# Off

### 1NC

#### Restrictions are prohibitions on action

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

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

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

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

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

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

#### 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 on particular authorities guarantee links to every core argument like flexibility and deference

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

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#### Security politics are driven by a fundamental fear of alterity that create the enabling conditions for executive overreach and perpetual violence

Vivienne Jabri 6, Director of the Centre for International Relations and Senior Lecturer at the Department of War Studies, King’s College London, War, Security and the Liberal State, Security Dialogue, 37;47

LATE MODERN TRANSFORMATIONS are often conceived in terms of the sociopolitical and economic manifestations of change emergent from a globalized arena. What is less apparent is how late modernity as a distinct era has impacted upon our conceptions of the social sphere, our lived experience, and our reflections upon the discourses and institutions that form the taken-for-granted backdrop of the known and the knowable. The paradigmatic certainties of modernity – the state, citizenship, democratic space, humanity’s infinite capacity for progress, the defeat of dogma and the culmination of modernity’s apotheosis in the free-wheeling market place – have in the late modern era come face to face with uncertainty, unpre- dictability and the gradual erosion of the modern belief that we could indeed simply move on, assisted by science and technology, towards a condition where instrumental rationality would become the linchpin of government and human interaction irrespective of difference. Progress came to be associated with peace, and both were constitutively linked to the universal, the global, the human, and therefore the cosmopolitan. What shatters such illusions is the recollection of the 20th century as the ‘age of extremes’ (Hobsbawm, 1995), and the 21st as the age of the ever-present condition of war. While we might prefer a forgetting of things past, a therapeutic anamnesis that manages to reconfigure history, it is perhaps the continuities with the past that act as antidote to such righteous comforts.¶ How, then, do we begin to conceptualize war in conditions where distinctions disappear, where war is conceived, or indeed articulated in political discourse, in terms of peace and security, so that the political is somehow banished in the name of governmentalizing practices whose purview knows no bounds, whose remit is precisely the banishment of limits, of boundaries and distinctions. Boundaries, however, do not disappear. Rather, they become manifest in every instance of violence, every instance of control, every instance of practices targeted against a constructed other, the enemy within and without, the all-pervasive presence, the defences against which come to form the legitimizing tool of war. ¶ Any scholarly take on the present juncture of history, any analysis of the dynamics of the present, must somehow render the narrative in measured tones, taking all factors into account, lest the narrator is accused of exaggeration at best and particular political affiliations at worst. When the late modern condition of the West, of the European arena, is one of camps, one of the detention of groups of people irrespective of their individual needs as migrants, one of the incarceration without due process of suspects, one of overwhelming police powers to stop, search and detain, one of indefinite detention in locations beyond law, one of invasion and occupation, then language itself is challenged in its efforts to contain the description of what is. The critical scholarly take on the present is then precisely to reveal the conditions of possibility in relation to how we got here, to unravel the enabling dynamics that led to the disappearance of distinctions between war and criminality, war and peace, war and security. When such distinctions disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control. We can reveal the operations of violence, but far more critical is the revelation of power and how power operates in the present. As the article argues, such an exploration raises fundamental questions relating to the relationship of power and violence, and their mutual interconnection in the complex interstices of disrupted time and space locations. Power and violence are hence separable analytical categories, separable practices; they are at the same time connected in ways that work on populations and on bodies – with violence often targeted against the latter so that the former are reigned in, governed. Where Michel Foucault sought, in his later writings, to distinguish between power and violence, to reveal the subtle workings of power, now, in the present, this article will venture, perhaps the distinction is no longer viable when we witness the indistinctions I highlight above¶ The article provides an analysis of the place of war in late modern politics. In particular, it concentrates on the implications of war for our conceptions of the liberty–security problematique in the context of the modern liberal state. The first section of the article argues the case for the figure of war as analyser of the present. The second section of the article reveals the con- ditions of possibility for a distinctly late modern mode of war and its imbri- cations in politics. The final section of the article concentrates on the political implications of the primacy of war in late modernity, and in particular on possibilities of dissent and articulations of political agency. The aim through- out is to provide the theoretical and conceptual tools that might begin to meet the challenges of the present and to open an agenda of research that concentrates on the politics of the present, the capacities or otherwise of contestation and accountability, and the institutional locations wherein such political agency might emerge. ¶ The Figure of War and the Spectre of Security¶ The so-called war against terrorism is constructed as a global war, transcend- ing space and seemingly defiant of international conventions. It is dis- tinguished from previous global wars, including the first and the second world wars, in that the latter two have, in historiography, always been analysed as interstate confrontations, albeit ones that at certain times and in particular locations peripherally involved non-state militias. Such distinc- tions from the old, of course, will be subject to future historical narratives on the present confrontation and its various parameters. What is of interest in the present discussion is the distinctly global aspect of this war, for it is the globality1 of the war against terrorism that renders it particularly relevant and pertinent to investigations that are primarily interested in the relation- ship between war and politics, war and the political processes defining the modern state. The initial premise of the present article is that war, rather than being confined to its own time and space, permeates the normality of the political process, has, in other words, a defining influence on elements con- sidered to be constitutive of liberal democratic politics, including executive answerability, legislative scrutiny, a public sphere of discourse and inter- action, equal citizenship under the law and, to follow liberal thinkers such as Habermas, political legitimacy based on free and equal communicative practices underpinning social solidarity (Habermas, 1997). War disrupts these elements and is a time of crisis and emergency. A war that has a permanence to it clearly normalizes the exceptional, inscribing emergency into the daily routines of social and political life. While the elements of war – conflict, social fragmentation, exclusion – may run silently through the assemblages of control in liberal society (Deleuze, 1986), nevertheless the persistent iteration of war into politics brings these practices to the fore, and with them a call for a rethinking of war’s relationship to politics. ¶ The distinctly global spatiality of this war suggests particular challenges that have direct impact on the liberal state, its obligations towards its citizenry, and the extent to which it is implicated in undermining its own political institutions. It would, however, be a mistake to assume that the practices involved in this global war are in any way anathema to the liberal state. The analysis provided here would argue that while it is crucial to acknowledge the transformative impact of the war against terrorism, it is equally as important to appreciate the continuities in social and political life that are the enabling conditions of this global war, forming its conditions of possibility. These enabling conditions are not just present or apparent at global level, but incorporate local practices that are deep-rooted and institu- tionalized. The mutually reinforcing relationship between global and local conditions renders this particular war distinctly all-pervasive, and poten- tially, in terms of implications, far more threatening to the spaces available for political contestation and dissent. ¶ Contemporary global politics is dominated by what might be called a ‘matrix of war’2 constituted by a series of transnational practices that vari- ously target states, communities and individuals. These practices involve states as agents, bureaucracies of states and supranational organizations, quasi-official and private organizations recruited in the service of a global machine that is highly militarized and hence led by the United States, but that nevertheless incorporates within its workings various alliances that are always in flux. The crucial element in understanding the matrix of war is the notion of ‘practice’, for this captures the idea that any practice is not just situated in a system of enablements and constraints, but is itself constitutive of structural continuities, both discursive and institutional. As Paul Veyne (1997: 157) writes in relation to Foucault’s use of the term, ‘practice is not an agency (like the Freudian id) or a prime mover (like the relation of produc- tion), and moreover for Foucault, there is no agency nor any prime mover’. It is in this recursive sense that practices (of violence, exclusion, intimidation, control and so on) become structurated in the routines of institutions as well as lived experience (Jabri, 1996). To label the contemporary global war as a ‘war against terrorism’ confers upon these practices a certain legitimacy, suggesting that they are geared towards the elimination of a direct threat. While the threat of violence perpetrated by clandestine networks against civilians is all too real and requires state responses, many of these responses appear to assume a wide remit of operations – so wide that anyone interested in the liberties associated with the democratic state, or indeed the rights of individuals and communities, is called upon to unravel the implications of such practices. ¶ When security becomes the overwhelming imperative of the democratic state, its legitimization is achieved both through a discourse of ‘balance’ between security and liberty and in terms of the ‘protection’ of liberty.3 The implications of the juxtaposition of security and liberty may be investigated either in terms of a discourse of ‘securitization’ (the power of speech acts to construct a threat juxtaposed with the power of professionals precisely to so construct)4 or, as argued in this article, in terms of a discourse of war. The grammars involved are closely related, and yet that of the latter is, para- doxically, the critical grammar, the grammar that highlights the workings of power and their imbrications with violence. What is missing from the securitization literature is an analytic of war, and it is this analytic that I want to foreground in this article. ¶ The practices that I highlight above seem at first hand to constitute differ- ent response mechanisms in the face of what is deemed to be an emergency situation in the aftermath of the events of 11 September 2001. The invasion and occupation of Iraq, the incarceration without due process of prisoners in camps from Afghanistan to Guantánamo and other places as yet un- identified, the use of torture against detainees, extra-judicial assassination, the detention and deportation – again without due process – of foreign nationals deemed a threat, increasing restrictions on refugees, their confine- ment in camps and detention centres, the construction of the movement of peoples in security terms, and restrictions on civil liberties through domestic legislation in the UK, the USA and other European states are all represented in political discourse as necessary security measures geared towards the protection of society. All are at the same time institutional measures targeted against a particular other as enemy and source of danger. ¶ It could be argued that the above practices remain unrelated and must hence be subject to different modes of analysis. To begin with, these practices involve different agents and are framed around different issues. Afghanistan and Iraq may be described as situations of war, and the incarceration of refugees as encompassing practices of security. However, what links these elements is not so much that they constitute a constructed taxonomy of dif- ferentiated practices. Rather, what links them is the element of antagonism directed against distinct and particular others. Such a perspective suggests that the politics of security, including the production of fear and a whole array of exclusionary measures, comes to service practices that constitute war and locates the discourse of war at the heart of politics, not just domes- tically, but, more crucially in the present context, globally. The implications for the late modern state and the distinctly liberal state are monumental, for a perpetual war on a global scale has implications for political structures and political agency, for our conceptions of citizenship and the role of the state in meeting the claims of its citizens,5 and for the workings of a public sphere that is increasingly global and hence increasingly multicultural. ¶ The matrix of war is centrally constituted around the element of antago- nism, having an association with existential threat: the idea that the continued presence of the other constitutes a danger not just to the well-being of society but to its continued existence in the form familiar to its members, hence the relative ease with which European politicians speak of migrants of particular origins as forming a threat to the ‘idea of Europe’ and its Christian origins.6 Herein lies a discourse of cultural and racial exclusion based on a certain fear of the other. While the war against specific clandestine organiza- tions7 involves operations on both sides that may be conceptualized as a classical war of attrition, what I am referring to as the matrix of war is far more complex, for here we have a set of diffuse practices, violence, disci- plinarity and control that at one and same time target the other typified in cultural and racial terms and instantiate a wider remit of operations that impact upon society as a whole. ¶ The practices of warfare taking place in the immediate aftermath of 11 September 2001 combine with societal processes, reflected in media representations and in the wider public sphere, where increasingly the source of threat, indeed the source of terror, is perceived as the cultural other, and specifically the other associated variously with Islam, the Middle East and South Asia. There is, then, a particularity to what Agamben (1995, 2004) calls the ‘state of exception’, a state not so much generalized and generalizable, but one that is experienced differently by different sectors of the global population. It is precisely this differential experience of the exception that draws attention to practices as diverse as the formulation of interrogation techniques by military intelligence in the Pentagon, to the recent provisions of counter-terrorism measures in the UK,8 to the legitimizing discourses surrounding the invasion of Iraq. All are practices that draw upon a discourse of legitimization based on prevention and pre-emption. Enemies constructed in the discourses of war are hence always potential, always abstract even when identified, and, in being so, always drawn widely and, in consequence, communally. There is, hence, a ‘profile’ to the state of exception and its experience. Practices that profile particular communities, including the citizens of European states, create particular challenges to the self-understanding of the liberal democratic state and its capacity, in the 21st century, to deal with difference. ¶ While a number of measures undertaken in the name of security, such as proposals for the introduction of identity cards in the UK or increasing surveillance of financial transactions in the USA, might encompass the population as a whole, the politics of exception is marked by racial and cul- tural signification. Those targeted by exceptional measures are members of particular racial and cultural communities. The assumed threat that under- pins the measures highlighted above is one that is now openly associated variously with Islam as an ideology, Islam as a mode of religious identi- fication, Islam as a distinct mode of lifestyle and practice, and Islam as a particular brand associated with particular organizations that espouse some form of a return to an Islamic Caliphate. When practices are informed by a discourse of antagonism, no distinctions are made between these various forms of individual and communal identification. When communal profiling takes place, the distinction between, for example, the choice of a particular lifestyle and the choice of a particular organization disappears, and diversity within the profiled community is sacrificed in the name of some ‘pre- cautionary’ practice that targets all in the name of security.9 The practices and language of antagonism, when racially and culturally inscribed, place the onus of guilt onto the entire community so identified, so that its indi- vidual members can no longer simply be citizens of a secular, multicultural state, but are constituted in discourse as particular citizens, subjected to particular and hence exceptional practices. When the Minister of State for the UK Home Office states that members of the Muslim community should expect to be stopped by the police, she is simply expressing the condition of the present, which is that the Muslim community is particularly vulnerable to state scrutiny and invasive measures that do not apply to the rest of the citizenry.10 We know, too, that a distinctly racial profiling is taking place, so that those who are physically profiled are subjected to exceptional measures. ¶ Even as the so-called war against terrorism recognizes no boundaries as limits to its practices – indeed, many of its practices occur at transnational, often indefinable, spaces – what is crucial to understand, however, is that this does not mean that boundaries are no longer constructed or that they do not impinge on the sphere of the political. The paradox of the current context is that while the war against terrorism in all its manifestations assumes a boundless arena, borders and boundaries are at the heart of its operations. The point to stress is that these boundaries and the exclusionist practices that sustain them are not coterminous with those of the state; rather, they could be said to be located and perpetually constructed upon the corporeality of those constructed as enemies, as threats to security. It is indeed the corporeal removal of such subjects that lies at the heart of what are constructed as counter-terrorist measures, typified in practices of direct war, in the use of torture, in extra-judicial incarceration and in judicially sanctioned detention. We might, then, ask if such measures constitute violence or relations of power, where, following Foucault, we assume that the former acts upon bodies with a view to injury, while the latter acts upon the actions of subjects and assumes, as Deleuze (1986: 70–93) suggests, a relation of forces and hence a subject who can act. What I want to argue here is that violence is imbricated in relations of power, is a mode of control, a technology of governmentality. When the population of Iraq is targeted through aerial bombardment, the consequence goes beyond injury and seeks the pacifica- tion of the Middle East as a political region. ¶ When legislative and bureaucratic measures are put in place in the name of security, those targeted are categories of population. At the same time, the war against terrorism and the security discourses utilized in its legitimiza- tion are conducted and constructed in terms that imply the defence or protection of populations. One option is to limit policing, military and intel- ligence efforts through the targeting of particular organizations. However, it is the limitless construction of the war against terrorism, its targeting of particular racial and cultural communities, that is the source of the challenge presented to the liberal democratic state. In conditions constructed in terms of emergency, war permeates discourses on politics, so that these come to be subject to the restraints and imperatives of war and practices constituted in terms of the demands of security against an existential threat. The implications for liberal democratic politics and our conceptions of the modern state and its institutions are far-reaching,11 for the liberal democratic polity that considers itself in a state of perpetual war is also a state that is in a permanent state of mobilization, where every aspect of public life is geared towards combat against potential enemies, internal and external. ¶ One of the most significant lessons we learn from Michel Foucault’s writ- ings is that war, or ‘the distant roar of battle’ (Foucault, 1977: 308), is never quite so distant from liberal governmentality. Conceived in Foucaultian terms, war and counter-terrorist measures come to be seen not as discontinuity from liberal government, but as emergent from the enabling conditions that liberal government and the modern state has historically set in place. On reading Foucault’s renditions on the emergence of the disciplinary society, what we see is the continuation of war in society and not, as in Hobbes and elsewhere in the history of thought, the idea that wars happen at the outskirts of society and its civil order. The disciplinary society is not simply an accumulation of institutional and bureaucratic procedures that permeate the everyday and the routine; rather, it has running through its interstices the constitutive elements of war as continuity, including confrontation, struggle and the corporeal removal of those deemed enemies of society. In Society Must Be Defended (Foucault, 2003) and the first volume of the History of Sexuality (Foucault, 1998), we see reference to the discursive and institutional continuities that structurate war in society. Reference to the ‘distant roar of battle’ suggests confrontation and struggle; it suggests the ever-present construction of threat accrued to the particular other; it suggests the immediacy of threat and the construction of fear of the enemy; and ultimately it calls for the corporeal removal of the enemy as source of threat. The analytic of war also encompasses the techniques of the military and their presence in the social sphere – in particular, the control and regulation of bodies, timed pre- cision and instrumentality that turn a war machine into an active and live killing machine. In the matrix of war, there is hence the level of discourse and the level of institutional practices; both are mutually implicating and mutually enabling. There is also the level of bodies and the level of population. In Foucault’s (1998: 152) terms: ‘the biological and the historical are not con- secutive to one another . . . but are bound together in an increasingly com- plex fashion in accordance with the development of the modern technologies of power that take life as their objective’. ¶ What the above suggests is the idea of war as a continuity in social and political life. The matrix of war suggests both discursive and institutional practices, technologies that target bodies and populations, enacted in a complex array of locations. The critical moment of this form of analysis is to point out that war is not simply an isolated occurrence taking place as some form of interruption to an existing peaceful order. Rather, this peaceful order is imbricated with the elements of war, present as continuities in social and political life, elements that are deeply rooted and enabling of the actuality of war in its traditional battlefield sense. This implies a continuity of sorts between the disciplinary, the carceral and the violent manifestations of government.

