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#### Restrictions are prohibitions on action

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

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

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

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

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

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

#### Restrictions on authority are distinct from conditions

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

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

#### Vote neg---

#### Ground---only prohibitions guarantee links to every core argument like deterrence---they allow rubber stamp affs that skirt everything

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

#### Limits---there are an infinite number of tiny conditions---overstretches our research burden

### Politics

#### Patent reform will pass now---but political capital is key

David Kravets, WIRED senior staff writer, 3-20-2014, "History Will Remember Obama as the Great Slayer of Patent Trolls," Threat Level, http://www.wired.com/threatlevel/2014/03/obama-legacy-patent-trolls/

But Obama will leave another gift to posterity, one not so obvious, one that won’t be felt until years after his term ends: The history ebooks will remember the 44th president for setting off a chain of reforms that made predatory patent lawsuits a virtual memory. Obama is the patent troll slayer. Even now, a perfect storm of patent reform is brewing in all three branches of government. Over time, it could reshape intellectual property law to turn the sue-and-settle troll mentality into a thing of the past. “If these reforms go into effect, they will be felt only minimally during the Obama administration,” says Joe Gratz, a San Francisco-based patent lawyer who is representing Twitter in a patent dispute. “They will be felt quite strongly well after the Obama administration.” “The president is a strong leader on these issues. We haven’t really seen that before,” says Julie Samuels, the executive director of startup advocacy group Engine. “I do think that this could be one of the legacies of this administration.” A patent troll is generally understood to be a corporation that exists to stockpile patents for litigation purposes, instead of to build products. Often taking advantage of vague patent claims and a legal system slanted in the plaintiff’s favor, the company uses the patents to sue or threaten to sue other companies, with an eye to settling out of court for a fraction of what they were originally seeking. The nation’s legal dockets are littered with patent cases with varying degrees of merit, challenging everything from mobile phone push notifications and podcasting to online payment methods and public Wi-Fi. Some 2,600 companies were targeted in new patent lawsuits last year alone. Against that backdrop, Obama issued five executive orders on patent reform last summer. Among other things, they require the Patent and Trademark Office to stop issuing overly broad patents, and to force patent applicants to provide more details on what invention they are claiming. One of the orders opens up patent applications for public scrutiny — crowdsourcing — while they are in the approval stage, to help examiners locate prior art and assist with analyzing patent claims. Since a patent is binding for 20 years, the impact of the new rules won’t be felt for some time. But they will be felt, says Gratz, a litigator who defends technology-heavy patent lawsuits. “The supply of overly broad, vague patents will start to dry up as new rules get put into place,” he says. In January, Obama became the first president to elevate patent reform to a national meat-and-potatoes issue, when he used the State of the Union address to urge Congress to “pass a patent reform bill that allows our businesses to stay focused on innovation, not costly and needless litigation.” The market is already reacting to the wind change. Shares of patent-litigation firm Acacia dropped sharply following Obama’s State of the Union, and are hovering near 52-week lows. Shares of VirnetX are in a similar tailspin. RPX, another intellectual-property concern, has seen its share prices slashed in half over the past three years. The House passed major patent reform legislation last year, on a 325-91 vote, in a bid to even out the litigation playing field. Among other things, the Innovation Act requires plaintiffs in lawsuits to be more specific about what they believe is being infringed, and to identify the people who have financial interests behind a company. Perhaps most significantly, it requires that plaintiffs pay litigation expenses if they lose at trial. The bill also prohibits patent holders from suing mere users of a technology that allegedly infringes on an invention, like restaurants offering Wi-Fi access to their diners. The Senate is debating similar legislation in a piecemeal manner. Whatever it finally approves, the package will have to go back to the House for final approval before landing on the president’s desk.

#### Restrictions on war powers deplete political capital and trade off with the rest of the agenda

Douglas L. Kriner 10, Assistant Professor of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 68-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."¶ While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.60¶ In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61

#### Reform that targets patent trolling is key to the entire green tech sector

Adam Gerschel-Clarke 13, independent design strategist specialising in the societal aspects of design and a contributing writer at Sustainable Brands, 11/14/13, “Are patent trolls strangling sustainable innovation?,” http://www.theguardian.com/sustainable-business/patent-trolls-sustainable-innovation

Disputes over intellectual property have risen dramatically over the last few years and, despite the global advantage green technologies offer, they have not been immune from these battles over ownership.¶ According to the latest figures published by the World Intellectual Property Organisation, applications to patent greentech have risen by over 6% since 2011, making it one of the leading growth areas for IP. Over the same period we've seen increasingly urgent global efforts to preserve the environment and avert lasting impact on society. So how is the volatile IP climate affecting the development of green technologies and the pace of progress towards a sustainable future? ¶ Patents were originally conceived as temporary defensive measures to protect and promote innovation. They grant the holder exclusive rights to make, use or sell an invention for up to 20 years. The aim was to ensure businesses investing time and effort into developing technology have the opportunity to commercialise it without competition from firms that haven't made the same commitment. ¶ Trolling¶ However, the ability to sell or licence patents for a fee has led to a slow proliferation of patent 'trolling' which is now threatening the creation of new sustainable systems and products. ¶ Patent trolls are non-manufacturing companies which acquire and exploit libraries of patents to extract licensing fees from creative firms. Small entities, such as entrepreneurs, are particularly at risk from trolling, as their limited budgets often prevent them from contesting spurious claims. Although multi-million pound battles between wealthy technology firms may dominate media coverage, recent figures suggest that 60% of patent litigation is now brought by patent trolls mostly against firms with low annual incomes. ¶ For sustainable development, the danger is that trolling replaces the financial protection that patents offer with financial encumbrance. This reduces the incentive to turn green ideas into green technology and impairs the creativity that is at the core of sustainable progress. ¶ Stifling green growth¶ But there are even greater risks with the patent system. By using patents on essential components and concepts, established manufacturers can keep a tight grip on emerging new technology as well as on creative talent in the field. ¶ Potential innovators and entrepreneurs – the driving force behind economic progress - are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes complete surrender of those ideas - Matt Stanford, 2012¶ Often it is not in the interests of incumbent firms to develop new technology. This is especially true of sustainable development, where progress can involve the retirement of serviceable and profitable technology, in favour of alternatives that may threaten existing revenue streams or that cannot yet offer the same economies of scale. This conflict of interest between progress and profit can mean that socially and environmentally beneficial technology is shelved. Worse, it can also provide a temptation to strategically purchase sustainable innovation purely to obstruct its development. ¶ In 1989, for example, innovator Stanford Ovshinsky invented a new nickel-based battery that was cheaper, safer and more powerful than contemporary battery technology. In 1994 he sold the patent to General Motors, to help develop the world's first mass-produced electric car, the EV1. ¶ After testing the technology GM opted to stick with their conventionally powered vehicles and sold the battery patent to Texaco, an oil retailer. Ovshinsky's battery technology has since been licensed by a succession of petrochemical companies. The licence conditions for his batteries limit their application in hybrid vehicles and effectively prohibit use in fully electric vehicles. ¶ The effect of this restriction can be seen in the pace of EV development today. Lithium-based batteries, used in contemporary vehicles such as the Nissan Leaf and Mitsubishi i-MiEV, are only just approaching the range and performance of the original EV1 technology and they cost considerably more to produce. ¶ Even though it seems the patents are failing to promote and protect sustainable innovation, arguably sustainable development would be worse off without them. The system includes an obligation to publish details of protected technology. Without patents, manufacturers may keep valuable scientific and technological knowledge secret, starving the global community of the building blocks of future innovation. ¶ Future of sustainable technology¶ We need to update the existing patent system to reflect the changing face of innovation. The process of finding solutions and meeting societal needs has become a community undertaking, increasingly motivated by concerns over human and environmental welfare, alongside potential profit. ¶ The traditional influence of financiers on the innovation process is diminishing as crowdfunding platforms enable communities to develop products and services without banks and loans. Similarly in business, social enterprises have grown in strength and look set to play a significant role in our future economy. ¶ An effective system to promote and protect innovation must recognise the complete spectrum of stakeholders in technological development, valuing innovation for environmental and social benefit as highly as for financial gain. We need a better regulation of the patent system, to restore the protection and incentives that patents were intended to offer all innovation. This means reducing the influence of incumbent manufacturers and trolls on emerging green technologies by limiting the breadth of patents and regulating licences on basic technologies. ¶ A new protection system for socially and environmentally valuable technology should be set up. We must devise a better IP protection strategy for greentech, such as a royalty or prize fund system to make sustainable knowledge available to all potential innovators and still ensure that those who push technology forward for human and environmental good are financially rewarded. ¶ Whatever strategy we adopt, tackling the negative effects of the present system on innovation must be a priority for the sustainable development community. Without action, as the market for greentech grows, we face the prospect that our journey towards a sustainable future will become ever slower and more difficult.

#### Green tech is key to warming---extinction

Klarevas 9 –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by [hu]mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent - and the best approach for achieving this is to promote a national strategy of greengemony.

### CP

#### The United States Congress should statutorily require that the President of the United States disclose her relationship to disability upon entering the office of the Presidency of the United States.

#### Solves the case --- they don’t have a reason why disclosure *immediately before entering hostilities is key*

#### Congressional intervention destroys crisis response --- they’re too inexperienced, and open --- the link threshold is low

-AT: Holmes medical analogy

Eric A. Posner 12, Kirkland & Ellis Professor, University of Chicago Law School, Winter, “REFLECTIONS ON THE LAW OF SEPTEMBER 11: A TEN-YEAR RETROSPECTIVE: DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER SEPTEMBER 11: CONGRESS, THE COURTS, AND THE OFFICE OF LEGAL COUNSEL,” 35 Harv. J.L. & Pub. Pol'y 213, Lexis

