.119 Often, disputes over military and diplomatic matters are time sensitive. Expedited judicial review might help, but events on the ground might well frustrate orderly judicial disposition.

### Readiness Extension

#### The plan cracks PQD

Entin 91 (Jonathan L. Entin Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University “Rethinking the Value of Litigation,” JSTOR)

At the same time, the discussion has implications for courts called upon to resolve interbranch separation of powers disputes. Some commentators, most notably Dean Choper, have suggested that the judiciary refrain from deciding constitutional conflicts between Congress and the President." This approach would require substantial revision of the political question doctrine and would uphold interbranch accommodations that contravened express textual provisions of the Constitution. A less extreme analysis would defer to arrangements devised by Congress and the President provided that those arrangements were consistent with the constitutional text. The goal would be to discourage litigation by persuading the political branches that resort to the judicial process would rarely succeed. This in turn might create incentives for the legislature and the executive to assess the stakes of their disputes more realistically and to fashion workable solutions that would promote both free and responsible government.