#### Our alternative is to refuse technical debates about war powers in favor of subjecting the 1ac’s discourse to rigorous democratic scrutiny

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit.¶ If the objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this meahn for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars-emphasizing new statutory frameworks or greater judicial assertiveness-is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants-danger too complex for the average citizen to comprehend independently-it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

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#### Momentum for patent reform now – Obama’s pushing and PC is key

David Kravets 3-20, WIRED senior staff writer, 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.

#### Plan wrecks PC

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

#### Universities are on the brink of large-scale patent sales to trolls---causes public backlash that crushes federal research funding---reform solves

Robin Feldman 3-28, professor of Law, Harry & Lillian Hastings Chair, and director of the Institute for Innovation Law at the University of California Hastings College of Law, 3/28/14, “Next patent troll victims: Pharma and bio?,” http://thehill.com/blogs/congress-blog/judicial/201945-next-patent-troll-victims-pharma-and-bio

With scattered signs showing that patent trolls are beginning to purchase biopharmaceutical patents, however, my co-author and I wondered whether the industry was really as safe as assumed. In particular, we wondered whether university holdings could provide a tempting pool of ammunition to launch against current biopharmaceutical products.

To test that theory, we looked at the life science patent holdings of five major research universities: University of California, University of Texas, MIT, CalTech, and the University of South Florida. Our study identified dozens of patents that could be deployed against current bio and pharma industries, following the patterns that NPEs have used against other industries. These include patents on drug formulas, methods of treatments, research methods, dosage forms, and others.

If patents like these are around and threatening, why hasn’t the biopharmaceutical industry found and dealt with them? The answer may be that up until now, university holdings have has posed little threat, particularly peripheral patents that could be used for the type of bargaining leverage popularized in modern patent trolling. Another recent study of mine—an extensive academic study of all 13,000 patent lawsuits filed over the last four years—showed that universities filed less than half of 1 percent of all of the patent lawsuits. Thus, the threat of university holdings may have been too low to justify the costs of searching out and licensing every patent that could potentially be launched against a product.

That safety net, however, may be coming down. Last fall, the Association of University Technology Managers began revisiting its policy against selling patents to NPEs. Pressure on university technology offices to bring in more revenue is causing the Association to rethink its position. That re-evaluation, however, could have serious consequences for the biopharmaceutical industry and for universities themselves.

Many university patents are developed at least in part with federal funds, and there are concerns when government-funded inventions end up as NPE lawsuits. For example, in what economists are calling the “leaky bucket,” only an estimated 20 percent of the money paid to NPEs gets back to the original inventors or into any internal R&D. And that’s a very small amount. On the flip side, the majority of NPE lawsuits are filed against small businesses. These perspectives raise concerns that government-funded research is being used to harm American businesses with little return to innovation.

As a result, dancing with NPEs could be a risky business for universities. If public anger about patent trolling focuses on universities, they have much more to lose in terms of federal dollars than they have to gain from NPEs.

Concerns about university portfolios and patent trolling are particularly relevant as Congress considers reform proposals. Some of the proposals would exempt universities and those working with universities. It is critical for legislative drafters to understand the potential for problems within university portfolios in general and as they might be aimed at the life sciences in particular.

The study is intended to sound a warning bell. Technology trolling seeped in silently under the radar, growing to extraordinary dimensions before lawmakers had time to react. In contrast, life sciences trolling is predictable and in its infancy. If reforms are implemented before the problem proliferates throughout the industry, legislators and regulators have a chance to cabin the activity before it becomes deeply entrenched and before too much harm occurs.

#### University research funding’s the backbone of the nuclear complex---key to stockpile maintenance and attribution for nuclear terrorism

Warren Miller et al 7, Research Professor and Associate Director, Nuclear Security Science and Policy Institute, Texas A&M University, 1/18/7, “Nuclear’s Human Element,” http://www2.ans.org/pi/fine/docs/finereport.pdf

The situation in the world today is extremely complex as it relates to nuclear technology for both peaceful and security applications. After a three‐decade period of essentially no new nuclear power plant construction in the United States and slow growth around the world, there is a renewed interest in nuclear‐generated electricity. Many factors have contributed to this renaissance, including concerns about possible climate change due to carbon emissions; fundamental changes in the costs of nuclear‐generated electricity due to significant improvements in safety and operating performance; government encouragement as manifested in, for example, the U.S. Energy Act of 2005 (Ref. 2); and energy security concerns driving nations toward more diverse electricity production portfolios.

At the same time, concerns about the potential malevolent use of nuclear technology have dramatically increased. Owing to concerns that a few countries may be using civilian nuclear technology as a cover to develop a weapons program, new ideas are being developed in the international security community to strengthen the Nuclear Nonproliferation Treaty. It is clear that the growing problems associated with the interface between nuclear weapons and nuclear power will increasingly require innovative technical and policy solutions and people who are literate, trained, and educated in nuclear processes.

The United States must have appropriate numbers of high‐quality NSE graduates for the needs of government and national laboratories, particularly for nuclear security roles, and for industry to continue to contribute to the growth and strength of nuclear power as well as to the other many applications of nuclear processes (e.g., nuclear medicine and food safety). As such, the Committee has concluded that Congress’s mandate in the Atomic Energy Act, which required the federal government, through the DOE, to be actively involved in supporting U.S. nuclear education, remains necessary and warranted today. Indeed, the Committee believes that it is in the economic and national security interests of the United States to remain at the forefront of nuclear R&D worldwide. As a consequence, the U.S. government, and specifically the DOE, must serve as a steward for the national nuclear research and education enterprise.

For the purposes of this study, NSE includes the disciplines of nuclear engineering, health physics, and nuclear physics of direct relevance to nuclear engineering, as well as nuclear and radiochemistry of direct relevance to nuclear engineering. For our purposes, nuclear engineering is concerned with the practical application of nuclear and radiation processes. In addition to energy from nuclear fission and fusion processes, nuclear engineering includes the production and use of radiation and radioisotopes in medicine, food processing, and industrial processes. It includes issues related to nuclear waste management and nuclear security, including technologies to protect against proliferation of nuclear weapons and nuclear material as well as against nuclear terrorism. It is based on fundamental areas related to the interaction of radiation with matter.

THE DOE ROLE IN US NSE EDUCATION

Although  university‐based  NSE  programs across the country receive support from various state and federal agencies as well as industry, there are very important differences when they are compared to other science and engineering disciplines. The understanding of nuclear processes in the core of a nuclear reactor is generally not a subject within the purview of the federal governmentʹs basic research funding agencies (e.g., NSF). This is due in large part to DOE’s clear charter, dating from the Atomic Energy Act, as the principal steward of the U.S. nuclear education enterprise. Further, issues associated with the interaction of ionizing radiation with matter, biological and nonbiological, are generally ignored by funding agencies other than the DOE [the National Aeronautics and Space Administration’s (NASA’s) interest in radiation effects on humans in space is a notable exception].

It is true that university‐based NSE programs often conduct research that is only somewhat related to nuclear processes and that funding for these activities can be obtained from basic research and mission‐related programs across the federal government. For example, many nuclear engineering departments have substantial research activities in areas such as thermal hydraulics, materials science, and/or plasma physics. These research activities, all related to the practical applications of nuclear energy, may be funded by the NSF, the U.S. Department of Defense (DOD), the DOE/SC, and other agencies. But, to a large extent, fundamental nuclear process research cannot be addressed without the financial support of the DOE. For example, the support of computational methods development for neutron transport processes, a field that underpins nuclear reactor analysis, medical physics, and nuclear weapons design, is not available outside DOE/NE.

DOE support of graduate programs in NSE is particularly important. Because NSE is so complex and applicable in so many fields, today’s undergraduate nuclear engineering program must cover a broad range of technical material. It is only in graduate school that an NSE student can focus on a particular application, e.g., design of new nuclear power plants, development of instruments to detect nuclear materials in shipping containers, new techniques for radiation treatment of cancer, etc. Many of the NSE positions in government agencies, national laboratories, universities, and medical facilities can be filled only by people holding graduate degrees. A graduate degree in NSE requires both study of advanced theory and research that involves practical application of theory in the student’s area of specialization. That research, which is guided by a professor, typically requires specialized equipment and significant financial support. However, it serves two purposes. It is part of the student’s training, but it also provides information of value to the sponsoring agency. Thus, DOE funding of NSE programs is important not only because it provides training for future essential NSE professionals but also because the results of the research can be immediately useful.