THE DEFERENCE THESIS¶ The deference thesis states that during emergencies the legislature and judiciary should defer to the executive. n8 It assumes that the executive is controlled by the President, but to the extent that the President could be bound by agents within the executive, the deference thesis also holds that those agents should follow the President's orders, not the other way around. In normal times, the three branches of government share power. For example, if the executive believes that a new, dangerous drug has become available, but possession of the drug is not yet illegal, the executive may not act on its own to detain and prosecute those who deal and use the drug. The legislature must first enact a statute that outlaws the drug. The executive also depends on the legislature for financial appropriations and other forms of support. The executive also faces constraints from the courts. If the executive arrests drug dealers and seeks to imprison them, it must first obtain the approval of courts. The courts ensure that the executive does not go beyond the bounds of the new law, does not violate earlier-enacted laws [\*215] that have not been superseded by the new law, and does not violate the Constitution.¶ In emergencies, the executive often will contemplate actions that do not have clear legislative authority and might be constitutionally dubious. For example, after September 11, the U.S. government engaged in immigration sweeps, detained people without charges, used coercive interrogation, and engaged in warrantless wiretapping of American citizens. n9 Many, if not all, of these actions would have been considered violations of the law and the U.S. Constitution if they had been undertaken against normal criminal suspects the day before the attacks. After September 11, both the legislature and the courts gave the executive some deference. The legislature gave explicit authorities to the executive that it had initially lacked; n10 the courts did not block actions that they would have blocked during normal times. n11 But neither body was entirely passive. Congress objected to coercive interrogation and did not give the executive all the authorities that it requested. n12 After a slow start, the courts also resisted some of the assertions the executive made. There is some dispute about whether this resistance was meaningful and caused the executive to change policy or merely reacted to the same stimuli that caused the executive to moderate certain policies independently. n13 In any event, no one disputes that the courts gave the executive a nearly free pass over at least the first five to seven years of the conflict with al Qaeda.¶ The deference thesis, then, can be strong-form or weak-form. This ambiguity has had unfortunate consequences for debates about post-September 11 legal policies. Few people believe that the courts should impose exactly the same restrictions on the [\*216] executive during an emergency as during normal times. Indeed, doctrine itself instructs courts to balance the security value of a course of action and its cost to civil liberties, implying that certain actions might be legally justified to counter high-stakes threats but not to counter low-stakes threats. n14 Nor does anyone believe that the executive should be completely unconstrained.¶ The debate is best understood in the context of the U.S. government's post-September 11 policies. Defenders of these policies frequently invoked the deference thesis--not so much as a way of justifying any particular policy, but as a way of insisting that the executive should be given the benefit of the doubt, at least in the short term. n15 The deference thesis rests on basic intuitions about institutional competence: that the executive can act more decisively and with greater secrecy than Congress or the courts because it is a hierarchical body and commands forces that are trained and experienced in countering security threats. The other branches lack expertise. Although they may have good ideas from time to time, and are free to volunteer them, the ability of the executive to respond to security threats would be unacceptably hampered if Congress and the courts had the power to block it to any significant degree.¶ Secrecy is an important part of the argument. Policymaking depends on information, and information during emergencies often must be kept secret. Congress and the courts are by nature and tradition open bodies; if they were to act in secret, their value would be diminished. Meanwhile, the argument continues, the fear of an out-of-control executive who would engage in abuses unless it was constrained by the other branches is exaggerated. The President has strong electoral and other political incentives to act in the public interest (at least, in the United States). Even if the executive can conceal various "inputs" into counterterrorism policy, it cannot conceal the "output"--the existence, or not, of terrorist attacks that kill civilians.¶ Thus, it was possible for defenders of the Bush Administration's counterterrorism policies to express discomfort with certain policy choices, while arguing nonetheless that Congress and the courts should not try to block executive policymaking [\*217] for the duration of the emergency--at least not as a matter of presumption. Critics of the Bush Administration argued that deference was not warranted--or at least not more than a limited amount of deference was warranted, although again these subtleties often were lost in the debate--for a variety of reasons. I now turn to these arguments.¶ II. EXTERNAL CONSTRAINTS: THE PROTOCOL ANALOGY¶ A. Medical Protocols¶ In an article published a few years ago, Professor Holmes uses the arresting image of the medical protocol as a device for criticizing the deference thesis--or, more broadly, the thesis that the executive should be "unconstrained" during emergencies. Holmes describes his own experience in an emergency room, where his daughter had been brought with a serious injury:¶ At a crucial moment, two nurses rushed into her hospital room to prepare for a transfusion. One clutched a plastic pouch of blood and the other held aloft my daughter's medical chart. The first recited the words on the bag, "Type A blood," and the other read aloud from the file, "Alexa Holmes, Type A blood." They then proceeded, following a prepared and carefully rehearsed script to switch props and roles, the first nurse reading from the dossier, "Alexa Holmes, Type A blood," and the second reading from the bag, "Type A blood." n16¶ To the layman, the repetitive actions of the nurses seem senseless. Why are they repeating themselves when the patient might die unless she receives the blood transfusion immediately? Surely, the nurses should depart from the script rather than follow it in a time of extreme medical urgency. Yet the protocol makes good sense. Experience has taught medical personnel that basic errors--the transfusion of the wrong blood--occur frequently, and that they can be avoided through the use of simple protocols. Although following the protocol uses valuable time, in practice the increased risk to the patient as a result [\*218] of the loss of time is less than the risk caused by the errors that protocols are designed to prevent. n17¶ The larger and more striking point of the example is that, even during emergencies, when the stakes are high and time is of the essence, agents should follow rules rather than improvise. In this way, agents should be constrained. n18 This argument has potentially radical implications. Recall that the conventional objection to deference is that the risk of executive abuse exceeds the benefits of giving the executive a free hand to counter al Qaeda. Professor Holmes argues--although at times he hedges--that in fact the benefits of giving the President a free hand are zero: A constrained executive, like a constrained medical technician, is more effective than an unconstrained executive. If the benefits of lack of constraint are zero, then the deference thesis is clearly wrong. Constraints both prevent executive abuses such as violations of civil liberties and ensure that counterterrorism policy is most effective.¶ B. Rules and Standards¶ The arresting medical protocol example helps clarify the tradeoffs involved, but it remains merely an illustration of the familiar rules versus standards tradeoff that has been a staple of the legal literature since time immemorial. n19 A rule is a norm that directs the decisionmaker to ignore some relevant policy considerations when deciding on a course of action; a standard is a norm that directs the decisionmaker to take into account all relevant policy considerations when deciding on a course of action. The familiar example is the speed limit. A sixty-mile-per-hour speed limit tells the driver that she does not face a legal sanction if she drives below sixty miles per hour, and that she does face a legal sanction if she exceeds that speed. A standard--for example, "drive carefully"--tells the driver that she does not face a legal sanction if she drives carefully, but that she does if she drives carelessly. The standard, unlike the rule, directs the driver to take into account all relevant considerations--the weather, traffic congestion, her own skill and [\*219] experience, the responsiveness of her car, and so on--when deciding how to drive.¶ A skilled and experienced driver who drives at sixty-five miles per hour on a clear day on an empty, straight road poses little threat to anyone, and most people would regard her driving as careful. Thus, under the standard she could not be held liable, although under a rule she would be. Meanwhile, an inexperienced driver who drives sixty miles per hour on a congested, dangerous road, at night, in bad weather, would probably be regarded as careless. He would be held liable under a standard but not under the rule. It is in the nature of standards that we cannot be sure that he would be held liable; it depends on the biases, intuitions, and experiences of the legal decisionmaker. n20 Thus, we say that applying standards involves high decision costs. It is in the nature of rules that we can easily tell whether the driver would be held liable or not, but only because the legal decisionmaker is forced to ignore relevant moral and policy considerations that otherwise complicate evaluation. Rules are under-and over-inclusive; by design, they cause error.¶ These considerations lead to a basic prescription. n21 Rules should be used to govern recurrent behavior, and standards to govern unusual behavior. Experience teaches us that if drivers obey certain rules (such as speed limits), the risk of accidents is greatly reduced, although judicious choice of (sometimes complex) rules ensures that error costs are low. When legislatures enact new rules, they can invest a great deal of time and effort determining the optimal rules, because the cost of the rules are then spread out over many instances of the behavior that the legislatures seek to regulate. Yet rules frustrate us because there always seems to be some new, unanticipated case where the application of rules leads to an injustice. The speed limit rule should not apply to the parent who rushes a badly injured child to the hospital. And there are many cases where rules can too easily be gamed. Tax rules, no matter how intricate, can be exploited: Lawyers set up tax shelters that evade the purpose of the rules. Congress reacted to this problem initially by creating ever more complex rules, but eventually trumped them [\*220] with a standard that prohibited bad faith evasion of the tax laws. n22¶ The legal landscape is a complex mix of rules and standards, which often overlap. Drivers must obey both traffic rules like the speed limit and traffic standards like laws against reckless driving and tort norms against negligent driving. Indeed, one can think of traffic norms as complex rules with standards--where there are apparently bright-line rules (drive under sixty miles per hour) that are subject to muddy standards (unless there is an emergency).¶ Medical protocols are just one more example of a choice along the rules-standards continuum. The nurses Professor Holmes describes follow a protocol that ensures that they do not use the wrong blood in a transfusion. Likewise, doctors are instructed to clear the windpipe before staunching the wound. n23 These protocols, like the speed limit, reflect generalizations from past medical experience. Delaying the blood transfusion is less risky than permitting only one nurse to check the blood type. Letting the blood flow from the wound is less risky than leaving the windpipe blocked. In the absence of protocols, medical practitioners may misjudge the situation, or panic, or allow themselves to be distracted by irrelevant factors (the goriness of the wound calls out for attention while the blocked windpipe is hidden). It is important to see that these rules, like the speed limit, are mere generalizations, and in individual cases the generalizations might be wrong. The patient dies because of the delay before the transfusion, yet we instruct medical practitioners to follow the rules because otherwise they are likely to make worse or more frequent errors.¶ That uncompromising rules produce high error costs supports adopting sensible exceptions to rules. Indeed, medical practitioners may violate protocols. The reasons are obvious. Consider Professor Holmes's insistence that the rule "always wash your hands" is unalterable and written in stone. n24 This clearly cannot be the case. Suppose that, in the midst of an emergency involving a patient with a serious trauma, the staff [\*221] is informed that the tap water is tainted, it is discovered that a patient has a rare allergy to the only soap available in the emergency room; or, for that matter, the emergency room runs out of soap. Common sense (which is just the application of the standard, "help the patient at minimal risk to him and oneself") will tell the doctors and nurses to deviate from the protocols when they clearly interfere with medical necessity. If they did not, they would be sued, and rightly so. The protocols, like many rules, turn out to be presumptions, which may be overcome by the press of events. That is why medical professionals are so highly trained; if one could really treat patients by following algorithms, one would not need doctors who have vast training and experience that supplies them with judgment and the ability to improvise. n25¶ In sum, medical protocols, like rules, provide a valuable service by simplifying the decision-making process at times of high stress, but, like rules, they unavoidably produce wrong results if they are not applied sensitively. Usually, when the stakes are high, rules and protocols create presumptions, but the decisionmaker is free to violate the presumption if circumstances suggest that that the presumption is based on factual assumptions that turn out not to be true in the particular setting in which the decisionmaker finds himself.¶ C. Rules and Standards During Emergencies¶ I now turn to the bulk of Professor Holmes's argument. Professor Holmes is right to identify confusion about the nature of emergency, and it is useful to distinguish a rule-development stage--which often but not always takes place before the emergency--and a rule-application stage--which takes place during the emergency. Holmes argues that during the emergency, rule application should be controlled by protocol, so the executive does not need (much) discretion; while pre-emergency, rule development does not need to be rushed and secret, so the executive can collaborate with Congress. The first problem with [\*222] this argument is that during the emergency one can follow protocols rather than exercise discretion only if the emergency is the same as earlier emergencies. This was not the case for September 11, though it may be the case for other security threats. The second problem is that the rule-development stage cannot always take place during normal times. For example, September 11 required not only an immediate response to the newly discovered threat but also the development of new rules under the shadow of that threat. Those rules needed to be developed quickly and (for the most part) secretly, and these exigencies limited the ability of Congress to contribute. A final point is that Holmes ignores an important dimension of the problem: the difference between agents, who in theory can merely follow rules and protocols, and principals, who cannot. The Bush Administration did in fact recognize the value of protocols and used them frequently; it just did not apply them to itself.¶ 1. Two Concepts of Emergency¶ Professor Holmes makes a valuable point, often neglected in the literature, that there are two distinct phases for addressing emergencies n26 --what I will call the stage of rule development and the stage of rule application. As we will see, the two stages can run together, but conceptually they are distinct. The rule-application stage comes when the patient is on the gurney. The doctors follow the protocols in the course of helping the patient. The rule development stage occurs earlier. Someone must decide what the protocols should be. Someone had to invent the rule that two nurses must check the blood type and that doctors should unblock the windpipe before staunching wounds--just as the legislature must determine the speed limit before drivers comply with it and police enforce it.¶ We might use the word "emergency" to refer to the time of rule application. As Professor Holmes points out, however, for the medical professionals, what seems like an emergency to a layperson is not an emergency at all. n27 They just apply the protocols that have been drilled into them, no different from assembly-line workers. Under this definition of "emergency," it is hard to support the deference thesis and those who argue that the executive [\*223] must be unconstrained during emergencies. If doctors are constrained during emergencies, why not executives?¶ If we refer instead to the time of rule-development, reliance on the idea of emergency seems even less appropriate. The doctors who develop emergency room protocols do not do so under time pressure but at their leisure. They also can do so in a large body, so as to take advantage of the perspectives of many different people, and in public, so that all stakeholders have a say. The executive can as well, the argument goes. When the executive determines the rules that will govern the response during a terrorist attack, it does so in advance, and it can, indeed should, do so in consultation with Congress and subject to judicial constraint.¶ Thus, executive deference is unnecessary. During rule development, there is no emergency, and so the executive, Congress, and the courts can collaborate in developing appropriate rules that will govern during emergencies. They can do so openly, deliberately, and slowly, with full respect for constitutional norms. During rule application, there is an emergency, but the executive can merely follow the rules or protocols that were developed during the rule-development stage. Thus, in the rule-application phase, executive discretion is unnecessary. It follows that deference to the executive is also unnecessary. During rule development, Congress has no reason to defer to the executive. During rule application, courts also have no reason to defer to the executive, but should instead insist that the executive comply with the rules.¶ 2. Rule Application¶ Let us consider the stages in reverse order. We already have addressed some of the problems with Professor Holmes's argument from protocols. Rules are seldom as bright-line as they first appear. They often turn out to be presumptions which are themselves subject to standards (drive under the speed limit unless there is an emergency). It is true that security threats, like medical emergencies, often fall into patterns and can be addressed in partially rule-governed fashion. Thus, when a gunman takes a hostage, the police follow certain rules: first clearing the area, then making contact with the gunman, and so on. Some officers will be given very simple rule-governed tasks ("don't let anyone cross this line"). But the rules quickly give out. Every hostage-taker is different, and the most highly [\*224] trained police officers will be given a great deal of discretion to deal with him and to make the crucial decision to use force. But even these types of threats are simple compared with the scenario that opened up on September 11. The government knew virtually nothing about the nature of the threat. It did not know how many more members of al Qaeda were in the United States, what their plans were, what resources were at their disposal, what their motives were, or how much support they had among American Muslims. n28 Protocols were worthless because nothing like the attack had ever happened before. (The closest analogy seemed to be the absurdly irrelevant example of Pearl Harbor.) The government could not follow rules; it had to improvise subject to a vague standard--protect the public while maintaining civil liberties to the extent possible. Improvise it did--instituting detentions, sweeps, profiling, surveillance, and many other policies on an unprecedented (in peacetime, if that was what it was) scale. n29¶ For the rule-application stage, the deference thesis counsels Congress and the judiciary to (presumptively) defer. Congress simply cannot set about holding hearings, debat[e]ing policy, and vot[e]ing on laws in the midst of emergency. Either the problem will not be addressed, or Congress will end up voting on a bill that it has not written, debated, or even read. n30 For courts, too, the alternatives are unrealistic. If courts enforce rules developed for normal times, then they will interfere with the proper response to the terrorist threat, just as they would if they required the U.S. military to comply with the Fourth Amendment on the battlefield. Alternatively, the courts could insist on applying a standard and halt executive actions that, in the courts' view, violated the standard described above--protect the nation while maintaining civil liberties to the extent possible. But here the courts are at a significant disadvantage. They do not have information [\*225] about the nature of the threat. n31 Courts can demand this information from the government, but the government will not give it to them because the government fears leaks (to say nothing of recalcitrance caused by rivalries among intelligence agencies). Moreover, judges are inexperienced in national security unlike the specialists in the executive branch.