The Committee believes the Atomic Energy Act also requires the DOE to take a general role in nurturing and monitoring NSE education in support of the national interest. This role includes monitoring (a) the relationship between demand and supply of NSE graduates; (b) the NSE education infrastructure, including faculty, facilities, and equipment; and (c) the level and quality of research in NSE university programs. The DOE must provide financial support to sustain faculty, students, and infrastructure to the extent needed to assure a healthy NSE enterprise in the country.

On the other hand, the DOE NSE education support programs cannot, alone, provide the resources needed for a healthy and comprehensive national effort. University‐based NSE programs must continue to aggressively seek and obtain research and education support from mission agencies, basic research funding organizations, national laboratories, and industry.

In short, the Committee believes DOE’s stewardship role is to continuously monitor the NSE education enterprise to ensure that it meets present and future national needs and to conduct a modest research, development, and education program, to appropriately augment other federal and industry supporting efforts, assuring the near‐ and long‐term robustness and health of the discipline to address national needs.

DEMAND FOR UNIVERSITY‐BASED NSE RESEARCH

University‐based NSE activities lead to R&D results, as well as to graduates for government, national laboratories, and industry. In the R&D realm, there are challenges in energy security, nuclear security, and other fields. In the area of nuclear energy, there are new, DOE‐funded initiatives in advanced reactors, in nuclear energy for hydrogen production, and in spent‐fuel management. Advanced reactor programs include novel ideas in water‐cooled, gas‐cooled, and liquid‐metal‐cooled reactors. Research programs are directed toward fielding Generation IV reactors in the first half of the 21st century. In addition, there continue to be R&D efforts to demonstrate the tokamak and other plasma confinement concepts that could lead to a demonstration fusion reactor in the middle of the century. Nuclear energy can potentially be used to produce hydrogen for transportation applications in an economically feasible manner and there is a vigorous research program to develop high‐temperature reactors for this purpose. A newly announced DOE program, the Global Nuclear Energy Partnership (GNEP), is intended to develop the systems, technologies, and policy regimes to allow recycling of used light water reactor fuel and, to a large extent, eliminate the actinides in fast‐spectrum reactors in a way that enhances proliferation resistance. The resulting waste streams are envisioned to have characteristics that would lessen the demand for geologic repository assets. These and other DOE‐funded research efforts will need to make great use of university‐based NSE capabilities.

In the nuclear security arena, unclassified research needs are also varied and rich. In addition to assuring the safety, reliability, and security of the U.S. nuclear weapons stockpile, innovations are needed to detect and defend against the proliferation of weapons‐usable nuclear materials. From systems analysis to new nuclear detector innovations and new approaches to analyze intelligence data, research opportunities abound. Defense against nuclear terrorism requires new approaches to border security and new methodologies to attribute nuclear and radiological contamination to a particular country or source. Federal agencies are specifically targeting universities for innovations in these fields. New attention is also being given to other applications of nuclear processes, especially to provide process heat. Potential applications vary from water desalination to recovery of usable petroleum products from oil shale and tar sands

#### Key to deterrence

Townsend 9 (Frances Fragos, Former Assistant to President Bush for Homeland Security and Counterterrorism and Senior Member of the Department of Justice, et al., "Leveraging Science for Security: A Strategy for the Nuclear Weapons Laboratories in the 21st Century", Task Force on Leveraging the Scientific and Technological Capabilities of the NNSA National Laboratories for 21st Century National Security, March, http://www.stimson.org/images/uploads/research-pdfs/Leveraging\_Science\_for\_Security\_FINAL.pdf)

On the campaign trail, President Obama embraced the vision of a nuclear free world, but he made clear that until the time such a world was possible, the US would maintain a “robust deterrent.” Resolving the inherent tension in these divergent goals is no easy task. The backbone of our deterrent is the scientific base at our nuclear weapons Laboratories. In order to recruit, train, and retain young, talented scientists, our political leaders must articulate a vision for the Laboratories that translates into meaningful work – a mission that young scientists can embrace and to which they will dedicate their professional lives. Simultaneously, the work to achieve this vision should not undercut US nonproliferation goals.

#### Global nuclear war --- perception key

Caves 10, Senior Fellow at the National Defense University– John P. Caves Jr., Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, January 2010, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent,” Strategic Forum, No. 252

The United States needs to modernize and ensure the long-term reliability and responsiveness of its aging nuclear deterrent force and nuclear weapons infrastructure. It cannot otherwise safely reduce its nuclear weapons, responsibly ratify the Comprehensive Test Ban Treaty, confidently deter and contain challenges from rising or resurgent nuclear-armed near peers, and effectively dissuade allies and partners from acquiring their own nuclear weapons. Modernization is fundamental to avoiding a future crisis of confidence in the U.S. nuclear deterrent.¶ A Hypothetical Scenario¶ In 2030, U.S. nuclear weapons scientists discover an anomaly during component testing of nuclear warheads used on U.S. submarine-launched ballistic missiles that raises serious doubts as to those warheads’ reliability. These doubts arise when an increasingly assertive, nuclear-armed great power has been exerting pressure upon U.S. allies and partners in its region to reduce their defense cooperation with the United States, and has even made nuclear threats to that end. Whereas this increasingly assertive great power recently fielded new warheads on new delivery vehicles as part of a major modernization and expansion of its nuclear 1forces, the United States still deploys only warheads and delivery systems built during or shortly after the Cold War. The United States has no existing capability to develop and produce new nuclear weapons, and it would take more than a decade to reconstitute that long-lapsed capability. The United States earlier had ratified the Comprehensive Test Ban Treaty (CTBT). The President is torn over whether to test explosively some existing warheads for reliability. Opposition to a withdrawal from or violation of our CTBT obligations would be intense, but reports of warhead failure already have leaked. While successful tests would allay concerns about warhead reliability, unsuccessful tests could lead allies and adversaries alike to conclude that the U.S. nuclear deterrent is no longer reliable.¶ Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nuclear-armed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. ¶ A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante.¶ The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the United States would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the United States from reclaiming its earlier power position.¶ Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years.¶ Important U.S. interests could be compromised or abandoned, or a major war could occur as adversaries and/or the United States miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict.

### 1NC

#### The United States Federal Government should establish by statute a permanent war powers consultation committee, requiring the President to consult with the committee over introduction of United States Armed Forces into combat, and require a Congressional authorization vote following consultation.

#### CP solves the whole case without restricting war powers which links to politics

Warren Christopher 8, **et al** 63rd Secretary of State. He also served as Deputy Attorney General in the Lyndon Johnson Administration, and as Deputy Secretary of State in the Carter Administration, Over 14 months, this bipartisan body met seven times in full-day sessions, interviewing more than 40 witnesses about the respective war powers of the President and Congress., James A. Baker, III, Slade Gorton Lee H. Hamilton Carla A. Hills John O. Marsh, Jr Edwin Meese, III Abner J. Mikva J. Paul Reason Brent Scowcroft Anne-Marie Slaughter Strobe Talbott, National War Powers Commission Report, http://web1.millercenter.org/reports/warpowers/report.pdf

The need for reform stems from the gravity and uncertainty posed by war powers questions. Few would dispute that the most important decisions our leaders make involve war. Yet after more than 200 years of constitutional his- tory, what powers the respective branches of government possess in making such decisions is still heavily debated. The Constitution provides both the President and Congress with explicit grants of war powers, as well as a host of arguments for implied powers. How broadly or how narrowly to construe these powers is a matter of ongoing debate. Indeed, the Constitution’s fram- ers disputed these very issues in the years following the Constitution’s ratiﬁ ca- tion, expressing contrary views about the respective powers of the President, as “Commander in Chief,” and Congress, which the Constitution grants the power “To declare War.” ¶ Over the years, public ofﬁ cials, academics, and experts empaneled on com- missions much like this one have expressed a wide range of views on how the war powers are allocated — or could best be allocated — among the branches of government. One topic on which a broad consensus does exist is that the War Powers Resolution of 1973 does not provide a solution because it is at least in part unconstitutional and in any event has not worked as intended. ¶ Historical practice provides no decisive guide. One can point to examples of Presidents and Congresses exercising various powers, but it is hard to ﬁ nd a “golden age” or an unbroken line of precedent in which all agree the Executive and Legislative Branches exercised their war powers in a clear, consistent, and agreed-upon way. ¶ Finally, the courts have not settled many of the open constitutional ques- tions. Despite opportunities to intervene in several inter-branch disputes, courts frequently decline to answer the broader questions these war powers cases raise, and seem willing to decide only those cases in which litigants ask them to protect individual liberties and property rights affected by the conduct of a particular war. ¶ Unsurprisingly, this uncertainty about war powers has precipitated a number of calls for reform and yielded a variety of proposals over the years. These proposals have largely been rejected or ignored, in many cases because they came down squarely on the side of one camp’s view of the law and dismissed the other. ¶ However, one common theme runs through most of these efforts at reform: the importance of getting the President and Congress to consult meaningfully and deliberate before committing the nation to war. Gallup polling data throughout the past half century shows that Americans have long shared this desire for consultation. Yet, such consultation has not always occurred. ¶ No clear mechanism or requirement exists today for the President and Congress to consult. The War Powers Resolution of 1973 contains only vague consultation requirements. Instead, it relies on reporting requirements that, if triggered, begin the clock running for Congress to approve the particular armed conﬂ ict. By the terms of the 1973 Resolution, however, Congress need not act to disapprove the conﬂ ict; the cessation of all hostilities is required in 60 to 90 days merely if Congress fails to act. Many have criticized this aspect of the Resolution as unwise and unconstitutional, and no President in the past 35 years has ﬁ led a report “pursuant” to these triggering provisions. ¶ This is not healthy. It does not promote the rule of law. It does not send the right message to our troops or to the public. And it does not encourage dialogue or cooperation between the two branches. ¶ In our efforts to address this set of problems, we have been guided by three principles: ■ First, that our proposal be practical, fair, and realistic. It must have a rea- sonable chance of support from both the President and Congress. That requires constructing a proposal that avoids clearly favoring one branch over the other, and leaves no room for the Executive or Legislative Branch justiﬁably to claim that our proposal unconstitutionally infringes on its powers. ¶ Second, that our proposal maximize the likelihood that the President and Congress productively consult with each other on the exercise of war powers. Both branches possess unique competencies and bases of support, and the country operates most effectively when these two branches of govern- ment communicate in a timely fashion and reach as much agreement as possible about taking on the heavy burdens associated with war. ¶ ■ Third, that our proposal should not recommend reform measures that will be subject to widespread constitutional criticism. It is mainly for this reason that our proposal does not explicitly deﬁne a role for the courts, which have been protective of deﬁ ning their own jurisdiction in this area. ¶ Consistent with these principles, we propose the passage of the War Powers Consultation Act of 2009. The stated purpose of the Act is to codify the norm of consultation and “describe a constructive and practical way in which the judg- ment of both the President and Congress can be brought to bear when deciding whether the United States should engage in signiﬁ cant armed conﬂict.” ¶ The Act requires such consultation before Congress declares or autho- rizes war or the country engages in combat operations lasting, or expected to last, more than one week (“signiﬁ cant armed conﬂ ict”). There is an “exigent circumstances” carve-out that allows for consultation within three days after the beginning of combat operations. In cases of lesser conﬂ icts — e.g., limited actions to defend U.S. embassies abroad, reprisals against terrorist groups, and covert operations — such advance consultation is not required, but is strongly encouraged. ¶ Under the Act, once Congress has been consulted regarding a signiﬁ cant armed conﬂ ict, it too has obligations. Unless it declares war or otherwise expressly authorizes the conﬂ ict, it must hold a vote on a concurrent resolution within 30 days calling for its approval. If the concurrent resolution is approved, there can be little question that both the President and Congress have endorsed the new armed conﬂ ict. In an effort to avoid or mitigate the divisiveness that commonly occurs in the time it takes to execute the military campaign, the Act imposes an ongoing duty on the President and Congress regularly to consult for the duration of the conﬂ ict that has been approved. ¶ If, instead, the concurrent resolution of approval is defeated in either House, any member of Congress may propose a joint resolution of disapproval. Like the concurrent resolution of approval, this joint resolution of disapproval shall be deemed highly privileged and must be voted on in a deﬁ ned number of days. If such a resolution of disapproval is passed, Congress has several options. If both Houses of Congress ratify the joint resolution of disapproval and the President signs it or Congress overrides his veto, the joint resolution of disapproval will have the force of law. If Congress cannot muster the votes to overcome a veto, it may take lesser measures. Relying on its inherent rule making powers, Congress may make internal rules providing, for example, that any bill appropriating new funds for all or part of the armed conﬂ ict would be out of order. ¶ In our opinion, the Act’s requirements do not materially increase the burdens on either branch, since Presidents have often sought and received approval or authorization from Congress before engaging in signiﬁcant armed conﬂ ict. Under the Act, moreover, both the President and the American people get some- thing from Congress — its position, based on deliberation and consideration, as to whether it supports or opposes a certain military campaign. If Congress fails to act, it can hardly complain about the war effort when this clear mechanism for acting was squarely in place. If Congress disapproves the war, the disapproval is a political reality the President must confront, and Congress can press to make its disapproval binding law or use its internal rule-making capacity or its power of the purse to act on its disapproval. ¶ We recognize the Act we propose may not be one that satisﬁes all Presidents or all Congresses in every circumstance. On the President’s side of the ledger, however, the statute generally should be attractive because it involves Congress only in “signiﬁ cant armed conﬂ ict,” not minor engagements. Moreover, it reverses the presumption that inaction by Congress means that Congress has disapproved of a military campaign and that the President is acting lawlessly if he proceeds with the conﬂ ict. On the congressional side of the ledger, the Act gives the Legislative Branch more by way of meaningful consultation and information. It also provides Congress a clear and simple mechanism by which to approve or disapprove a military campaign, and does so in a way that seeks to avoid the constitutional inﬁrmities that plague the War Powers Resolution of 1973. Altogether, the Act works to gives Congress a seat at the table; it gives the President the beneﬁt of Congress’s counsel; and it provides a mechanism for the President and the public to know Congress’s views before or as a mili- tary campaign begins. History suggests that building broad-based support for a military campaign — from both branches of government and the public — is often vital to success. ¶ To enable such consultation most proﬁtably to occur, our proposed Act establishes a Joint Congressional Consultation Committee, consisting of the majority and minority leaders of both Houses of Congress, as well as the chair- men and ranking members of key committees. We believe that if the President and Committee meet regularly, much of the distrust and tension that at times can characterize inter-branch relationships can be dissipated and overcome. In order that Congress and the Committee possess the competence to pro- vide meaningful advice, the Act both requires the President to provide the Committee with certain reports and establishes a permanent, bipartisan congressional staff to facilitate its work. Given these resources, however, our proposed Act limits the incentives for Congress to act by inaction — which is exactly the course of conduct that the default rules in the War Powers Resolution of 1973 often promoted. ¶ To be clear, however, in urging the passage of War Powers Consultation Act of 2009, we do not intend to strip either political branch of government of the constitutional arguments it may make about the scope of its power. As the Act itself makes plain, it “is not meant to deﬁne, circumscribe, or enhance the con- stitutional war powers of either the Executive or Legislative Branches of government, and neither branch by supporting or complying with this Act shall in any way limit or prejudice its right or ability to assert its constitutional war powers or its right or ability to question or challenge the constitutional war powers of the other branch.”

#### Avoids politics---turf battles over authority are key

James A. Baker 11, was secretary of state from 1989 to 1992. Lee H. Hamilton is a former Democratic representative from Indiana who chaired the House Committee on Foreign Affairs, Breaking the war powers stalemate, www.washingtonpost.com/opinions/breaking-the-war-powers-stalemate/2011/06/08/AGX0CrNH\_story.html

Breaking the war powers stalemate¶ With our country engaged in three critical military conflicts, the last thing that Congress and the White House should be doing is squabbling over which branch of government has the final authority to send American troops to war. But that is exactly what has been happening, culminating with the House’s rebuke of the Obama administration last Friday for the way it has gone about the war in Libya.¶ On one hand is a bipartisan group of House members who argue that President Obama overreached because he failed to seek congressional approval for the military action in Libya within 60 days of the time the war started, as required by the War Powers Resolution. The lawmakers are particularly upset because the administration sought, and received, support from the United Nations — but not from them.¶ On the other hand is the White House, which argues that history is on its side. The 1999 NATO-led bombing over Kosovo lasted 18 days longer than the resolution’s 60-day requirement before the Serbian regime relented.¶ Stuck in the middle are the American people, particularly our soldiers in arms. They would be best served if our leaders debated the substantive issues regarding the conflict in Libya — and those of Afghanistan and Iraq — rather than engaging in turf battles about who has ultimate authority concerning the nation’s war powers.¶ There is, unfortunately, no clear legal answer about which side is correct. Some argue for the presidency, saying that the Constitution assigns it the job of “Commander in Chief.” Others argue for Congress, saying that the Constitution gives it the “power to . . . declare war.” But the Supreme Court has been unwilling to resolve the matter, declining to take sides in what many consider a political dispute between the other branches of government.¶ We believe there is a better way than wasting time disputing who is responsible for initiating or continuing war.¶ Almost three years ago, we were members of the Miller Center’s bipartisan National War Powers Commission, which proposed a pragmatic framework for consultation between the president and Congress. Co-chaired by one of us and the late Warren Christopher, the commission could not resolve the legal question of which branch has the ultimate authority. Only the court system can do that. Instead, the commission strove to foster interaction and consultation, and reduce unnecessary political friction. The commission — which represented a broad spectrum of views, from Abner Mikva on the liberal end to Edwin Meese on the conservative end — made a unanimous recommendation to the president and Congress in 2008.¶ The commission’s proposed legislation would repeal and replace the War Powers Resolution. Passed over a presidential veto and in response to the Vietnam War, the 1973 resolution was designed to give Congress the ability to end a conflict and force the president to consult more actively with the legislative branch before engaging in military action. The resolution, a hasty compromise between competing House and Senate plans, stated that the president must terminate a conflict within 90 days if Congress has not authorized it. But no president has ever accepted the statute’s constitutionality, Congress has never enforced it and even the bill’s original sponsors were unhappy with the end product. In reality, the resolution has only further complicated the issue of war powers.

## Case

## SOP Adv

### Squo Solves---NSS---1NC

#### Their ev is all describing the “Bush Doctrine” in the 02 NSS

Rehman 12 – 1AC Author – Fehzan Rehman, International Relations at the University of Westminster, "Analyzing America’s National Security Strategy", e-International Relations, 9-13, http://www.e-ir.info/2012/09/13/analyzing-americas-national-security-strategy/

The 11th September 2001 attacks on America catalysed the foreign policy objectives and decisions made by President George W. Bush, known as the Bush Doctrine. Some aspects of the Bush Doctrine were codified, particularly with a document called The National Security Strategy (NSS). This essay questions the implications the NSS has had on sovereignty and international law. Are we coming to a new age of collective security, where American exceptionalism sets the standards for interventions, and such institutions like the UN can be seen as a limit to a state’s sovereignty? Are we seeing a trend set by America where institutions like the UN and its international power will dwindle and have a similar fate as its predecessor, the League of Nations?

#### Obama already repudiated that in the 2010 NSS --- either the squo solves or the aff can’t

AP 10 Associated Press writers Anne Gearan and Robert Burns, “ Obama's National Security Strategy Turns Away From Bush Administration Goals,” http://www.huffingtonpost.com/2010/05/26/obamas-national-security\_n\_590109.html

WASHINGTON — President Barack Obama is breaking with the go-it-alone Bush years in a new strategy for keeping the nation safe, counting more on U.S. allies to tackle terrorism and other global problems. It's an approach that already has proved tricky in practice.¶ The administration's National Security Strategy, a summary of which was obtained Wednesday by The Associated Press, also for the first time adds homegrown terrorism to the familiar menu of threats facing the nation – international terror, nuclear weapons proliferation, economic instability, global climate change and an erosion of democratic freedoms abroad.¶ From mustering NATO forces for Afghanistan to corralling support to pressure North Korea to give up its illicit nuclear weapons program, the U.S. has sometimes struggled in leaning on friends and allies in recent years. Still, the new strategy breaks with some previous administrations in putting heavy emphasis on the value of global cooperation, developing wider security partnerships and helping other nations provide for their own defense.¶ In his first 16 months in office, Obama has pursued a strategy of gentle persuasion, sometimes summarized as "engagement."¶ His administration has attended more closely to ties with Europe, sought a "reset" of relations with Russia, pushed harder to restart stalled Mideast peace talks and consulted widely on a roadmap for defeating the Taliban in Afghanistan.¶ Obama's critics, however, assert that his policies have largely failed, given the continued defiance of Iran and North Korea on nuclear development, the stalemate in Afghanistan and rising worries about terrorist attacks at home.¶ Presidents use their national security strategy to set broad goals and priorities for keeping Americans safe. But the document isn't an academic exercise: it has far-reaching effects on spending, defense policies and security strategy.¶ For example, President George W. Bush's 2002 strategy document spelled out a doctrine of pre-emptive war.¶ "We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends," the Bush strategy said, with Iraq clearly in mind. The following year U.S. forces invaded, launching a conflict that has lasted far longer and cost far more money and lives than Bush intended.¶ Obama's new strategy is expected to move away from that doctrine.

### Squo Solves---NSS---2NC

#### Their 1AC author supports our double bind --- says the 2002 NSS means preemption modeling is inevitable

Sloane 8 -- 1AC Author – Sloane, Associate Professor of Law, Boston University School of Law, 2008 (Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, Lexis)

Many states took note, for example, when in the 2002 National Security Strategy of the United States ("NSS"), President Bush asserted that the United States had the right under international law to engage in preventive wars of [\*350] self-defense. n57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS's robust claims of a right to engage in preventive wars of self-defense. n58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as "rogue states," such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan. n59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century.

### Preemption---Drones Alt-Cause---1NC

#### Obama’s drone policy is a huge alt-cause

Peter D. Feaver 13, Professor of Political Science, Director, Triangle Institute for Security Studies and Director, Program in American Grand Strategy, Stanford University, 2/5/13, “Obama's embrace of the Bush doctrine and the meaning of 'imminence',” http://shadow.foreignpolicy.com/posts/2013/02/05/obamas\_embrace\_of\_the\_bush\_doctrine\_and\_the\_meaning\_of\_imminence

The Obama Administration has embraced the Bush doctrine, or at least the preemption part of the Bush doctrine. According to news reports about the Justice Department's memo on drone strikes, the Obama Administration bases its policy on an expansive interpretation of the laws of war, which allow countries to act to head off imminent attack. In particular, according to the reporter who broke the story, the Obama Administration bases its legal reasoning by interpreting "imminence" in a flexible way: ¶ "The condition that an operational leader present an ‘imminent' threat of violent attack against the United States does not require the United States to have clear evidence that a specific attack on U.S. persons and interests will take place in the immediate future," the memo states.¶ Instead, it says, an "informed, high-level" official of the U.S. government may determine that the targeted American has been "recently" involved in "activities" posing a threat of a violent attack and that "there is no evidence suggesting that he has renounced or abandoned such activities." The memo does not define "recently" or "activities."¶ This should sound familiar to anyone who has debated American foreign policy for the past decade, for precisely that sort of logic undergirded the Bush Administration's preemption doctrine. Here is the relevant section from Bush's 2006 National Security Strategy (itself quoting from the earlier and controversial articulation in the 2002 National Security Strategy):¶ If necessary, however, under long-standing principles of self defense, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy's attack. When the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of preemption. The place of preemption in our national security strategy remains the same. We will always proceed deliberately, weighing the consequences of our actions.¶ Of course, the Bush Administration was excoriated for framing the issue that way, and there arose a lively cottage industry devoted to attacking this aspect of the Bush doctrine. While Obama has tended to get away with things his predecessors could not, I suspect that even he will face some tough questioning now that the overlap with the controversial Bush doctrine is so unmistakable.

### O

#### Current Presidential control sets a ceiling on how much the Tea Party can materially affect foreign policy---the plan empowers isolationist Tea Partiers

Bruce Stokes 14, director of global economic attitudes at the Pew Research Center, 2/12/14, “The Tea Party's worldview,” http://www.europeanvoice.com/article/2014/february/the-tea-party-s-worldview/79627.aspx

About half of Tea Party sympathisers among Republicans and Independents who lean Republican say the United States is doing too much in solving world problems, according to a recent Pew Research Centre survey. This wariness of an activist American foreign policy merely mirrors the sentiment of the broader public. ¶ Similarly, roughly eight in ten Tea Party supporters say it is more important for President Barack Obama to focus on domestic issues rather than foreign policy. In turning inward, the Tea Party is no different from the American public at large. ¶ But such neo-isolationist sentiment should not be equated with protectionism. Tea Party backers agree with the broader public that trade is good for the United States and that American involvement in the global economy is a good thing. ¶ However, Tea Party adherents are far more concerned about declining American influence around the world than is the public at large: 86% say the US plays a less important role today, compared with just 53% of the public who are so concerned. ¶ This is particularly galling to Tea Party supporters because nearly three in four say the United States should be the world's only military superpower, while over half the general public puts a priority on such defence superiority. And Tea Party sympathisers are willing to back up their concerns with spending. Nearly half want to increase the Pentagon's budget, while only about a quarter of the public would do so. ¶ One distinguishing characteristic of Tea Party foreign-policy beliefs is their animosity toward some US foes and the fierceness of their support for traditional friends. ¶ Roughly three-quarters of Tea Party adherents have an unfavourable view of China, compared with the negative view of just over half of the general public. And two-thirds see China's emergence as a world power as a threat to the US. Roughly half the public agrees. ¶ Iran is a particular Tea Party concern: 39% say that the country poses the gravest danger to the US. The general public is less troubled. (Tea Party sympathisers are more concerned about Iran than about China.) And they are far more sceptical about current efforts to curb Tehran's nuclear programme: 84% of Tea Party adherents say Iranian leaders are not serious about addressing international concerns about their country's nuclear enrichment programme compared with 60% of the public that is sceptical. ¶ At the same time, 86% of Tea Party backers have a favourable opinion of Israel, compared with the pro-Israel sentiment by 61% of the general public. This may be one reason 38% of Tea Party supporters say the US should be more involved in resolving the dispute between Israel and the Palestinians. Just 21% of the general public agrees. ¶ Tea Party members of Congress do not set American foreign policy. That is a presidential prerogative in the United States. And Tea Party sympathisers represent only a minority of Congress, although their influence in the Republican party belies the number of their supporters. But their foreign-policy views do have an impact on the US's posture in the world, through the budgetary process. And Tea Party voters and their views of the world shape the US political debate. ¶ So the Tea Party worldview bears watching in 2014. It has global implications.