#### Causes nuclear war and bioterror --- executive discretion is key to fourth generation warfare

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A. The Emergence of Non-State Actors

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

### CP

#### The United States Congress should statutorily encourage that the President of the United States disclose her relationship to disability prior to entering forces into hostility.

#### As an example, I will now personally identify myself as temporarily able bodies.

#### The requirement to disclose one’s relationship to disability condemns disabled people to confess and conform to a certain narrative of what it means to be ‘disabled’ --- this demand for ‘authentic’ identity is coercive and entrenches disempowering notions of disability

Anna Mollow 4, PhD candidate in English at the University of California, Berkeley, “Identity Politics and Disability Studies: A Critique of Recent Theory,” Spring 2004, http://quod.lib.umich.edu/cgi/t/text/text-idx?cc=mqr;c=mqr;c=mqrarchive;idno=act2080.0043.218;rgn=main;view=text;xc=1;g=mqrg

In addition, the confessional aspects of Siebers's writing also potentially undermine his critique of social constructions of disability as individual and personal. Siebers acknowledges the potentially depoliticizing aspects of personal narrative, but he hopes that personal narratives by people with disabilities will enable "people without disabilities to recognize our reality and theirs as a common one"; this is necessary, he believes, in order for us to gain political recognition (TO 51). Siebers's point is well taken, and his own work demonstrates that personal narrative can be an invaluable component of a political analysis of disability. [15] Yet Foucault's insistence upon the ways in which subjects are "condemned to confess" is also worth considering in relation to disability. The requirement that people with invisible or undiagnosed disabilities routinely provide first-person narratives—explain "what happened," describe "what's wrong" with them, justify their requests for accommodations when they "look fine"—exemplifies a process by which the demand to "speak the truth" contributes to the medicalization of individuals. Moreover, institutional conferral of the identity of "disabled person" often mandates the production of a narrative; many applicants for disability benefits are required to describe in detail their symptoms, daily activities, and medical histories.

Identity politics movements also often demand the authentication of one's identity. Consider, for example, Siebers's assertion that "every person with a disability can recount . . . stories" in which disabled bodies "become sources of fear and fascination for able-bodied people, who cannot bear to look at the unruly sight before them but also cannot bear not to look" (DT 746). As I will discuss later, this claim illustrates Butler's argument that the consolidation of identity necessarily operates by a process of exclusion (22). One can assume that Siebers does not mean to suggest that people with unseen impairments are not disabled; but his statement nonetheless implies that only those whose disabilities are visible belong to the group comprising "every person with a disability" (DT 746). The idea that all disabled people can relate similar stories might also be considered in the context of Janet E. Halley's critique of identity politics. Halley suggests that Althusserian interpellation can be instituted, not only by a state apparatus, but also "from within resistant social movements" (44). To support this argument, she draws upon K. Anthony Appiah, who observes: "Demanding respect for people as blacks and as gays requires that there are some scripts that go with being an African-American or having same-sex desires. There will be proper ways of being black and gay, there will be expectations to be met, demands to be made." [16]Indeed, one of the dangers of identity politics is its coercive potential. As Siebers's use of an identity politics model of disability illustrates, coercion can take the form of a requirement to produce certain kinds of stories in order to be identified as disabled; it can also operate through the entrenchment of de-sexualizing and disempowering definitions of disability.

#### The demand for a disclosure of a relationship to disability is a form of blaming the subject for societal oppression and depriving the person of autonomy --- only the ability to disclose on one’s own terms avoids these pitfalls

Cheuk 12 Fiona Cheuk, Critical Disability Studies, York University “Locked Closets and Fishbowls: Self-disclosing Disabilities” https://pi.library.yorku.ca/ojs/index.php/cdd/article/viewFile/34960/32620

This is troubling for many reasons; first of all, the person's right to autonomy to self-disclose is compromised by the demand that she show detailed proof of her disability for the sake of receiving potentially equalizing services. This deprives her of controlling rights in that she cannot choose who to disclose her identity to, as well as when she wants to disclose it. These situations also place her in a double-bind situation where disclosing her identity subjects her to public and institutional scrutiny, while not disclosing may mean additional difficulties in academic achievements, or hinder her survival which would then be attributed to personal failure as social responsibilities are ignored. Secondly, this practice implies that the only socially acceptable version of disability which has legitimacy in formal institutions is not an account given by the person with disability who is seeking services, but one that is described by the authority of medicine (Wendell 1996). Therefore, distributions of such services are not grounded on needs but on medically informed assumptions about what people under that particular label need. This allows for the creation of a very narrow concept of a disability identity that must be legitimized by a third-party authority, and in doing so subjects those who do not fit into socially defined notions of disability to skepticism and doubt, publically, socially, and even by the person herself.¶ Final Thoughts on Disclosing Disabled Identities¶ In conclusion, self-disclosure of a disability involves more than just the individual; it is a socially relational act, an act to change power dynamics, and a process of negotiating another set of social norms as oneself and others have internalized the label associated with it. A declaration of one's closeted identity is a response to having that single facet of the individual's whole identity face systematic exclusion from social participation as an equal subject. Yet, the assumption that identity disclosure is a matter of individual choice, as well as the notion that changes to a stigmatized identity could easily be rectified by widespread disclosure still persists. This type of assumption is personally damaging because it **places the burden of guilt on the individual** by insinuating that she is to be blamed for her continual discrimination, which is **made possible by the assumption that only the individual can influence choice making**. Secondly, in failing to consider reasons for concealing a disability other than shame and self-rejection, the listener is assigning a role to disability identity that **scripts it as something that people ought to be ashamed of**, thus reinforcing myths of dependency, inability, and personal tragedy related to disability.¶ Refusing to disclose is not always a matter of comfort and acceptance of one's disability identity, but **it can also be a keeping control over one's body and mind**, or to avoid having another's faulty version of having a disability imposed upon her. For example, there are many people with learning disabilities who choose to pass and not seek accommodations not because they wish to conform, but because the process involved with declaring a disability and getting accommodations is a long process made painful by the hegemony of ableist bureaucracy which demands proof of our identity, or proof that we cannot, without accommodations, access the same societal participation opportunities (Olney et al. 2003, Jung 2011). The burden of proof is a heavy one that is not without consequences, as it subjects the self-disclosure to verifying processes that are society's way of normalizing disability as the abnormal rather than include persons who identify as such within the society. In doing so, this alienates the individual from her status as a member of her community, whether she was to disclose or not, as long as her identity includes disability. In cases of passing and concealing, the individual is put into the conflicting position of being complacent in denying her disability identity a place in her life and in her community. Furthermore, as I have demonstrated, the proof demanded is often medically situated, which means that control over the account of one's personal identity as a person with a disability is undermined by medically influenced authority rather than by her own authority. As the discloser's identity is not detached from this structure, the constant skepticism and doubt about her experiences as a person with a disability makes way for internalizing doubt of her own identity. In doing so, she is invited to keep that identity closeted on the grounds that it seems to be non-existent to her peers and institutions around her as socially recognized imagery of, and expectations about persons with disabilities that are defined by non-disabled people do not appear to include her. Hence the "freedom" attributed to leaving the closet is an illusory one, due to the ableist social conditions and the prevalence of medical authority. The disability "closet" could more aptly be a fishbowl, because leaving the bowl means entering an environment that is currently as unsuited for the disabled body as land for fish out of the water.