#### Empowering Congress triggers an isolationist withdrawal from global engagement---extinction

Nicholas Burns 14, professor of the practice of diplomacy and international politics at Harvard’s Kennedy School of Government, 1/30/14, “The new American isolationism,” https://www.bostonglobe.com/opinion/2014/01/30/new-american-isolationism/Kvnzv4gNdDCOabdWgdjAKP/story.html

ARE AMERICANS turning inward, tiring of our immense global responsibilities, just when our leadership may be needed most?¶ That is the unsettling conclusion from a poll conducted last autumn by The Pew Research Center and Council on Foreign Relations (where I serve on the board of directors). The poll found:¶ ■ 53 percent of respondents say the United States is less powerful than a decade ago; ¶ ■ 70 percent believe the United States is less respected; ¶ ■ 52 percent agreed that “the US should mind its own business internationally and let other countries get along the best they can on their own.” ¶ For Bruce Stokes, director of Global Economic Attitudes at Pew, these findings describe “an unprecedented lack of support for American engagement with the rest of the world.” ¶ On the surface, American public skepticism about our global role is understandable. Since the 9/11 attacks, the United States has fought two deeply unpopular land wars in Afghanistan and Iraq — the longest in our history. We suffered through the most damaging economic crisis since the Great Depression and watched as pressures rose on the poor and middle class. President Obama spoke for millions of Americans when he said in 2011 that it was “time to focus on nationbuilding here at home.” ¶ But there are worrisome signs that support for US international leadership is breaking down in Congress. On the far left of the Democratic Party, there is visibly less support for sustaining world-class military and diplomatic capabilities. Meanwhile, the Tea Party sometimes gives the impression it **wants to dig a giant moat around the country** with drawbridges pulled up — permanently — to separate us from the rest of the world. ¶ The problem with this line of thinking, of course, is that while isolation and retreat may have been perfectly rational responses to the world of 1814, they are recipes for foreign policy failure in the more highly integrated world of 2014. The Atlantic and Pacific oceans did not stop the 9/11 hijackers and won’t deter cyber criminals and terrorists waiting to strike in the future. The global economy knits together every nation on earth. That is why an increasing number of American jobs depend on our ability to export, trade, and invest competitively overseas. ¶ In a very real way, the fate of every person on earth is now linked as never before. That is the tangible import of climate change, human trafficking, and the drug and crime cartels that plague every country in the world.¶ The United States serves, as Princeton’s John Ikenberry puts it, as the global “system operator.” By any metric of power — political, military, economic — the United States is still, by far, the most influential country in the world. China, India, and Brazil — the three great rising powers — are neither ready nor willing to replace us. And we should not want to live in a world dominated in the future by an autocratic and bullying Beijing. ¶ In her gripping 2013 book, “Those Angry Days,” Lynne Olson chronicled the titanic public battle between the isolationist hero Charles A. Lindbergh and the interventionist President Franklin D. Roosevelt on the eve of the Second World War. It was not at all a given in 1939 to 1941 that FDR would finally defeat the isolationists who would have kept us criminally neutral in the battle against Hitler. ¶ Fortunately, we face no isolationist movement in 2014 as dramatically powerful as Lindbergh and his allies in the US Senate before Pearl Harbor. The main lesson of that time, however, applies today. The United States needs to lead internationally, however burdensome that may sometimes be. ¶ But, many of America’s closest friends are worried about us. In London last week, I listened to a litany of concerns about the consistency and durability of US global leadership. Could it be, some wondered, that in our understandable desire to withdraw from Iraq and Afghanistan, we may have pulled back too much from the rest of the Middle East, especially Syria and Egypt? ¶ In a recent column that should be read carefully in Washington’s corridors of power, the influential British Financial Times columnist Philip Stephens warned starkly: “The US remains the only power that matters everywhere, but Washington no longer thinks that everywhere matters.”

### No Modeling---1NC

#### No norm against preemption exists regardless of US action --- means it’s inevitable

Keir A. Lieber 2, Assistant Professor of Political Science, University of Notre Dame and Robert J. Lieber, Professor of Government and Foreign Service, Georgetown University, December 2002, http://164.109.48.86/journals/itps/1202/ijpe/pj7-4lieber.htm

Some analysts believe that it is counterproductive to make explicit the conditions under which America will strike first, and there are compelling reasons for blurring the line between preemption and prevention. The attacks of September 11th demonstrate that terrorist organizations like al Qaeda pose an immediate threat to the United States, are not deterred by the fear of U.S. retaliation, and would probably seize the opportunity to kill millions of Americans if WMD could effectively be used on American soil. A proactive campaign against terrorists thus is wise, and a proclaimed approach toward state sponsors of terrorism might help deter those states from pursuing WMD or cooperating with terrorists in the first place. Other critics have argued that the Bush NSS goes well beyond even the right to anticipatory self-defense that has been commonly interpreted to flow from Article 51 of the U.N. Charter, and thus the Bush strategy will undermine international law and lead other states to use U.S. policy as a pretext for aggression. The most common examples are that the broad interpretation of legitimate preemption could lead China to attack Taiwan, or India to attack Pakistan. This logic is not compelling, however, as these states are not currently constrained from taking action by any norm against preemption, and thus will not be emboldened by rhetorical shifts in U.S. policy.

#### Domestic concerns drive preemption---aff can’t solve

Victor Davis Hanson 2, PhD in classics, editor of the National Review Online, 9/20/02, “Iraqi Interrogatories: The usual questions about Iraq,” National Review, <http://nationalreview.com/hanson/hanson092002.asp>

**But won't we set a bad precedent? Maybe India or Russia will do the same? This is the current conventional wisdom repeated ad nauseam**. But Russia went into Chechnya regardless of our wishes or example. **And India will make a decision to act on the basis of its own self-interest, not whether they can cite "precedent" on the part of the United States**. **Strong nations evaluate** their **options from calculations of self-preservation and morality** — **choices not necessarily predicated on what the** United States must do to ensure its own security. The invasion of Iraq will have a deleterious effect on world peace only if it is seen as gratuitous or unnecessary — and neither presently happens to be true. So the danger is not preemption per se, but bellicosity for no good reason. **We must get away from stereotyped generalizations and look at specifics**. **Being inactive in the face of unprovoked attacks on Americans** — the Iranian embassy takeover and the Marine barracks bombing are good examples — **can establish precedents just as pernicious**. In that regard, President Carter's restraint in 1980, in combination with a failed raid, was a far more dangerous act than President Reagan's bombing of Libya — and makes his present moral objections to preempting Saddam as disturbing as they are hypocritical.

### No Impact---SOP

#### Reject their hyperbolic claims --- multiple checks prevent SOP imbalance

John Yoo 9, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “Crisis and Command,” Book, p. x-xi

This book is also written out of respect for Congress as well as the President. I have had the honor to serve as general counsel of the Senate Judiciary Committee under the chairmanship of Senator Orrin G. Hatch of Utah, a good and decent man as well as a strward of the Senate. I have the greatest respect for the awesome powers of Congress and the ways in which Congress and the broader political system can check any Chief Executive. It was Congress that forced the resignation of Richard Nixon through hearings, political pressure, spending constraints, and ultimately, the threat of impeachment. Today’s critics of the Presidency underestimate the power of politics to corral any branch of government that goes too far. They give too much credit to appeals to abstract notions of constitutional balance to restrain a truly out-of-control President, or misread active responses to unprecedented challenges as challenges to the Constitution. The hyperbole in such rhetoric is manifest in overwrought yet commonplace invocations of “treason” or “tramplings” of the Constitution. Has the Constitution indeed been trampled on? History provides us with a guide.¶ Certainly, the fear that a President might abuse power for personal gain or to maintain his or her position has haunted America from her birth. Executive power, as the Founding Fathers well knew, always carries the possibility of dictatorship. In their own day, the great Presidents were all accused of wielding power tyrannically. Yet, they were not dictators. They used their executive powers to the benefit of the nation. Once the emergency subsided, presidential power receded and often went into remission under long periods of congressional leadership. When chief executives misused their powers, the political system blocked or eventually ejected the President. No dictator has ever ruled in the United States, yet critics of contemporary presidential power wish to work radical change in current practice out of fear of impending dictatorship.

## Accidents Adv

### Obama Solves---1NC

#### Status quo solves- Obama will never intervene- inaction, default to legislature, refusal of even political pressure

David Rothkopf 3/3/14, visiting scholar at the Carnegie Endowment as well as CEO and editor at large of Foreign Policy magazine, "A World Without Consequences," http://carnegieendowment.org/2014/03/03/world-without-consequences/h2dn