## Oncase

### 1NC

#### Embracing embodiment politics in the context of disabilities prompts societal backlash and reifies the ability-disability binary --- fails to produce progressive political or societal change

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Disability differs even more significantly from categories like race because "the disabled arouse in the able-bodied the fear that impairment could happen to them." 68 Harlan Hahn calls this "sense of personal identification with the position of a disabled person… existential anxiety." 69 Existential anxiety renders disability "othering" fundamentally different from the "othering" associated with race. As Wendell explains,

When we make people 'Other,' we group them together as the objects of our experience instead of regarding them as subjects of experience with whom we might identify, and we see them primarily as symbolic of something else - usually, but not always, something we reject and fear and project onto them. To the non-disabled, people with disabilities and people with dangerous or incurable illnesses symbolize, among other things, imperfection, failure to control the body, and everyone's vulnerability to weakness, pain, and death. 70

Similarly, "that anyone can become disabled at any time makes disability more fluid, and perhaps more threatening, to those who identify themselves as normates than such seemingly more stable marginal identities as femaleness, blackness, or non dominant ethnic roles." 71

 [517] This realization that any person could acquire a characteristic that is considered a disability strengthens the desire to enforce a clear demarcation between ability and disability and to deny the uncategorizable spectrum of human physical and mental attributes and conditions. 72 In an arbitrary white/nonwhite distinction, "one drop" of nonwhite blood renders a person presumptively and permanently nonwhite; a "white" individual feels no danger that she will ever cross this fixed boundary. 73 Individuals on the "ability" side of the ability-disability binarism, however, have no choice but to recognize that disability is relational and unstable; and this recognition serves to strengthen the adherence to the medical, legal, or other models that provide a comfortingly bright, normative line between ability and disability. 74

An identity politics of disability akin to that advocated by Critical Race Theorists, then, however contingent and relational it imagines the category, merely resimplifies the ability-disability binarism along different lines. Identity politics requires, first, the assumption of some shared experience (which is belied by the variety of conditions considered disabilities and experiences engendered by them) and, second, the acknowledgment that there is a clear (though socially constructed) demarcation between the normate and the other. 75 Although categorizing race gives rise to damaging behavioral assumptions and power dynamics, unlike disability, race is constructed as a relatively static individual characteristic with a qualifiable range of experiences that offers Critical Race Theorists a common experience of oppression and a common goal of liberation. The identity politics of Critical Race [518] Theory thus fails to produce a similar possibility of liberation for people with disabilities.

#### Even positive deployment of disability pride reifies us/them binaries --- causes societal scapegoating of disabled persons for the inevitability of suffering

Mairian Scott-Hill 2, former senior research fellow at King's College London (deceased), “Policy, politics and the silencing of ‘voice’,” Policy & Politics, vol 30, no 3, 2002, p. 397-409

I have argued elsewhere (Corker, 1999c, 2002) that approaches to the representation of disability that play on ‘visibility’ and ‘affirmative identities’ are not entirely satisfactory in any reading of the political or the social. A focus on the body (or the dominance of ‘the wheelchair brigade’ described in the introduction) appears reductive in such a way that it is often rendered inconsistent with social-relational accounts of ‘disability’. This is because these accounts incorporate a very unsophisticated and oversimplified interpretation of the material, and the visible that is then essentialised as the ‘disability identity’. Writing about gay and lesbian politics, Imogen Walker describes this in terms of “a cultural politics of looking like what you are” (1993: 866). She suggests that, where visibility and authenticity are conjoined, “members of a given population who do not bear that signifier of difference or who bear visible signs of another identity are rendered invisible and are marginalized within an already marginalized community” (1993: 888). In the same way, ‘positive’ notions of disability identity – disability pride – play on the widespread cultural denial of the inevitability and necessity of suffering (Bourdieu, 1999), and of messy or ‘negative’ feelings as part of ‘normal’ life (Craib, 1994). They increase the tendency to make particular impairment groups or particular identities responsible for carrying their associations for everyone else through the strategy of scapegoating.

Judith Butler (in Bell, 1999: 169) also questions the visualism that leads the visual to be understood as ‘read’ in the same way that written texts are. Butler’s ideas suggest that any attempt to politicise identity solely on the basis of what is ‘seen’ demands a turn against the constitutive historicity of disability and, as such, is profoundly undemocratic, even exclusionary. It cannot be concluded that the part of disability that is performed in the politics of visibility is the ‘truth’ of disability. But those of us who have questioned the politics of visibility that is endemic in contemporary identity categories are sometimes charged with depoliticising the social model (Barnes et al, 1999: 92). However, if as Butler notes “the genealogical critique of the subject is the interrogation of those constitutive and exclusionary relations of power through which contemporary discursive resources are formed” (1993: 227), it follows that the critique of the disabled subject is crucial to the democratisation of disability politics. Thus, as much as identity terms must be used as identifiers, as much as ‘outness’ or visibility is to be affirmed, these same notions must become subject to a critique of the exclusionary operations of their own production. This leads Butler to ask a series of questions, which are reproduced in full below:

For whom is outness a historically available and affordable option? Is there an unmarked class character to the demand for universal ‘outness’? Who is represented by which use of the term, and who is excluded? For whom does the term present an impossible conflict between racial, ethnic, or religious affiliation and sexual politics? What kinds of policies are enabled by what kinds of usages, and which are backgrounded and erased from view? In this sense, the genealogical critique of [the disabled subject] will be central to [disability politics] to the extent that it constitutes a self-critical dimension within activism, a persistent reminder to take the time to consider the exclusionary force of one of activism’s most treasured contemporary premises.

#### Disability identity politics replicate the practices of ableism through surveillance and the exclusion of those who do not fit --- marginalizing people with nonvisible disabilities

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Both femme lesbians and people with nonvisible disabilities present what Marjorie Garber calls a "category crisis." 37 In the dominant cultural discourse, as well as in lesbian and disability subcultures, certain assumptions about the correlation between appearance and identity have resulted in an often exclusive focus on visibility as both the basis of community and the means of enacting social change. Discourses of coming out and passing are central to visibility politics, in which coming out is generally valorized while passing is seen as assimilationist. Thus vigilant resistance to external stereotypes of disability and lesbianism has not kept our subcultures from enacting dynamics of exclusion and surveillance over their members. Nor does a challenge to those dynamics necessarily imply a wish on my part to discard visibility politics or a rejection of the value and importance of visibility for marginalized communities. As Walker observes:

The impulse to privilege the visible often arises out of the need to reclaim signifiers of difference which dominant ideologies have used to define minority identities negatively. But while this strategy of reclamation is often affirming, it can also replicate the practices of the dominant ideologies which use visibility to create social categories on the basis of exclusion. The paradigm of visibility is totalizing when a signifier of difference becomes synonymous with the identity it signifies. In this situation, members of a given population who do not bear that signifier of difference or who bear visible signs of another identity are rendered invisible and are marginalized within an already marginalized community. 38

Moreover, people with nonvisible disabilities not only are marginalized in disability communities but walk an uneasy line between those communities and the dominant [End Page 244] culture, often facing significant discrimination because our identities are unrecognized or disbelieved.

The history of femme identity in Euro-American culture, much like that of nonvisible disabilities, is one of indeterminacy and ambiguity: "The femme woman has been the most ambiguous figure in lesbian history; she is often described as the nonlesbian lesbian, the duped wife of the passing woman, the lesbian who marries." 39 Extending Terry Castle's analysis of the "apparitional lesbian," Walker suggests that "the feminine lesbian . . . perhaps more than any other figure for same-sex desire, 'haunts the edges of the field of vision.'" The sexologists who first named lesbianism in the early twentieth century had difficulty describing femmes except as dupes of the masculine "inverts" on whom their theories centered, since "the feminine lesbian produces a collapse at the intersection of the systems of marking and visibility that underpin the theory of inversion." 40 During the rise of lesbian feminism in the 1970s and 1980s, femme lesbians were shunned for supposedly copying heterosexual roles and buying into misogynist beauty standards. In the early 1990s, with the publication of Nestle's groundbreaking anthology, The Persistent Desire, many femme writers and activists began to speak out in defense of their identities and to protest "the penalties we have had to pay because we look like 'women'—from straight men, from so-called radical feminists, and from some lesbian separatists who, because of their anger at the social construction of femininity, cannot allow us to even exist." Yet Rebecca Ann Rugg, a member of the generation following Nestle's, still describes facing "two constant problems for a nineties femme: invisibility as a dyke and how to authenticate herself as one despite doubt and rudeness from others." 41

Rugg's comment also rings true for the experiences of many people with nonvisible disabilities, who face not only uneasy inclusion in the disability community but a daily struggle for accommodation and benefits that reflects the dominant culture's insistence on visible signs to legitimate impairment. The very diversity of nonvisible disabilities, which include a wide range of impairments, such as chronic and terminal illness, sensory impairment, learning and cognitive differences, mental illness, and repetitive strain injuries, presents a category crisis. While I do not claim to present a comprehensive range of impairments among the authors I cite, a reading of numerous narratives across impairments suggests a common experience structured by the disbelieving gaze of the normate (much as theorists such as Garland-Thomson and Lennard J. Davis argue that disability is constructed via the normate's stare confronted by people with visible disability). 42

#### Obama has motive and capability to circumvent the plan

Jeffrey Crouch 13, assistant professor of American politics at American University, Mark J. Rozell, acting dean and a professor of public policy at George Mason University, and Mitchel A. Sollenberger, associate professor of political science at the University of Michigan-Dearborn, December 2013, The Law: President Obama's Signing Statements and the Expansion of Executive Power, Presidential Studies Quarterly 43.4

Signing statements are a natural result of the vast growth in the exercise of unilateral presidential powers in the modern era. Presidents increasingly seek methods for governing by avoiding the traditional constraints provided by a system of separated powers. The rise of an increasingly powerful and virtually unchecked executive has been aided by various factors, including what Gene Healy (2008) calls a “cult of the presidency” in which power-seeking presidents are seen as the norm and even the ideal. It is hard to imagine a president today suggesting the need to give greater deference to the other branches of government.¶ Nonetheless, the Bush era witnessed a remarkably open and critical national debate over the limits of presidential powers. In 2007-08, presidential candidate Obama made no secret of his disagreement with President Bush's conception of executive powers. Through his pledges during the campaign, Senator Obama gave clear signals that he would not push the outer limits of executive power and that he would respect the system of checks and balances. Maybe he was not exactly promising to scale back the presidency, but he left the unmistakable impression that he would not continue the Bush era trend of runaway executive powers.¶ It is therefore appropriate to criticize President Obama for the actions we have described here because he had promised a higher standard of conduct than that practiced by his predecessors. Longtime observers of the modern presidency should not be surprised, though, as his actions fall into a customary pattern: when a new president sees the utility of a particular power established by his predecessors, he is not going to give that power away. On several occasions now, what President Obama has not been able to achieve through the normal ebb and flow of deliberations with the legislative branch, he has stipulated through the issuance of a signing statement. He has even made quips about how he looks for ways to govern without direct congressional involvement (Savage 2012).¶ The “Unitary Executive” Theory¶ During the George W. Bush presidency, there was substantial scholarly debate over what had been termed the “unitary executive” theory, defined by Stephen Skowronek as the claim “that the Constitution mandates an integrated and hierarchical administration—a unified executive branch—in which all officers performing executive business are subordinate to the President, accountable to his interpretations of their charge, and removable at his discretion” (2009, 2077). Skowronek's definition is drawn from four crucial constitutional provisions relating to presidential power. First, the “executive power” vested in the president by Article II is interpreted broadly by unitary executive theory proponents to justify vast authority over the rest of the executive branch. Second, the “vesting” clause of Article II, which does not contain the “herein granted” language of Article I, seems to imply greater executive power than the explicit words of the Constitution may suggest. Third, the president's oath of office is his responsibility to “preserve, protect and defend the Constitution.” Finally, the “take care” clause—the idea that the president has total control over his subordinates in the executive branch and is responsible to the entire nation for the implementation of the laws—rounds out the list (Skowronek 2009, 2076; see Kelley, forthcoming, 12-13).¶ For legal scholars Steven Calabresi and Christopher Yoo “all of our nation's presidents have believed in the theory of the unitary executive” (2008, 4). Along similar lines, although looking at the question from a political development perspective, Skowronek casts the unitary executive theory backers as the latest in a long line of insurgents. In the past progressives extolled the virtues of a strong presidency; more recently the rebels have been conservatives who see the unitary executive theory as a way to gather power and avoid accountability (Skowronek 2009).¶ The unitary executive theory—at least, in its current form—was essentially a creation of conservative attorneys in the Ronald Reagan Justice Department. As Christopher Kelley and Bryan Marshall note, presidents from Reagan onward have, to some degree, exhibited a belief in the unitary executive theory (2007, 144). After Watergate, the presidency faced unprecedented scrutiny from the public and the mass media, and Congress had passed a series of laws intended to check presidential power, including the Congressional Budget and Impoundment Control Act, the Ethics in Government Act, and the War Powers Resolution (Kelley 2010, 108; see Kelley 2003, 23; Rudalevige 2006). To fight back, lawyers in the Reagan OLC devised plans for the president to act unilaterally, even if against Congress's wishes (Kelley forthcoming, 6).¶ Their actions stimulated a debate over the constitutional powers of the presidency. One prominent critic, Cass Sunstein, writes, “It has become a pervasive view within the executive branch, and to a large degree within the courts, that the original vision of the Constitution put the President on top of a pyramid, with the administration below him. This vision, set out in numerous documents by the Department of Justice's Office of Legal Counsel, my former home, is not an accurate interpretation of the Constitution. It is basically a fabrication by people of good intentions who have spoken ahistorically” (Sunstein 1993-94, 300).¶ Similarly, it is obvious to Louis Fisher that the president does not have complete control over the executive branch. The Constitution assumes that others will share in the workload: “The Constitution does not empower the President to carry out the law. That would be an impossible assignment. It empowers the President to see that the law is faithfully carried out” (Fisher 2009-10, 591). In the separation of powers system, those executive branch agencies actually executing the laws necessarily have relationships with—and are responsible to—the other branches of government and to the laws passed by Congress, not just the president.¶ The “Decider” Model¶ Peter Shane argues that a different presidential model took hold during the Bush years. Shane contends that the traditional understanding of the president's role is that of the chief executive regarding himself as the “overseer” of the executive branch responsible for “general oversight” and able to “indirectly” influence his subordinates. In contrast, Bush believed more in the “decider” model, which gave him direct input into everything his subordinates might do, “without regard to any limitations Congress might try to impose on the President's power of command” (Shane 2009, 144-45). Shane concludes that the “decider” model is “profoundly undemocratic and deeply dangerous” (2009, 144). It is also contrary to law. Executive officials carry out numerous mandatory and adjudicatory duties pursuant to statutory policy. Presidents and White House aides may not intervene to change the outcomes of those decisions. Many attorneys general have advised presidents that they may not interfere with statutory duties assigned to particular executive officials (Fisher 2009-10, 576-79).¶ Signing statements comfortably fit the “decider” model of presidential power. Scholars identify signing statements as among the current litany of unilateral presidential powers (see Cooper 2002; Moe and Howell 1999), and some see no danger in the exercise of this practice (Ostrander and Sievert 2013a, 2013b). The trouble is that some presidents have used signing statements to revise legislative intent or even to alter the balance of power between the political branches and have thus undermined democratic controls on executive power (Pfiffner 2008, 196; see also Korzi 2011, 197; Fisher 2006, 1).

#### Obama’s attempt to circumvent the aff results in a massive *interbranch fight* that destroys cooperation over foreign policy

Jules Lobel 8, Professor of Law @ University of Pittsburgh, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War,” Ohio State Law Journal, Vol. 69

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53¶ The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority.¶ Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law.¶ Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. ¶ If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute.¶ Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

#### Foreign policy based on *cooperation* between Congress and the Executive is critical to solve a laundry list of existential threats

Hamilton 2 – Lee H., President and Director of the Woodrow Wilson International Center for Scholars, Vice Chairman of the 9/11 Commission, President's Homeland Security Advisory Council, Former Member of the United States House of Representatives for 34 Years, Co-Chair of the Iraq Study Group, Formerly Special Assistant to the Director at the Woodrow Wilson Center, A Creative Tension: The Foreign Policy Roles of the President and Congress, p. 3-7

We face many dangers, however. The diversity of the security and economic threats around the globe is daunting. Terrorism, which has already struck the united states brutally, will be a continuing threat in the years ahead, and it may become more deadly if weapons of mass destruction proliferate and reach the wrong hands. the greatest security threat might be the danger that nuclear weapons or materials in russia could be stolen and sold to terrorists or hostile nations and used against americans at home or abroad. groups and individuals that do not wish us well will also attempt to attack us with weapons of mass disruption, such as information warfare, which could assault our economic, financial, communications, information, transportation, or energy infrastructures. there are numerous other threats to national security. The world's population will increase substantially during the first half of the twenty-first century, placing added strain on natural resources, including water, and possibly intensifying interstate conflicts and civil strife. Economic crises will likely be a regular occurrence, throwing some nations into turmoil and occasionally creating widespread financial instability. International crime, the illegal drug trade, global warming, infectious diseases, and other transnational problems will challenge national sovereignty and threaten our security, prosperity, and health. yet these dangerous threats are balanced by many opportunities. as the world's most powerful nation, the United States has a tremendous capacity to influence the world for good—to protect international peace, root out terrorism, resolve conflicts, spread prosperity, and advance democracy and freedom. Other nations look to us for leadership and to set an example of responsible and principled international action. our values of freedom, justice, the rule of law, and equality of opportunity are increasingly the values of peoples around the globe. in the coming decades, the spread of these values and incredible advances in science and technology will give us the capacity to disseminate knowledge, cure diseases, reduce poverty, protect the environment, and create jobs in the farthest-flung corners of the world. so our new world is as full of hope as it is of danger. To meet the threats and take advantage of the opportunities, the United States will need strong leadership, expertise in many fields, and large measures of foresight and resolve. again and again, i have been impressed with the need for u.s. leadership on the most pressing international challenges. if something important has to be done—from fighting international terrorism to bringing peace to the middle east—no other country can take our place. we may not get it right every time, but our leadership is usually constructive and helpful. we must, however, be aware of the limits to american power. the united states is neither powerful enough to cause all of the world's ills, nor powerful enough to cure them. so it is critical that we maintain good relations with our international allies and friends, manage prudently our sometimes difficult relationships with russia and china, and support and strengthen international institutions. a world that is committed to working together through effective international institutions and partnerships will be the world most capable of protecting peace and security and advancing prosperity and freedom. Equally important for a successful foreign policy will be cooperation between the president and Congress. today's moment of u.s. preeminence has not come to this nation by chance. sound policies shaped by past presidents and congresses helped to place us in this desirable position. to remain secure, prosperous, and free, the united states must continue to lead. that leadership requires the president and Congress to live up to their constitutional responsibilities to work together to craft a strong foreign policy. the great constitutional scholar edward corwin noted that the constitution is an invitation for the president and congress to struggle for the privilege of directing foreign policy. although the president is the principal foreign policy actor, the Constitution delegates more specific foreign policy powers to congress than to the executive. it designates the president as commander-in-chief and head of the executive branch, whereas it gives Congress the power to declare war and the power of the purse. the president can negotiate treaties and nominate foreign policy officials, but the senate must approve them. congress is also granted the power to raise and support armies, establish rules on naturalization, regulate foreign commerce, and define and punish offenses on the high seas. This shared constitutional responsibility presupposes that the president and Congress will work together to develop foreign policy, and it leaves the door open to both of them to assert their authority. on some basic foreign policy issues, the president and congress agree on their respective roles. for instance, congress generally does not question the president's power to manage diplomatic relations with other nations, and presidents accept that congress must appropriate funds for diplomacy and defense. but on a panoply of other issues—from oversight of foreign aid and responsibility for trade policy to authorization of military deployments and funding for international institutions—Congress and the president battle intensely to exert influence and advance their priorities. Of course, I approach the executive–legislative relationship from the perspective i gained during my congressional experience. That experience has convinced me that Congress plays a very important role in foreign policy, but does not always live up to its constitutional responsibilities. Its tendency too often has been either to defer to the president or to engage in foreign policy haphazardly. I recognize that political pressures, institutional dynamics, and the heavy domestic demands placed on congress can make it difficult for it to exercise its foreign policy responsibilities effectively. But I believe that Congress could improve its foreign policy performance markedly if it made a concerted effort to do so. Although the president is the chief foreign policy maker, Congress has a responsibility to be both an informed critic and a constructive partner of the president. the ideal established by the founders is neither for one branch to dominate the other nor for there to be an identity of views between them. Rather, the founders wisely sought to encourage a creative tension between the president and Congress that would produce policies that advance national interests and reflect the views of the American People. Sustained consultation between the president and congress is the most important mechanism for fostering an effective foreign policy with broad support at home and respect and punch overseas. in a world of both danger and opportunity, we need such a foreign policy to advance our interests and values around the globe.