Russia invades Ukraine. The United States responds with threats of unspecific "costs" Moscow will incur if it doesn't reverse course. We offer Putin-esque photos of Obama in almost comically aggressive postures on a telephone call with the Russian leader. We threaten not to invite Russian President Vladimir Putin to future summits of global big shots. NATO dispatches some of its elite corps of press release writers to offer up limp admonitions. And the U.S. president's critics are left wondering aloud: Is this the weakest American president since Jimmy Carter? Or is it unfair to Carter to include him in that question? House Intelligence Committee Chairman Mike Rogers illustrated the critique, suggesting that "Putin is playing chess" while "we're playing marbles." Or alternatively, in the view of the president's defenders, perhaps Barack Obama is just doing as much as a responsible president, respectful of his mandate and the current limitations on American power, can do.¶ The situation in Crimea is, of course, not the only factor in raising questions about the nature of contemporary American leadership. Looking around the world today we see as daunting an array of global crises and brewing problems as we have seen at any one time in recent history: Ukraine, Syria, Venezuela, Iran, Egypt, Libya, Iraq, Afghanistan, Pakistan, Turkey, Israel-Palestine, North Korea, China-Japan, Thailand, Burma, the Central African Republic, South Sudan, Somalia, Nigeria, Mali, economic problems in faltering big emerging powers, and the climate crisis. It seems the lid has come off the pot worldwide. It forces a bigger question: Is this an aberrant moment or the beginning of a trend? Are the mechanisms we have for helping to stabilize volatile situations failing? Did they ever work well enough? And what does this have to do with the current crop of governments of the world's most powerful nations, notably the United States? Are their domestic problems and political predilections and the character of their leaders part of the problem? Is there any way they can become part of the solution?¶ Each crisis cited above, of course, is its own complex situation. In the case of Ukraine, the United States has made diplomatic efforts behind the scenes to address it. It is good to hear that energetic and creative Secretary of State John Kerry is flying to Kiev to meet with the interim government. Further, what Russia does in its near abroad is certainly not solely the concern of the United States. The European Union and the world's other powers have been equally ineffective or inert or both, thus persuading Putin that he could act with impunity while violating the sovereignty of an important nation. And beyond economic and political wrist-slaps, it is hard to know what the West can do without escalating the situation. Certainly, the current situation in Ukraine echoes what happened in Georgia when Russia effectively snapped up the separatist regions of Abkhazia and South Ossetia and the United States, then under President George W. Bush, also did nothing but watch and vigorously complain. (It is worth noting that subsequent Russian provocations have effectively gone unchallenged by the Obama administration.)¶ But, even while acknowledging all that, we can be relatively certain that one of the reasons that Putin has taken the action he has -- why he has felt free to order troops into Crimea and indeed why he has felt so free to meddle in the affairs of Ukraine since the beginning of the current crisis -- is because he has felt there would be no consequences -- at least none serious enough to dissuade him.¶ This is the message that America's recent foreign-policy actions -- or rather its relative inaction and fecklessness -- from Syria to the Central Africa Republic, from Egypt to Anbar province, from the East China Sea to the Black Sea, have helped to send. We have gone from Pax Americana to Lox Americana. Our policy time and time again has effectively been to just lie there like a fish.¶ The world knows this now. They saw Obama hesitate to act in Syria years ago when his advisors were calling for it and he could have made a difference. They saw him blink when Syria crossed the red line he had drawn not once but 12 times. They saw him blink again when he almost took the most limited of military actions against Bashar al-Assad's regime, his team supported it, the ships were in place, and he punted. They have even seen, thanks to recent reporting by David Sanger at the New York Times, that when the NSA gave him cyber-options to use against the Syrians -- the lightest and theoretically most risk-free of all light-footprint options -- he refused to act.¶ When asked about Syria on Meet the Press, National Security Advisor Susan Rice accurately characterized what has happened there as "horrific" and then posed a classic false choice, arguing, "But if the alternative here is to intervene with American boots on the ground, as some have argued, I think that the judgment the United States has made and the president of the United States has made is that is not in the United States' interests." Because, of course, that is not the only choice, as the decision-non-decision to launch cruise missiles in August clearly demonstrated. And other available steps -- such as providing faster and more meaningful support for elements of the opposition we supported, a stronger, better-funded, more proactive humanitarian response, movement in the International Criminal Court to prosecute Assad, and tougher pressure on Russia and Iran to stop supporting Assad -- were also not taken. Assad is, per the assessment of Obama's own intelligence chief, James Clapper, stronger today (thanks to our chemical weapons deal) than he was before it. (For a good take on this, see Richard Cohen's piece "Susan Rice and the Retreat of American Power.")¶ Russia was there watching America on Syria and elsewhere. Putin was watching.¶ They saw that when then-President Mohamed Morsi abused the Egyptian people and the promise of democracy in that country, this administration refused to put meaningful pressure on him. But when the people of Egypt spoke and ousted a man who abused the trust they had placed in him -- as is the inalienable right of any people in the view of the founding fathers of the United States -- we also couldn't make up our mind on how to treat the successor regime. Indeed, not only did we hesitate (thus alienating not only a key ally but also virtually every other reliable ally we have in the region), but we even saw two inconsistent policies on Egypt emerge -- one from the State Department and Secretary Kerry that showed a practical willingness to work with the government of Egypt's army chief, Field Marshal Abdel Fattah al-Sisi, and one from the White House revealing only more recalcitrance and inaction.¶ When China sentences scholars to prison, the White House response is to tweet its "deep disappointment." When Putin meddled in Ukraine, our first response was to issue weak counterstatements. When the Ukrainian regime killed its own people, we revoked their visas. When Putin massed troops on the border, Obama urged him not to act, lest there be those "costs" -- a word that sent the unmistakable message that the worst Putin would have to contend with would be possible sanctions or more visa-war. (Obama also released a picture of himself posing forcefully at his Oval Office desk while talking to Putin.\*) More recently we bandied about the threat of kicking Russia out of the G8 -- a group in which it didn't belong in the first place, one whose role has been marginalized somewhat since the financial crisis, and one the Russians can clearly live without. A White House press call on Sunday included a list of possible economic penalties being considered, but all were on the drawing board, many were pinpricks at best, and none seemed likely to alter the situation.¶ Just last week, in a corner of the world that has produced both U.S. and Russian foreign-policy failures, Afghanistan, when the regime of Hamid Karzai continued behaving as recklessly as it has all along, the White House followed another classic pattern -- warning that if the Afghan regime didn't go along with U.S. policy, then we were done, we'd just walk away. Disengaging after failure as a means of persuasion is a tactic the president has employed with the U.S. Congress time and time again, and it is now the policy driver likely to write the last chapter in America's longest war. Obama has unnecessarily deepened America's involvement in that war, in my view. But having no presence there, seeking no effective alternative to Karzai, going to the zero option would be a disaster -- especially because of the degree to which it would inhibit our ability to keep an eye on terrorist threats in the region and, more worrisome, Pakistan's nuclear program.¶ Make no mistake, the administration of George W. Bush often and with devastating consequences went too far. It launched a catastrophic war in Iraq. He therefore owns a considerable share of the responsibility for America's loss of appetite for sound, active, sometimes forceful, foreign policy. But this president is the man who has since taken us too far in the opposite direction. He has not only sent the message that America won't launch reckless foreign wars -- which is why he was elected - but he has gone further and seemingly turned the false choice outlined by Rice into the foundations of a doctrine. We have gone from Bush's "us versus them" to "all or nothing" -- well, to be fair, to "too much or not enough." America is leaning away from the tough questions, leaning away not only from use of force (the last resort), but credible threats of force, from active use of sanctions and real political pressure, from mobilizing the international community effectively to support such efforts, from having clear policies, from making tough choices. And while we may even appreciate a reflective president who is not prone to rash moves, we need to be open to the idea that it is possible to go too far in the direction of reflexive passivity.¶ It is not terribly useful to get into simplistic discussions about whether we are isolationist or not, though the fact that these questions are being raised these days says something. Kerry was right last week to call out Congress on its tendencies in this direction. But doesn't this White House now own some of that opprobrium given that, for example, those in its administration first concluded that taking action against Syria was the right thing to do and then deferred to that isolationist-laden legislature knowing full well that doing so would likely mean no action would be taken at all.

### No Impact---1NC

#### Interventions won’t escalate --- executives will be responsible

Weiner 7 Michael Anthony, J.D. Candidate, Vanderbilt School of Law, 2007, “A Paper Tiger with Bite: A Defense of the War Powers Resolution,” http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Weiner.pdf

IV. CONCLUSION: THE EXONERATED WPR AND THE WOLF IN SHEEP'S CLOTHING The WPR is an effective piece of war powers legislation. As Part III made clear, no presidential unilateral use of force since 1973 has developed into a conflict that in any way resembles the WPR's impetus, Vietnam. Rather, the great majority of these conflicts have been characterized by their brevity, safety, and downright success. Yes, there have been tragic outcomes in Lebanon and Somalia; but what happened in response to those tragedies? In Lebanon, President Reagan actually submitted to being Congress's "messengerboy," 203 asking for its permission, per the WPR, to continue the operation. And in Somalia, at the first sight of a looming disaster, it was President Clinton who cut short the operation. Thus, from 1973 on, it is easy to argue that sitting Executives have made responsible use of their power to act unilaterally in the foreign affairs realm. The WPR has even contributed to a congressional resurgence in the foreign affairs arena. In many of these conflicts, we have seen Congress conducting numerous votes on whether and how it should respond to a unilaterally warring Executive. In some of the conflicts, Congress has come close to invoking the WPR against rather impetuous Executives. 20 4 In Lebanon, Congress actually succeeded in the task.20 5 It is this Note's contention, though, that even when Congress failed to legally invoke the WPR, these votes had normative effects on the Executives in power. Such votes demonstrate that Congress desires to be, and will try to be, a player in foreign affairs decisions. So, perhaps the enactment of the WPR, the rise of Congress (at least in the normative sense) and the successful string of unilateral presidential uses of force are just a series of coincidences. This Note, however, with common sense as its companion, contends that they are not. Rather, it is self-evident that the WPR has played a significant role in improving the implementation of presidential unilateral uses of force.

### Groupthink---1NC

#### Informal, internal checks are sufficient to address groupthink

Kennedy 12, JD from USC, MA in Middle Eastern Regional Studies from Harvard [Copyright (c) 2012 Gould School of Law Southern California Interdisciplinary Law Journal Spring, 2012 Southern California Interdisciplinary Law Journal 21 S. Cal. Interdis. L.J. 633 LENGTH: 23138 words NOTE: THE HIJACKING OF FOREIGN POLICY DECISION MAKING: GROUPTHINK AND PRESIDENTIAL POWER IN THE POST-9/11 WORLD NAME: Brandon Kennedy\* BIO: \* Class of 2012, University of Southern California Gould School of Law; M.A. Regional Studies: Middle East 2009, Harvard Graduate School of Arts and Sciences; B.A. Government 2009, Harvard University.]

Neither the president nor the decision-making group members implement "hybrid" checks; the checks do, however, originate in the executive branch and directly affect the president and the group members. Hybrid checks relate to the bureaucratic machine and typically address the structural faults within the executive branch that can affect the core decision-making group. Although the president and his or her advisers constitute the insiders of the decision-making group, they ultimately belong [\*676] to a larger organization - the executive branch - and thereby become part of the bureaucratic machine. 1. Inter-Agency Process The "inter-agency process" check involves getting approval for, or opinions about, a proposed decision from **other agencies**. n252 The inter-agency process is particularly common for national security and foreign policy decisions. n253 "Occasionally, it will operate at a higher level in principals' committees involving Cabinet-level or sub-Cabinet people and their deputies," thus directly checking the decision-making group members. n254 2. Intra-Agency Process Another similar check is the "intra-agency process," in which the circulation of proposed decisions **within the agency** empowers dissidents and harnesses a diversity of thinking. n255 If nothing else, the process catches errors, or at least increases the odds of avoiding them, given the number of people who must review or approve a document or decision within the agency. n256 3. Agency or Lawyer Culture The culture of a particular agency - the institutional self-awareness of its professionalism - provides another check. n257 "Lawyer culture" - which places high value on competencyand adherence to rules and laws - resides at the core of agency culture; n258 its "nay-saying" objectivity "is especially important in the small inner circle of presidential decision making to counter the tendency towards groupthink and a vulnerability to sycophancy." n259 [\*677] 4. Public Humiliation A final check in this category is the "public humiliation" check. n260 This check only comes into play when the previous three have failed, and involves the threat to ""go public' by leaking embarrassing information or publicly resigning."

### AT: Spoofing---1NC

#### They don’t solve spoofing:

#### A) Terrorists will just bait OTHER countries to intervene

#### B) Congress wouldn’t be able to know any better

#### No lashout hysterics

Mueller 5 (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

## Japan Adv

### No Article 9 Revision

#### They have zero modeling evidence in the context of Article 9 – even if Japan generally models war powers, their evidence says the motivation for Article 9 revision is regional security, not blindly aping the US

#### No risk of Article 9 revision – their article concludes neg

Linda Sieg 3/25, Reuters, 2014, Abe faces push-back in aim to free Japan military from constitution, www.gmanetwork.com/news/story/353982/news/world/abe-faces-push-back-in-aim-to-free-japan-military-from-constitution

Prime Minister Shinzo Abe is hitting a speed bump in his drive to ease constitutional limits on Japan's ability to fight abroad, as members of his own coalition put up obstacles that could force him to delay or water down the move. Abe has made clear he will press on with changes to free the military from the constraints of the pacifist constitution, but members of his own party are urging caution and his coalition partner is dubious about the wisdom of the historic - and unpopular - change. Allowing the Self-Defense Forces to aid the United States or other allies under attack would mark a turning point for Japan's military, which has not fired a shot in conflict since World War Two. It would increase the chances of involvement in wars overseas - and almost certainly strain already fraught ties with neighbors China and South Korea. After parliament last week enacted Abe's budget for the coming fiscal year, so-called collective self-defense looks set to dominate the remaining three months of this session. Other aspects of Abe's agenda, which seeks a more muscular military and a less-apologetic foreign policy, have also run into trouble. His December visit to Tokyo's Yasukuni Shrine, seen by critics as a symbol of Japan's wartime militarism, upset not only Asian neighbors China and South Korea but security ally the United States, which expressed "disappointment". Abe has had to back away from any attempt to revise a 1993 government statement apologizing for government involvement in forcing Asian women to serve as prostitutes for Japanese soldiers in World War Two under U.S. pressure to repair frayed ties with Washington's other key Asian ally Seoul. The government is not making a direct assault on the constitution to allow collective self-defense, but instead aims to reinterpret the charter to authorize the use of force to help allies abroad. But even some of Abe's political allies are wary of that approach. "I think it is wanton for the government to change overnight the interpretation of the constitution to allow the exercise of the right of collective self-defense," Natsuo Yamaguchi, leader of dovish coalition partner New Komeito, said over the weekend in one of his strongest statements on the topic. Sidestepping constitution Given such obstacles, Abe now "realizes that it is not so easy as he expected twoor threemonths ago", said Hokkaido University Professor Jiro Yamaguchi, a member of a group of about 30 academics opposing the change. "It will take longer." The need to compromise, especially with the New Komeito but also with less hawkish members of Abe's conservative Liberal Democratic Party, could limit the scope of eventual changes. Abe says there is no deadline to decide. But failure to adopt a cabinet resolution and seek needed legal changes in an autumn session of parliament would make the new interpretation too late to include in an upgrade of U.S.-Japan defense cooperation guidelines, which the allies want to complete by the end of the year. The push-back from the New Komeito could force Abe to whittle down the scope of reinterpretation, perhaps to allow aid only for the United States and only in conflicts close to Japan.

#### No Japanese militarization now – no public support

The Economist 14, January 18, "Don’t look back", http://www.economist.com/news/leaders/21594299-japan-should-be-able-defend-itself-any-other-country-honouring-war-criminals-makes

In fact in today’s world it is very hard to imagine a rebirth of Japanese militarism. The vast majority of Japanese would reject it—polls last year suggested that even coming to the aid of an ally would command only a slender majority of support. Even if ordinary Japanese wanted to be more aggressive, their country dedicates only about 1% of GDP to defence despite Mr Abe’s increase. That is not enough for Japan to throw its weight around Asia. And even if Japan built up its armed forces, it would come up against America, which has 16 bases there and provides the country’s nuclear umbrella.