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## Counterplan

### OV

#### **Requiring the disclosure of one’s relationship to disability effaces the social context of that disclosure --- this atomizes identities and renders oppression invisible to criticism by sustaining the factors that contribute to social stigmatization and devaluation of disabled people**

Fiona Cheuk 12, York University - Critical Disability Studies, M.A. Program School of Health Policy and Management Faculty of Health, Canada, “Locked Closets and Fishbowls: Self-disclosing Disabilities,” 2012, https://pi.library.yorku.ca/ojs/index.php/cdd/article/viewFile/34960/32620

The association of closeted disability identities with such negative sentiments as shame are problematic as they tend to reinforce the myth that disability is inherently negative; thus reifying the concept of disability as a personal tragedy and contributing to the stigmatization of disability identities and people with disabilities. Furthermore, this focus on the individualistic aspects of self-disclosure detaches the social from the individual and in doing so renders factors that construct disability as a devalued identity to be invisible for criticism in the context of closeting and outing. The individual’s agency cannot be separated from the influence of the socio-political environment and the historical background in which both the agent and the identity being disclosed is situated. Yet, the belief that self-disclosure as a matter of individual choice not only persists, but is dominant within Western industrialized societies and is apparent in both formal institutional and social interactive discourses around disclosing disabilities2. Therefore self-disclosing a socially stigmatized identity is conceptualized as similar to disclosing impersonal and apolitical facts about the self rather than being understood as a complex act of identity negotiation that has both personal and social consequences. Social influence cannot be ignored since self-disclosing involves the exposure of one’s status as a member of stigmatized social group and renders the relation between the individual and that status to be politically visible. When self-disclosure is categorized into areas of personal responsibility;, contextual factors such as social responses to disability and their influence on one’s decision around disclosing are rendered invisible and untouchable to critique, thus allowing these socio-political factors to continue contributing to the social stigmatization and devaluation of disability and disabled people. The so-called “choice” does not begin nor does it end at individual agency, as one’s identity is not an automaton that forms without the influence of social evaluation and dominant norms. Therefore questions around the moral imperative to self-disclose cannot begin to be made without first considering the role of the social interpretations and responses to disability in relation to the individual’s.

#### Forcing disclosure of disability by Temporarily-Abled-Bodies in Congress replicates the current situation where disabled persons are subject to interrogations to explain their disability in a way that fits a predetermined script --- only the CP allows for self-representation, an empowering stance that avoids these harms

[THEIR TAG: The disclosure of Presidential disability is likely inevitable, but OUR affirmative reverses the hegemony of narration in which Temporarily-Able-Bodies write the lives of cripples – that’s key to resist ableism]

Couser, 2005 G. Thomas. “Disability as diversity: a difference with a difference.” Ilha do Desterro A Journal of English Language, Literatures in English and Cultural Studies 48 (2005): 095-113.

Like life writing by other marginalized groups—women, Afri can-Americans, and gays—life writing by disabled people in North America and Britain is a cultural manifestation of a human rights move ment; significantly, the rise in personal narratives of disability roughly coincides with the disability rights movement, whose major legal manifestation in the United States is the Americans with Disabilities Act, which was passed in 1990. The first flowering of disability autobiography is aLso part of a broader disability renaissance that involves other arts and media. Disability autobiography should be seen, then, not as spontaneous self-expression hut as a response—indeed a retort—to the traditional misrepresentation of disability in Western culture generally. Just as disability is a difference with a difference (and in some ways more fundamental than differences in race, ethnicity, and genre), it stands in a unique relation to life narrative. One way of understanding this special relation between somatic variation, on the one hand, and life narrative, on the other, is through a common phenomenon: the way deviations from bodily norms often provoke a demand for explanatory narrative in everyday life. Whereas the unmarked case— the “normal” body—can pass without narration, the marked case the scar, the limp, the missing limb or the obvious prosthesis—calls for a story. People presenting unexpectedly anomalous bodies are often called upon to account for them, sometimes explicitly: “What happened to you”? (Illustrating and responding to this cultural practice is a collection of life writing by women with disabilities called What Happened to You? [KeithJ.) One of the social burdens of disability, then, is that it exposes affected individuals to inspection, interrogation, and violation of privacy. In effect, people with extraordinary bodies are held responsible for them, in two senses. First, they are required to account for them, often to complete strangers; second, the expectation is that their accounts should relieve their auditors’ discomfort. Despite the request for impromptu narration, often the answer to the question—”what happened to you?”—is pre-determined. The elicited narrative is expected to conform to, and thus confirm, a cultural script. For example, people diagnosed with lung cancer or Hl V/AIDS are expected to admit to behaviors that have induced the condition in question—to acknowledge having brought it upon themselves. Thus, one fundamental connection between life writing and somatic anomaly is that to have certain conditions is to have one’s life written for one. For people with many disabilities, culture inscribes narratives on their bodies in a way or to a degree not true of other minority populations. One can see, then, why autobiography is a particularly important form of life writing about disability: written from inside the experience in question, it involves self-representation by definition and thus offers the best-case scenario for revaluation of that condition. Disability autobiographers begin from a position of marginalization, belatedness, and pre-inscription. Long the objects of others’ classification and examination, disabled people have only recently assumed the initiative in representing themselves. In autobiography, disabled people counter their historical subjection by occupying the subject position. In approaching this literature, then, one should attend to the politics and ethics of representation, for the “representation” of disability in such narratives is a political as well as a mimetic act—a matter of speaking foras well as speaking about. Indeed, disability autobiography may be regarded as a post-colonial (which is to say an anti-colonial) phenomenon, a form of autoethnography, as Mary Louise Pratt has defined it: “instances in which colonized subjects undertake to represent themselves in ways that engage with [read: contest] the colonizer’s own terms” (7).

Forcing disclosure = ethical violence

Judith Butler, Maxine Elliot Professor in the Departments of Rhetoric and Comparative Literature at the University of California, Berkeley, 2001, Diacritics 31.4, p. 27-30

It may be that a certain ability to affirm what is contingent and incoherent in identity allows one to affirm others who may or may not "mirror" one's own constitution. After all, the mirror always tacitly operates in Hegel's concept of reciprocal recognition: I must somehow see that the Other is like me, that the Other is making this same recognition of our likeness. There is lots of light in the Hegelian room, and the mirrors have the happy coincidence of usually being windows as well [see Abrams; Kearney]. In this sense, we might consider a certain post-Hegelian reading of the scene of recognition in which precisely my own opacity to myself occasions my capacity to confer a certain kind of recognition on others. It would be perhaps an ethics based on our shared, and invariable, partial blindness about ourselves. The recognition that one is, at every turn, not quite the same as what one thinks that one is, might imply, in turn, a certain patience for others that suspends the demand that they be selfsame at every moment. Suspending the demand for self-identity or, more particularly, for complete coherence, seems to me to counter a certain ethical violence that demands that we manifest and maintain self-identity at all times and require that others do the same. For subjects who live in time this is a hard norm to satisfy, if not impossible. For subjects whose very capacity to recognize and become recognized is occasioned by a norm which has a temporality other than that of a first-person perspective, a vector of temporality that disorients one's own, it follows that one can only give and take recognition on the condition that one becomes disoriented from oneself by something which is not oneself, that one undergoes a decentering and "fails" to achieve self-identity. Can a new sense of ethics emerge from that inevitable ethical failure? I suggest that it can, and that it would be spawned from a certain willingness to acknowledge the limits of acknowledgment itself, that when we claim to know and present ourselves, we will fail in some ways that are nevertheless essential to who we are, and that we cannot expect anything else from others. If we speak about an acknowledgment of the limits of acknowledgment itself, are we then assuming that acknowledgment in the first sense is full and complete in its determination of the limits of acknowledgment in the second? In other words, do we know in an unqualified way that acknowledgment is always qualified? Is the first kind of knowing qualified by the qualification that it knows? This would have to be the case, for to acknowledge one's own opacity or that of another does not transform opacity into transparency. To know the limits of acknowledgment is a self-limiting act and, as a result, to experience the limits of knowing itself. This can, by the way, constitute a disposition of humility, and of generosity, since I will need to be forgiven for what I cannot fully know, what I could not have fully known, and I will be under a similar obligation to offer forgiveness to others who are also constituted in partial opacity to themselves. If the identity we say we are cannot possibly capture us, and marks immediately an excess and opacity that fall outside the terms of identity, then any effort made "to give an account of oneself" will have to fail in order to approach being true. As we ask to know the Other, or ask that the Other say, finally, who he or she is, it will be important not to expect an answer that will ever satisfy. By not pursuing satisfaction, and by letting the question remain open, even enduring, we let the Other live, since life might be understood as precisely that which exceeds any account we may try to give of it. If letting the Other live is part of a new definition of recognition, then this version of recognition would be one that is based less on knowledge than on an apprehension of its limits. In a sense, the ethical stance consists in asking the question, "Who are you?," and continuing to ask the question without any expectation of a full or final answer. This Other to whom I pose this question will not be captured by any answer that might arrive to satisfy the question. So if there is, in the question, a desire for recognition, this will be a desire which is under an obligation to keep itself alive as desire, and not to resolve itself through satisfaction. "Oh, now I know who you are": at this moment, I cease to address you, or to be addressed by you. Lacan infamously cautioned, "do not cede upon your desire." This is a complicated claim, since he does not say that your desire should or must be satisfied. He says only that desire should not be stopped. Indeed, sometimes satisfaction is the very means by which one cedes upon desire, but it can also be the means by which one turns against it, arranging for its death. Hegel was the one who linked desire to recognition, providing the formulation that was recast by Hyppolite as the desire to desire. And it was in the context of Hyppolite's seminar that Lacan was exposed to this formulation. Although Lacan will argue that misrecognition is a necessary by-product of desire, it may be that an account of recognition, in all its errancy, can still work in relation to the problem of desire. For us to revise recognition as an ethical project, it would have to become, in principle, unsatisfiable. For Hegel, it is important to remember, the desire to be, the desire to persist in one's own being, a doctrine articulated first by Spinoza, is only fulfilled through the desire to be recognized. But if recognition works to capture or arrest desire, then what has happened to the desire to be and to persist in one's own being? In a sense, Spinoza marks for us the desire to live, to persist, upon which any theory of recognition is built. And because the terms by which recognition operates may seek to fix and capture us, they run the risk of arresting desire, and of putting a certain end to life. As a result, it would be important to consider that any theory of recognition would have to give an account of the desire for recognition, and recognize that desire sets the limits and the conditions for the operation of recognition itself. Indeed, a certain desire to persist, we might say, following Spinoza, underwrites recognition, such that forms of recognition or, indeed, forms of judgment that seek to relinquish or destroy the desire to persist, the desire for life itself, undercut the very conditions of recognition itself.

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## Politics

### AT: Ukraine

#### Dems backed off IMF reform to avoid a fight---it’s not a loss because there was never a vote

Michael Tomasky 3-26, Daily Beast special correspondent, editor of Democracy: A Journal of Ideas, 3/26/14, “The GOP Just Screwed Ukraine Out of Billions to Hurt Obama,” http://www.thedailybeast.com/articles/2014/03/26/the-gop-just-screwed-ukraine-out-of-billions-to-hurt-obama.html

But those points don’t matter on the right, of course. Over there, it all spells a diminution of American power, the hated global governance, like Pat Buchanan’s old warnings about sending our boys out to global hotspots donning light-blue (i.e. United Nations) helmets. John McCain and Bob Corker, to their credit, supported the aid with the IMF reform tacked on. But most Republicans didn’t, and even though the full package easily passed a procedural vote, Democrats were getting the strong sense that an aid deal with the IMF stuff included wasn’t going to make it.

And so, it emerged this week that the Obama administration and Senate Democrats apparently backed off their demand for the Ukraine aid bill on Capitol Hill to include the reforms. On Monday, John Kerry visited Congress and threw in the towel. Better to have whatever we can get now than fight over this and delay matters. Or worse, lose altogether, because there was no chance that the House would ever have passed the IMF-laden version.