#### Japanese militarization structurally impossible – no budget

Philippe de Konig 13, Foreign Policy, 7/30, The Land of the Sinking Sun, www.foreignpolicy.com/articles/2013/07/30/the\_land\_of\_the\_sinking\_sun\_japan\_military\_weakness

There is a paradox at the heart of Abe's bluster. Although his calls for a stronger military have worried his neighbors, **a decade of budget cuts and a struggling economy means that Japan's military is surprisingly feeble**. Despite Abe's bluster, the real threat posed by Japan is not that its military is growing too strong, but that it is rapidly weakening. Even accounting for the 0.8 percent increase contained in Abe's 2013 budget, Japan's annual defense budget has declined by over 5 percent in the last decade. During the same period, China's defense budget increased by 270 percent (South Korea's and Taiwan's grew by 45 percent and 14 percent, respectively.) In U.S. dollar terms, Japan's defense budget was 63 percent larger than China's in 2000, but barely one-third the size of China's in 2012. In fact, since 2000, Japan's shares of world and regional military expenditures have fallen by 37 percent and 52 percent, respectively. Japan's defense review will likely frighten its neighbors more than it will improve the military. These figures understate Japan's predicament. Steady declines in defense expenditures over the past decade forced Japan into a series of measures that are beginning to take a toll. In a nation where lifetime employment is the norm, aversion to layoffs and pension cuts have made personnel expenditures virtually impossible to reduce. Consequently, much of the burden fell on the equipment procurement budget, which has declined by roughly 20 percent since 2002. Japanese defense policymakers have coped by extending the life of military hardware, such as submarines, destroyers, and fighter jets. As a result, Japan's focus has shifted from acquisition to preservation, and maintenance costs have skyrocketed: at the end of the Cold War, maintenance spending was roughly 45 percent the size of procurement expenditures; it is now 150 percent. Because of declining procurement budgets and higher unit costs, Japan now acquires hardware at a much slower rate: one destroyer and five fighter jets per year compared to about three destroyers and 18 fighter jets per year in the 1980s. In the coming decade, Japan's fleet of destroyers stands to be reduced by 30 percent. Although Japan plans to order 42 F-35 fighter jets in the next decade to replace what remains of its aging F-4EJ aircraft, project delays and cost overruns will likely lead to the order's reduction or postponement. There is significant concern in U.S. policy circles that Abe's aggressive remarks, coupled with Japan's waning military power, could undermine U.S. interests. Power transitions are notoriously destabilizing: Japanese defense officials now publicly fret about the threats posed by China's improving maritime capabilities, while vessels from both countries patrol the waters around the disputed islands on a daily basis, raising the likelihood of unintended escalation. The United States, as Tokyo's principal ally, risks being drawn into a military confrontation. Japan's decline also threatens to undercut the Obama administration's "pivot" towards Asia, as the United States now needs to compensate for Japan's decline. The United States expects Japan to support its efforts in East Asia and to help ensure that China's rise is peaceful. Indeed, Tokyo played a similar role in the late 20th century, when, despite constitutional restrictions on the use of force, Japan was a respectable military power: as recently as 2002, Japan had the third largest defense budget in the world, with particularly robust, albeit defensive, naval capabilities. Japan's forces in East Asia helped the United States focus its military assets elsewhere without risking instability in the Asia-Pacific region. Getting back to that place won't be easy, and might even be impossible. A **deep structural and economic malaise is at the heart of Japan's military austerity**. Japan suffers from the highest public debt levels of any major nation -- 235 percent of GDP -- and a severe budget deficit of 10 percent of GDP in 2012. It has the most rapidly aging population in the world, which means its tax base is shrinking, and its pension and healthcare costs are rapidly mounting. The Japanese government now spends more on debt service and social security than it raises in tax revenues: all other spending, including national defense, is effectively financed through unsustainable debt. Whether fiscal consolidation comes through draconian austerity or a debt crisis, defense spending will continue to be squeezed. To compensate for the growing gaps in the Japanese military, the United States needs to cooperate ever more closely with Japan. Outstanding issues that threaten to undermine relations, such as Futenma air base relocation and host-nation support, must be resolved quickly. Joint capabilities need to be adapted in anticipation of further fiscal troubles, which may make it impossible to replace aging hardware such as Japan's Asagiri- and Hatsuyuki-class destroyers and F-4EJ fighter jets. Abe would be wise to use his new, large legislative majorities to pursue pragmatic reforms instead of ideological ones. A constitutional revision that relaxes constraints on Japan's military will be a hollow victory if the country's economy and military capabilities sink into oblivion. Japan would be better served if Abe's party expands the prime minister's bold economic plan into a long-term reform program that addresses the country's enduring problems: economic stagnation, public debt, and demographic decline. Indeed, Abe's attempts to boost defense spending are unsustainable unless these underlying structural issues are resolved.

### Martin Votes Neg

#### Plan can’t possibly be key to Japan modeling because their Martin evidence is describing language that already exists in the proposed revisions

Martin 12 – 1AC Author – Craig Martin, Associate Professor of Law at the Washburn University School of Law, and Frequent Visiting Lecturer at Osaka University Graduate School of Law and Politics, "Why Japan should Amend Its War-Renouncing Article 9", Japan Times, 8-4,http://www.japantimes.co.jp/opinion/2012/08/04/opinion/why-japan-should-amend-its-war-renouncing-article-9/~~23.UsXSSdKIySo

Even more important, a new paragraph three would establish explicit requirements that the Diet provide approval for each and every use of force, as that term is understood in paragraph one and in international law, and for every deployment of the SDF for non-use of force actions such as U.N. peacekeeping operations.¶ Such constitutional war powers provisions, which date back to the U.S. Constitution, and which have theoretical origins in the writings of Kant, Madison and others, are becoming increasingly common in the constitutions of democracies all around the world.¶ Such provisions are based on the idea that it is important for the direct representatives of the people, who will be paying for and often dying in the wars decided upon by executive branch of government, to have a direct say in the decision-making process. Moreover, requiring legislative approval, and thus a separation of the power to decide on making war, ensures wide public debate with intense interrogation of the government’s rationales for wanting to use force. This makes for better decisions, and makes military misadventure less likely.¶ The convention for Diet approval already exists in Japan, and it is indeed criticized as being cumbersome and time consuming. But the decision to engage in armed conflict should be difficult, and if the government cannot convince the legislature that such use of force is necessary, then it suggests that the policy is indeed not required.

### Senkaku Tension Inevitable

#### Sino/Japan tensions are inevitable but won’t escalate, even if they win a huge internal link

Michal Meidan 12, China Analyst at the Eurasia Group, 8/7/12, “Guest post: Why tensions will persist, but not escalate, in the South China Sea,” <http://blogs.ft.com/beyond-brics/2012/08/07/guest-post-why-tensions-will-persist-but-not-escalate-in-the-south-china-sea/#axzz2Cbw54ORc>

These tensions are likely to persist. And Beijing is not alone in perpetuating them. Vietnam and the Philippines, concerned with the shifting balance of powers in the region, are pushing their maritime claims more aggressively and increasing their efforts to internationalise the question by involving both ASEAN and Washington. Attempts to come up with a common position in ASEAN have failed miserably but as the US re-engages Asia, it is drawn into the troubled waters of the South China Sea.¶ Political dynamics in China – with a once in a decade leadership transition coming up, combined with electoral politics in the US and domestic constraints for both Manila and Hanoi – all augur that the South China Sea will remain turbulent. No government can afford to appear weak in the eyes of domestic hawks or of increasingly nationalistic public opinions. The risk of a miscalculation resulting in prolonged standoffs or skirmishes is therefore higher now than ever before. But there are a number of reasons to believe that even these skirmishes are unlikely to escalate into broader conflict.¶ First, despite the strong current of assertive forces within China, cooler heads are ultimately likely to prevail. While a conciliatory stance toward other claimants is unlikely before the leadership transition, China’s top brass will be equally reluctant to significantly escalate the situation, since this will send southeast Asian governments running to Washington. Hanoi and Manila also recognize that despite their need for assertiveness to appease domestic political constituencies, a direct confrontation with China is overly risky.¶ Second, military pundits in China also realize that the cost of conflict is too high, since it will strengthen Washington’s presence in the region and disrupt trade flows. And even China’s oil company CNOOC, whose portfolio of assets relies heavily on the South China Sea, is diversifying its interests in other deepwater plays elsewhere, as its attempted takeover of Nexen demonstrates.¶ An uneasy balance and a highly volatile region remain, therefore, the best policy option for all sides involved.

### AT: Japan-Korea War

#### No war

[Green](http://www.foreignaffairs.com/author/michael-j-green) 11— the Japan Chair and a senior adviser at the [Center for Strategic and International Studies](http://en.wikipedia.org/wiki/Center_for_Strategic_and_International_Studies), associate professor of international relations at [Georgetown University](http://en.wikipedia.org/wiki/Georgetown_University). He served as special assistant to the president for national security affairs and senior director for Asian affairs at the [National Security Council](http://en.wikipedia.org/wiki/United_States_National_Security_Council), Dr. Green is also an avid bagpipe player (Michael, April 9, 2011, Foreign Affairs, “Tokyo’s Turning Point”, <http://www.foreignaffairs.com/articles/67720/michael-j-green/tokyos-turning-point?page=show>)
March 11 may also solidify Japan-South Korea relations. The two countries experienced recurring tensions over territorial and historical issues, but relations between the two nations were slowly on the mend prior to March 11, due to a shared anxiety regarding China’s continued diplomatic protection of Kim Jong Il after North Korea’s attacks on the South Korean warship Cheonan and the island of Yeongpyeong last year. The South Korean Red Cross has already raised more money for the earthquake and tsunami in Japan than it has for any previous Japanese disaster and even the so-called comfort women, who were forced into carnal service by the Japanese military during World war II, interrupted their regular protests in front of the Japanese embassy in Seoul to offer prayers and support for those suffering from the catastrophe. Last December, U.S. Secretary of State Hillary Clinton and her Korean and Japanese counterparts came close to issuing an unprecedented collective security statement declaring that an attack on one party by North Korea would be viewed as an attack on all three. The South Korean side reneged at the last minute because of domestic sensitivities over issuing the statement during the same week that Seoul and Washington reached an agreement on a bilateral free-trade agreement, but closer trilateral security coordination is certain to strengthen in the future.

# Block

## Cp

### Solves the Case---2NC

#### No possible solvency deficits---the counterplan institutes a formal statutory mechanism that solves cred and the entire case but avoids politics

Margaret E. McGuinness 9, Associate Professor, University of Missouri Law School, The President, Congress and the Security Council, 45 Willamette Law Review 417

B. The Form of Congressional Involvement ¶ The National War Powers Commission, chaired by former Secretaries of State James Baker and Warren Christopher, proposed a War Powers Consultative Act (WPCA). 141 Though its project was not aimed explicitly at the question of U.N. operations, the Commission set aside the question of constitutional war powers of the President and Congress that has bedeviled the War Powers Resolution, and replaced it with a structured consultative mechanism (the WPCA) designed to address domestic political concerns. 142 The framework of the WPCA may be a useful starting point for thinking about incorporating congressional consultation and participation into the President’s actions at the Council, not only for domestic legitimacy purposes, but also for purposes of international institutional legitimacy. ¶ By setting aside the contentious constitutional law questions, the Commission usefully positions its own proposal as a political arrangement aimed at broader political participation and accountability. It is useful to think about congressional participation in use of force decisions as politically desirable, rather than legally mandated, as the Commission recommends. 143 The proposal, however, falls short in that it specifically exempts short-term and limited operations—which would include many of the types of counterterrorism operations we are likely to see more of. 144 The proposed WPCA includes a requirement for congressional consultation for large-scale military commitments, and notes that “[i]n cases of lesser conflicts—e.g. , limited actions to defend U.S. embassies abroad, reprisals against terrorist groups , and covert operations—such advance consultation is not required, but is strongly encouraged.” 145 Adding to this proposal specific language in support of multilateralism and requiring prior consultation in the case of all U.N. operations—including smaller scale operations—would create the kind of formal statutory mechanism which could achieve the goals of more effective domestic accountability. ¶ Expanding, deepening, and formalizing the executive branch practice of prior consultation with Congress is only one way to achieve congressional participation. Other, less formal (even creative) approaches could be adopted as means of supplementing formal consultation requirements. For example, the executive branch could adopt a practice of hosting more direct congressional presence at the U.N. Security Council. This could be accomplished in a variety of ways that would not infringe on the President’s diplomatic and foreign affairs prerogatives. As U.S. Ambassador to the U.N., Richard Holbrooke hosted a Senate Foreign Relations Committee hearing at the Council as a way to build that Committee’s support for paying U.S. arrears to the U.N. general budget. 146 The effort was largely successful. Even considering appointing former legislators, who retain significant political and personal ties to their former colleagues, to key U.S. diplomatic positions at the U.N. (as President Bush did with his appointment of Senator John Danforth to be U.S. Permanent Representative to the U.N.) can have a real effect. These are not meant to exhaust all the possible means and avenues of executive consultation with Congress, but are merely intended as initial thoughts about improving congressional participation. The point is to create processes through which U.S. participation in U.N. counterterrorism measures at the U.N. can be seen to enjoy broad- based popular support. ¶ CONCLUSION In the struggle against global terrorism, legitimacy of the norms—both substantive and procedural—that are invoked by states working to protect their own and international security are as important as the effectiveness of the military and other weapons deployed against terrorists. If it is the case that the U.S. will increasingly act through the U.N. and other collective security mechanisms to address terrorism, then the U.S. should do so in a way that reinforces democratic participation and individual rights protections both at home and internationally. An expanded and more explicitly acknowledged role for the Congress in U.S. counterterrorism policies at the U.N. represents one useful means through which to ensure greater legitimacy of counterterrorism measures, a legitimacy which is essential to reducing the threat terrorism poses to democratic governance and the international rule of law.