#### Their ev is punditry --- won’t cost PC

Michael Cohen, 3/3/14, Don't listen to Obama's Ukraine critics: he's not 'losing' – and it's not his fight, www.theguardian.com/commentisfree/2014/mar/03/obama-ukraine-russia-critics-credibility

As in practically every international crisis, the pundit class seems able to view events solely through the prism of US actions, which best explains Edward Luce in the Financial Times writing that Obama needs to convince Putin “he will not be outfoxed”, or Scott Wilson at the Washington Post intimating that this is all a result of America pulling back from military adventurism. Shocking as it may seem, sometimes countries take actions based on how they view their interests, irrespective of who the US did or did not bomb. Missing from this “analysis” about how Obama should respond is why Obama should respond. After all, the US has few strategic interests in the former Soviet Union and little ability to affect Russian decision-making. Our interests lie in a stable Europe, and that’s why the US and its European allies created a containment structure that will ensure Russia’s territorial ambitions will remain quite limited. (It’s called Nato.) Even if the Russian military wasn’t a hollow shell of the once formidable Red Army, it’s not about to mess with a Nato country. The US concerns vis-à-vis Russia are the concerns that affect actual US interests. Concerns like nuclear non-proliferation, or containing the Syrian civil war, or stopping Iran’s nuclear ambitions. Those are all areas where Moscow has played an occasionally useful role. So while Obama may utilize political capital to ratify the Start treaty with Russia, he’s not going to extend it so save the Crimea. The territorial integrity of Ukraine is not nothing, but it’s hardly in the top tier of US policy concerns.

#### It wasn’t a fight and Kerry made the call---Obama’s going to push IMF language as a separate bill

NYT 3-25 – New York Times, 3/25/14, “Senate Democrats Drop I.M.F. Reforms From Ukraine Aid,” http://www.nytimes.com/2014/03/26/world/europe/senate-democrats-drop-imf-reforms-from-ukraine-aid-package.html?\_r=0

But the need for speed on loans and direct assistance to Ukraine overcame the White House’s willingness for a fight. Senator Harry Reid of Nevada, the majority leader, said he was taking his lead from Secretary of State John Kerry, who had signaled that the administration would push for the monetary fund language separately.

### UQ

#### Top of the docket – patent reform is on the fast track, and PC keeps it there

Patently Apple, 3-2-2014, "U.S. Senate Bill Aimed at Patent Trolls is now on the Fast Track," http://www.patentlyapple.com/patently-apple/2014/03/us-senate-bill-aimed-at-patent-trolls-is-now-on-the-fast-track.html

In December Congress overwhelmingly passed the "Innovation Act" bill aimed at discouraging frivolous lawsuits by patent holders. The move was backed by companies like Apple, IBM, Cisco and Google. House Judiciary Committee Chairman Bob Goodlatte sponsored the bill which won strong bipartisan support in passing by a 325-91 vote. We're now learning that the Senate Bill Targeting Patent Trolls is on the Fast Track. A report published on Friday notes that "While patent reform advocates wait for the Senate Judiciary Committee to move a comprehensive bill to crack down on patent trolls, another bill providing some limited relief is moving fast in the Commerce Committee. On Thursday, Sen. Claire McCaskill, chairman of the consumer protection subcommittee, introduced a bill to make vague patent troll demand letters more transparent. By the end of the day, the bill, co-sponsored by Sen. Jay Rockefeller (D-W.Va.), chairman of the Senate Commerce Committee, put it on the committee's schedule to take up next Wednesday. Congress doesn't have much time left before lawmakers begin to leave town to campaign, so moving fast is the name of the game. Because patent troll legislation has so much support from the White House down to both sides of the aisle, it's a likely candidate for swift action."

#### No Dems thumpers—Obama’s taken everything else off the table---answers minimum wage and pay equity

WP 2-22 – Washington Post, 2/22/14, <http://www.washingtonpost.com/politics/obama-seeks-to-defuse-tensions-among-democrats/2014/02/22/92e472fc-9b1b-11e3-ad71-e03637a299c0_story.html>

President Obama is stepping up his efforts to coalesce and energize the Democratic base for the 2014 elections, backing off on issues where his positions might alienate the left, and more aggressively singling out Republicans as being responsible for the country’s problems. Voter turnout in midterm elections tends to be much lighter than it is in years when the country is picking a president, which means that it is crucial to maximize the enthusiasm of the party stalwarts who are most likely to show up at the polls. That helps explain why, in several sensitive policy areas, Obama recently has moved to defuse tensions with his fellow Democrats. Liberals are celebrating the president’s decision not to include a proposal to trim Social Security benefits in his 2015 budget, abandoning his previous stance in favor of making that part of a larger “grand bargain” to bring down the national debt. And while the White House insists that it will continue to press Congress for more authority to negotiate trade deals — something that puts the administration at odds with the Democratic base, and with its own party’s congressional leaders — Vice President Biden this month signaled to House Democrats that it has no expectation that will actually happen. Nor is the administration showing much appetite for bringing about a resolution to the question of allowing construction of the Keystone XL pipeline, an issue that pits environmentalists against unions, both of which the Democrats will be counting on in November. A Nebraska judge’s decision on Wednesday rejecting the pipeline route in that state has raised the possibility that a decision may be delayed until after the election.

#### It’ll pass---it’s almost at the finish line because of Obama but only PC ensures the piecemeal Senate approach lines up with the House---that’s Kravets

#### Their ev doesn’t assume Obama’s behind-the-scenes negotiations---details are controversial and could scuttle the bill without PC---so UQ can’t overwhelm the link

Jimm Phillips 3-17, Warren’s Consumer Electronics Daily, 3/17/14, “Some Momentum Observed on Senate Patent Revamp Legislation,” p. Factiva

Recent developments indicate there's some movement on legislation to improve the U.S. patent system and curb abusive patent litigation, though concerns about provisions in individual bills remain, said industry stakeholders in interviews.

Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., placed the Patent Transparency and Improvements Act (S-1720) on the docket for the committee's March 27 executive business meeting, meaning the committee could mark up the bill as soon as April 3. Sen. Dianne Feinstein, D-Calif., introduced the Patent Fee Integrity Act Thursday night, earning support from stakeholders. That bill would establish a separate fund for Patent and Trademark Office user fees to allow PTO full access to that line of funding. Sens. Tom Coburn, R-Okla., Amy Klobuchar, D-Minn., and Jeff Flake, R-Ariz., were original co-sponsors of the bill (1.usa.gov/1fYavy4). The future for the Transparency in Assertion of Patents Act (S-2049) remains murky, with no firm date yet set for a rescheduled markup following two postponements, stakeholders said.

Leahy said in a statement Thursday that he's "committed to ensuring we move forward" with a bipartisan compromise version of S-1720. Negotiations on the compromise version of S-1720 are still ongoing, and Senate Judiciary has not begun circulating a compromise draft, said an industry official. Senate Judiciary consideration of S-1720 would follow months of behind-the-scenes negotiations on the bill, including staff briefings on industry concerns about provisions the committee is considering for the compromise version of S-1720 (CED Feb 12 p3).

One of the remaining sticking points in those negotiations appears to be "how to put litigation reform provisions into the bill," said the industry official. The committee is considering language on litigation reform from two other patent bills: The Patent Abuse Reduction Act (S-1013) and the Patent Litigation Integrity Act (S-1612). Committee Republicans have been pushing litigation reform as key to their support for S-1720, while committee Democrats have expressed concerns about the language of provisions under consideration. Intellectual property and legal groups have also been concerned about the inclusion of litigation reforms in S-1720, as they were when the House included those provisions in the Innovation Act (HR-3309). The American Intellectual Property Law Association "supports S-1720 conceptually," but believes the potential litigation reform provisions -- including court rules in patent cases and fee shifting -- are "much more controversial and much more challenging," said AIPLA President Todd Dickinson, former PTO director.

#### It’ll pass but there’s a short window of bipartisan compromise that’s currently distinct from other issues---answers all pounders

Greg Baumann 3-26, “Silicon Valley CEOs hit D.C. seeking curbs on patent trolls as immigration and tax reform remain elusive,” Puget Sound Business Journal Online, p. Factiva

Silicon Valley CEOs have never talked more with their D.C. representatives or spent more money on federal lobbying. Yet they're finding D.C. a complicated place to do business.

The most visible indicator of the Silicon Valley-D.C. divide is continued inaction on the tech industry's banner policy issue: Immigration reform. For years, the industry has pushed to increase the number of U.S. visas available for foreign-born tech talent, most notably during an aggressive push by startups, large corporations and business groups last year.

Comprehensive tax reform doesn't look much more promising. Not a single corporate tax officer predicted passage of tax reform this year, according to a recent survey by a D.C. law firm.

Other issues lie within closer reach.

"We have never been so close to passing meaningful patent troll reform," said the leadership group's CEO, Carl Guardino. "For us, that's important. Other issues aren't as far along as that one."

The Leadership Group is seeking higher pleading standards that would dissuade patent trolls from filing frivolous suits, shifting of legal fees to plaintiffs of spurious suits, improved records as to who owns patents, and protection against suits for companies that use technologies that are the subject of patent claims, according to briefing documents prepared by the organization.

The Silicon Valley Leadership Group divides its lobbying force of executives into small groups and has scheduled 64 meetings with legislators, including 16 with senators, according to briefing documents. The event is sponsored by a group of companies that includes SAP, Microsoft Corp., Verizon, AT&T and Virgin America. Participants pay a fee.

Guardino said his group's lobbying has yielded results in the past

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, including the government decision to place a U.S. Patent and Trademark Office in San Jose and funding for the extension of Bay Area Rapid Transit south toward the city.

"While many would think advocating in D.C. is like watching grass grow, we have actually seen crops harvested on these trips," he said, noting that securing the PTO's location took 5 ½ years.

The delegation, led by Leadership Group chairman Steve Berglund, CEO of Trimble Navigation, and Vice Chairman Greg Becker, president of Silicon Valley Bank, is visiting a Congress on the mend. It has emerged from brinksmanship between the Democrats and Republicans that led to a government shutdown from Oct. 1 through Oct. 16.

Still, with Senate seats in play for the Nov. 4 election, posturing and defensive tactics may mean the window is closing on more controversial issues this year.

### PC

#### It’ll pass---but PC is key to momentum and increased Dems push

Julian Hattem, 3-5-2014, "Congress gets out club for patent ‘trolls’," TheHill, http://thehill.com/blogs/hillicon-valley/technology/199954-lawmakers-look-to-push-patent-troll-bill

Proponents of a bill to prevent patent “trolls” from harassing businesses are increasingly optimistic their legislation will become law this year. Lawmakers and a wide swath of different industries have aligned behind the push for a crackdown on the so-called trolls, which sue companies for patent license violations. Supporters of the reform effort claim the lawsuits are often frivolous, but nonetheless force businesses into settlements to avoid lengthy and costly court cases. Plaintiffs in the suits argue they are merely trying to protect their intellectual property and preserve inventors’ ability to innovate. With campaign politics gumming up the works on Capitol Hill, the patent crackdown could be one of the few bills to make it to President Obama’s desk before November, supporters say. “I think that members on both sides of the aisle recognize that this is a big problem affecting people being employed in their district, investments in their district,” said Beth Provenzano, a senior director for government relations at the National Retail Federation. “I think that this does stand a good chance, even in the election year.” The Senate Judiciary Committee, the focus of the patent reform fight, will look to take action on legislation this month, Chairman Patrick Leahy (D-Vt.) said on Tuesday. Sen. Mike Lee (R-Utah) on Wednesday said he hoped the full chamber would vote on the bill in the coming months. In addition to the retailers trade group, associations for restaurants, financial institutions and major tech companies such as Google have pushed for the chamber to approve legislation. The troublesome lawsuits can cost millions, they say, and need to be stopped immediately. Patent-rights holders skeptical of reform claim that bill goes too far and warn it could make it difficult for inventors and universities to profit from their creations. In December, the House overwhelmingly passed the Innovation Act, which would reform much of the patent lawsuit process. Lee and Leahy are pushing a companion bill, the Patent Transparency and Improvements Act, in the Senate. Obama backed the House bill and called for action in his State of the Union address. Supporters hope the president’s backing will help push legislation across the finish line

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in the Senate. “It meant a lot in the Senate to have the president weigh in like that,” Lee said at an event Tuesday in Washington. “To have it brought up by the president in some very public settings has been very helpful to help focus the public attention on the fact that this is hurting a lot of people.” Obama’s support also created momentum in the House, and convinced Democratic lawmakers who might not have been focused on the issue to hop on board, according to Rep. Jared Polis (D-Colo.). “When it comes to a patent bill, they say ‘Oh OK, the president liked it so we’re going to give it a look,’ ” he said at the event, which was sponsored by Politico. “So that sort of opened the door for a lot of members on the Democratic side, where we had stronger vote totals than we were necessarily expecting.”

### Theory

#### PC is key and zero sum---best scholarship proves

Matthew N. Beckmann and Vimal Kumar 11, Profs Department of Political Science, @ University of California Irvine "How Presidents Push, When Presidents Win" Journal of Theoretical Politics 2011 23: 3 SAGE

Before developing presidents’ lobbying options for building winning coalitions on Capitol Hill, it is instructive to consider **cases where the president has no** political capital and no viable lobbying options. In such circumstances of **imposed passivity** (beyond offering a proposal), **a president’s fate is clear**: his proposals are subject to pivotal voters’ preferences. So if a president lacking political capital proposes to change some far-off status quo, that is, one on the opposite side of the median or otherwise pivotal voter, a (Condorcet) winner always exists, and it coincides with the pivot’s predisposition (Brady and Volden, 1998; Krehbiel, 1998) (see also Black (1948) and Downs (1957)). Considering that there tends to be substantial ideological distance between presidents and pivotal voters, positive presidential inﬂuence without lobbying, then, is not much inﬂuence at all.¶ As with all lobbyists, presidents looking to push legislation must do so indirectly by **push**ing the **lawmakers whom they need to pass it**. Or, as Richard Nesustadt artfully explained:¶ The essence of a President’s persuasive task, with congressmen and everybody else, is to induce them to believe that what he wants of them is what their own appraisal of their own responsibilities requires them to do in their interest, not his…Persuasion deals in the coin of self-interest with men who have some freedom to reject what they ﬁnd counterfeit. (Neustadt, 1990: 40) ¶ Fortunately for contemporary presidents, today’s White House affords its occupants an unrivaled supply of **persuasive carrots and sticks**. Beyond the ofﬁce’s unique visibility and prestige, among both citizens and their representatives in Congress, presidents may also sway lawmakers by using their discretion in budgeting and/or rulemaking, unique fundraising and campaigning capacity, control over executive and judicial nominations, veto power, or numerous other options under the chief executive’s control. Plainly, when it comes to the arm-twisting, brow-beating, and horse-trading that so often characterizes legislative battles, modern presidents are uniquely well equipped for the ﬁght. In the following we employ the omnibus concept of ‘presidential political capital’ to capture this conception of presidents’ positive power as persuasive bargaining.¶ Speciﬁ- cally, we deﬁne presidents’ political capital as the **class of tactics White House ofﬁcials employ to induce changes in lawmakers’ behavior.**¶Importantly, this conception of presidents’ positive power as persuasive bargaining not only **meshes with previous scholarship** on lobbying (see, e.g., Austen-Smith and Wright (1994), Groseclose and Snyder (1996), Krehbiel (1998: ch. 7), and Snyder (1991)), but also **presidential practice.** For example, Goodwin recounts how President Lyndon Johnson routinely allocated ‘rewards’ to ‘cooperative’ members:¶ The rewards themselves (and the withholding of rewards) . . . might be something as unobtrusive as receiving an invitation to join the President in a walk around the White House grounds, knowing that pictures of the event would be sent to hometown newspapers . . . [or something as pointed as] public works projects, military bases, educational research grants, poverty projects, appointments of local men to national commissions, the granting of pardons, and more. (Goodwin, 1991: 237) Of course, presidential political capital is a scarce commodity with a ﬂoating value. Even a favorabl[e]y situated president enjoys only a ﬁnite supply of political **capital**; **he can only promise or pressure so much**. What is more, this capital **ebbs and ﬂows as realities and/or perceptions change**. So, similarly to Edwards (1989), we believe presidents’ bargaining resources cannot fundamentally alter legislators’ predispositions, but rather operate ‘at the margins’ of US lawmaking, **however important those margins may be**

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 (see also Bond and Fleisher (1990), Peterson (1990), Kingdon (1989), Jones (1994), and Rudalevige (2002)). Indeed, our aim is to explicate those margins and show how **presidents may** systematically inﬂuence them.

# 2NR

#### Calling us out for using an *unintentionally offensive term* might make them feel better for embarrassing us, but it doesn’t do anything to address ableist oppression.

Kinzel 11 — Lesley Kinzel, blogger and social justice writer, has written for Newsweek and Marie Claire, was named one of the Feminist Press’s “40 Feminists Under 40,” 2011 (“On our difficult language, and the calling-out of,” Two Whole Cakes—a blog about body politics, social justice activism, and pop-cultural criticism from a feminist perspective, March 30th, Available Online at http://blog.twowholecakes.com/2011/03/on-our-difficult-language-and-the-calling-out-of-same)

We throw “that’s ableist” or “that’s racist” or “that’s fatphobic” around, I suspect, in the hope that such heavy judgement-bearing words will shock and embarrass the speaker out of using the offending language. And sometimes, it can work, at least in the short term, when we are merely thinking of our own self-preservation. But beyond that instant, this is not constructive activism. Using surprise, guilt, or humiliation as negative reinforcement to change behavior does nothing to instruct the person in question on why their behavior is causing problems; they stop simply because they don’t want to get in trouble. While the power shift this approach employs may feel awfully satisfying to those of us who have labored under some degree of oppression for much our lives—we get to dictate the terms of engagement, for once—merely shifting the power from one hand to another does nothing to change the destructive use of said power against us.¶ This practice of shaming people into behaving a certain way or using certain language does not truly address the underlying inclination; it does not unpack the thinking that allowed that speaker to feel entitled to say those things in the first place. Fear can be an effective motivator, but it’s not often a productive one

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, if our goal is broad and lasting cultural change. It is, after all, fear that motivates folks of all sizes to diet, that keeps queer folks in the closet, that makes women afraid to walk alone at night, that compels people of color to keep their heads down even in the face of overt discrimination and just get by. It is fear and shame that locks the systems that marginalize us in place, and as Audre Lorde has explained, in one of the most brilliant pieces of writing on social justice ever put to paper, there is little we can do while still holding on to the master’s tools.¶ Those of us who stand outside the circle of this society’s definition of acceptable women; those of us who have been forged in the crucibles of difference — those of us who are poor, who are lesbians, who are Black, who are older — know that survival is not an academic skill. It is learning how to stand alone, unpopular and sometimes reviled, and how to make common cause with those others identified as outside the structures in order to define and seek a world in which we can all flourish. It is learning how to take our differences and make them strengths. For the master’s tools will never dismantle the master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this fact is only threatening to those women who still define the master’s house as their only source of support.¶ Ideally, people should stop using certain language because they have developed an understanding of why that language is oppressive, and how their use of it contributes to inequality and marginalization, and not because they are afraid or ashamed of confusing social repercussions they do not understand. What we need is a commitment to giving people clear explanations—be they angry, or impassioned, or blunt—of why their words or behavior are problematic, or upsetting, or damaging. We need to resist relying on comfortable jargon to call people out, and to ditch the erroneous presumption that making someone feel stupid will encourage them to read more about a subject. It doesn’t work. Fear and shame don’t help people to understand how the language we use and the actions we undertake, even in our own small individual spheres, all conspire to create a social environment that oppresses us. Fear breeds resentment and, sometimes, hatred. These are not things we need more of. These are the things that put us here in the first place.

#### “Should” requires defending federal government action

Judge Henry Nieto 9, Colorado Court of Appeals, 8-20-2009 People v. Munoz, 240 P.3d 311 (Colo. Ct. App. 2009)

"Should" is "used . . . to express duty, obligation, propriety, or expediency." Webster's Third New International Dictionary 2104 (2002). Courts [\*\*15] interpreting the word in various contexts have drawn conflicting conclusions, although the weight of authority appears to favor interpreting "should" in an imperative, obligatory sense.

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HN7A number of courts, confronted with the question of whether using the word "should" in jury instructions conforms with the Fifth and Sixth Amendment protections governing the reasonable doubt standard, have upheld instructions using the word. In the courts of other states in which a defendant has argued that the word "should" in the reasonable doubt instruction does not sufficiently inform the jury that it is bound to find the defendant not guilty if insufficient proof is submitted at trial, the courts have squarely rejected the argument. They reasoned that the word "conveys a sense of duty and obligation and could not be misunderstood by a jury." See State v. McCloud, 257 Kan. 1, 891 P.2d 324, 335 (Kan. 1995); see also Tyson v. State, 217 Ga. App. 428, 457 S.E.2d 690, 691-92 (Ga. Ct. App. 1995) (finding argument that "should" is directional but not instructional to be without merit); Commonwealth v. Hammond, 350 Pa. Super. 477, 504 A.2d 940, 941-42 (Pa. Super. Ct. 1986). Notably, courts interpreting the word "should" in other types of jury instructions [\*\*16] have also found that the word conveys to the jury a sense of duty or obligation and not discretion. In Little v. State, 261 Ark. 859, 554 S.W.2d 312, 324 (Ark. 1977), the Arkansas Supreme Court interpreted the word "should" in an instruction on circumstantial evidence as synonymous with the word "must" and rejected the defendant's argument that the jury may have been misled by the court's use of the word in the instruction. Similarly, the Missouri Supreme Court rejected a defendant's argument that the court erred by not using the word "should" in an instruction on witness credibility which used the word "must" because the two words have the same meaning. State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958). [\*318] In applying a child support statute, the Arizona Court of Appeals concluded that a legislature's or commission's use of the word "should" is meant to convey duty or obligation. McNutt v. McNutt, 203 Ariz. 28, 49 P.3d 300, 306 (Ariz. Ct. App. 2002) (finding a statute stating that child support expenditures "should" be allocated for the purpose of parents' federal tax exemption to be mandatory).