#### Comparative evidence---consultation’s a far more effective mechanism for balancing Congressional and executive war powers than a pre-authorization requirement

Geoffrey Corn 10, Associate Professor of Law at South Texas College of Law, Summer 2010, “ARTICLE: TRIGGERING CONGRESSIONAL WAR POWERS NOTIFICATION: A PROPOSAL TO RECONCILE CONSTITUTIONAL PRACTICE WITH OPERATIONAL REALITY,” Lewis & Clark Law Review, 14 Lewis & Clark L. Rev. 687

The inherent flaws in the War Powers Resolution have recently become the focus of an initiative far more important than the scholarly debate that has previously been the dominant focus of critique and debate. n23 In a recently published report (Miller Report), n24 the National [\*692] War Powers Commission, composed of distinguished former public officials and nationally renowned constitutional scholars, proposed the enactment of the War Powers Consultation Act of 2009 as a replacement for the War Powers Resolution. n25 The Commission performed its work at the Miller Center of the University of Virginia, and its report articulates in compelling terms why the War Powers Resolution has failed n26 and why consultation between the two political branches has and remains the sine qua non of constitutionally legitimate war powers decisions. Accordingly, the members of the Commission:

Urge that in the first 100 days of the next presidential Administration, the President and Congress work jointly to enact the War Powers Consultation Act of 2009 to replace the impractical and ineffective War Powers Resolution of 1973. The Act we propose places its focus on ensuring that Congress has an opportunity to consult meaningfully with the President about significant armed conflicts and that Congress expresses its views. We believe this new Act represents not only sound public policy, but a pragmatic approach that both the next President and Congress can and should endorse.

The need for reform stems from the gravity and uncertainty posed by war powers questions. Few would dispute that the most important decisions our leaders make involve war. Yet after more than 200 years of constitutional history, what powers the respective branches of government possess in making such decisions is still heavily debated. The Constitution provides both the President and Congress with explicit grants of war powers, as well as a host of arguments for implied powers. How broadly or how narrowly to construe these powers is a matter of ongoing debate. Indeed, the Constitution's framers disputed these very issues in the years following the Constitution's ratification, expressing contrary views about the respective powers of the President, as "Commander in Chief," and Congress, which the Constitution grants the power "To declare War." n27

The proposal's focus on "meaningful" consultation is unsurprising. Indeed, this was a key concern of the drafters of the War Powers Resolution. As is noted throughout the Miller Report, consultation must be meaningful in order to ensure the cooperative decision-making [\*693] process essential to constitutionally valid war powers decisions. n28 This in turn leads to the core of the Commission's proposal: that consultation occur prior to, or immediately after, a use of the armed forces in a "significant armed conflict." n29 This term is defined n30 in the proposal as either a use of the armed forces expressly authorized by Congress, or any other use ordered by the President that involves hostilities lasting more than seven days. n31

It is clear from the Miller Report that the key objective of this proposal is not only to ensure cooperation between the political branches of government in relation to the decision to engage the nation in hostilities, but perhaps more importantly to define with greater precision than did the War Powers Resolution those situations in which such cooperation is required. As I will argue below, this objective is consistent with the historical constitutional "gloss" of war powers. n32 However, it is the thesis of this Article that the proposal suffers from the same inherent flaw that hobbled the notification and consultation provisions of the War Powers Resolution, namely a twilight zone surrounding the trigger for such notification and consultation. Like the failed concept of "hostilities[] or ... . situations where imminent involvement in hostilities is clearly indicated by the circumstances," n33 the [\*694] concept of "armed conflict" n34 will almost inevitably be susceptible to interpretive debate. In addition, the seven-day trigger, like the ubiquitous sixty-day clock, will almost inevitably lead to assertions that the President has plenary authority to initiate hostilities, an assertion that is simply overbroad. Finally, and perhaps most problematically, it is unlikely that any President will acquiesce to mandated consultation obligations for armed conflicts "thrust" upon the nation, irrespective of duration. Instead, it is much more likely that Presidents will continue to assert such responsive military operations are conducted pursuant to their exclusive authority to respond to sudden attacks by "meeting force with force." n35

There is, however, simply no question that the effort to eliminate the War Powers Resolution's express authorization requirement - the provision of the Resolution most inconsistent with the history of constitutional war powers n36 - and the effort to define a more effective triggering event for consultation, n37 is perhaps the ideal remedy to the ongoing debate over how to effectively balance the war powers of the two political branches. What is therefore needed to "close this deal" is a more effective consultation trigger. Such a trigger will ensure Congress is placed on notice in advance of military operations that implicate its institutional war authorization (or prohibition) role. If properly tailored, this would facilitate the ability of Congress to "take a stand" on a war-making initiative in a timely manner, prevent the President from presenting Congress with a fait accompli, and validate reliance on subsequent congressional acquiescence.

### Smidt

#### Proves the CP solves the case better---Congress will never enforce an ex-ante authorization requirement --- only the CP creates a realistic chance for restrictions and solves warfighting

Michael L. Smidt 9, Lieutenant Colonel, United States Army, 3/19/9, “THE PROPOSED 2009 WAR POWERS CONSULTATION ACT,” http://handle.dtic.mil/100.2/ADA500649

President Obama and the 111th Congress should immediately enact the proposed 2009 War Powers Consultation Act as recommended by the National War Powers Commission.2 Over the years, particularly since the Korean War, Presidents have deployed the armed forces of the United States into combat or into situations where combat was likely without fully consulting Congress. Congress has failed to properly exercise its constitutional duty to participate in the decision whether to commit troops and has simply acquiesced to executive leadership. Passage of the act would require the participation of both political branches of the government in any decision to consign the armed forces to any significant hostile action as the Framers of the Constitution intended.

Not only would participation of both branches of the government lead to a more constitutionally grounded decision to employ military force and expend U.S. treasure, a joint decision to use force will lead to greater strategic certainty. In turn, the resulting clear and unambiguous statements of support for the use of American forces by both political branches of the government should, in many cases, translate to a greater likelihood of battlefield success for the military commander.

In an effort to limit the President’s ability to deploy US forces into hostile situations without congressional involvement, Congress passed the 1973 War Powers Resolution over the veto of President Nixon. 3 However, Presidents from both parties have since considered the War Powers Resolution unconstitutional.4 Moreover, recognizing its defects,5 not only have Presidents largely ignored the law, so has Congress.6 The Supreme Court has also all but refused to decide cases based on the law. Applying the judicially created “political question doctrine,” 7 the Court has never ruled on the constitutionality of the War Powers Resolution. Even so, the Court has struck down other unrelated laws but having same or similar alleged defects. This has led many to believe that the Court would find the 1973 War Powers Resolution unconstitutional if the Court ever decides to consider it.8

The political branches have had 35 years worth of opportunities to apply the 1973 War Powers Resolution. The Resolution has proven to be at best ineffective and at worst unconstitutional. Through the proposed 2009 War Powers Consultation Act, the National War Powers Commission has sought to correct the problems and defects associated with the 1973 War Powers Resolution. If enacted, the 2009 War Powers Consultation Act will repeal the 1973 War Powers Resolution. Passage of the act is in the United States' best interests.

#### Solves warfighting and SOP

Michael L. Smidt 9, Lieutenant Colonel, United States Army, 3/19/9, “THE PROPOSED 2009 WAR POWERS CONSULTATION ACT,” http://handle.dtic.mil/100.2/ADA500649

It is in the United States’ best interests to enact the proposed 2009 War Powers Consultation Act on the grounds that it will encourage shared decision making for any significant use of the armed forces. Joint, rather than unilateral, congressional and presidential foreign policy decisions to use the military are more consistent with the national security framework in the Constitution. The Framers intentionally built a framework which would prevent an overly aggressive government from engaging military forces without deliberate and thoughtful consideration,148 but one which would also be able to take resolute action and defend itself and its interests when necessary.149

Both branches of government have certain indispensable keys relating to the effective use of the military as an instrument of power. 150 The constitutional requirement for near simultaneous use of these keys creates a shared power framework. However, Presidents have often been willing to commit troops without first consulting with Congress and Congress has simply gone along. This phenomenon has been described by one scholar as, “Executive custom and Congressional acquiescence.”151

The proposed 2009 War Powers Consultation Act preserves the spirit and objectives of the 1973 War Powers Resolution. The Act facilitates the participation of both political branches of government in any decision to commit forces in any significant operation, while addressing the constitutional and policy defects associated with the Resolution. Passage of the Act should not only serve to protect the American people from an adventurous President, but citizens will also benefit because the Act seeks to force a reluctant Congress to debate and participate in these most important governmental decisions.

The Act will go a long way toward restoring the balance of power established by the Framers in the Constitution. In a democracy built on the rule of law, it is imperative that the government comply with the ideals enunciated in the Constitution even though this might, on occasion, mean more time and debate. As discussed above, the Act carves out exceptions to the consultation and voting requirements for emergency situations where time is of the essence. Congress is the peoples’ branch of government and the people need to be heard when their sons and daughters are sent into harms way.152

Moreover, when the government adheres to constitutional provisions in matters of national security, strategic advantages will follow. First, in the general sense, the government will appear strong when in compliance with its own rules. The government will not appear panicked or stressed. Second, with regard to the specific conflict involved, when both branches of government support a military action, it will be clear to allies, neutrals and enemies alike the United States means business and is willing to use its military element of power to resolve the issue. Third, a declaration of war or similar statutory pronouncement would have the pragmatic advantage of legal sanction and all that that entails. A declaration of war or similar vote as required by the 2009 War Powers Consultation Act would serve to mobilize the American public.153

And finally, U.S. commanders and soldiers on the ground we be in a better position to plan and execute military operations on the ground. The political objectives established by the policy makers will be more clear. Commanders will have a better idea of how the civilian leadership defines success when national interest are at stake. Where the entire government supports a military action, commanders and soldiers will have reason for faith that the government will provide the resources and personnel required. As has been said,

Unless Congress has un-equivocally authorized a war at the outset, it is a good deal more likely to undercut the effort, leaving it in a condition that satisfies neither the allies we induced to rely on us, our troops who fought and sometimes died, nor for that matter anyone else except, conceivably the enemy.154

Congress can easily strangle any war effort where it has not been consulted in advance.155

#### CP solves Congressional reluctance---it incentivizes both branches to come to the table

Warren Christopher 8, **et al** 63rd Secretary of State. He also served as Deputy Attorney General in the Lyndon Johnson Administration, and as Deputy Secretary of State in the Carter Administration, Over 14 months, this bipartisan body met seven times in full-day sessions, interviewing more than 40 witnesses about the respective war powers of the President and Congress., James A. Baker, III, Slade Gorton Lee H. Hamilton Carla A. Hills John O. Marsh, Jr Edwin Meese, III Abner J. Mikva J. Paul Reason Brent Scowcroft Anne-Marie Slaughter Strobe Talbott, National War Powers Commission Report, http://web1.millercenter.org/reports/warpowers/report.pdf

The statute we propose endeavors to address these shortcomings. It does so by:¶ ■ Eliminating aspects of the War Powers Resolution of 1973 that have opened it to constitutional challenge. The new statute takes great care to preserve the respective rights of the President and Congress to take actions they deem necessary to exercise their constitutional powers and fulﬁ ll their constitutional duties. ¶ ■ Promoting meaningful consultation between the branches without burdening the President’s time or too greatly tying his or her hands. The President has a responsibility to defend the country and its security inter- ests. But as Gallup Polls show, Americans strongly favor congressional involvement in decisions to go to war. This desire is, notably, not of recent vintage. At the time of the passage of the War Powers Resolution, 80% of those polled said Congress should be signiﬁ cantly involved in decisions to go to war. Similar polls, including recent ones, indicate that for some seven decades Americans have wanted Congress involved in decisions to go to war. That is why Presidents usually have sought and received approval or authorization from Congress before engaging in signiﬁ cant armed conﬂ ict. ¶ ■ Providing a heightened degree of clarity and striking a realistic balance that both advocates of the Executive and Legislative Branches should want. On the presidential side of the ledger, the statute involves Congress only in “signiﬁ cant armed conﬂ ict,” not minor campaigns, and it reverses the presumption that inaction by Congress means it has disapproved a military campaign. The statute also affords the President independent and valuable advice from Congress and gives Congress greater resources to serve this consultative role. On the congressional side, the statute gives Congress a role that it presently does not have — i.e., a seat at the table, providing the President meaningful advice. Our proposed statute also provides Congress clear and simple mechanisms by which to approve or disapprove war-mak- ing efforts — mechanisms not readily open to constitutional attack, as are those in the War Powers Resolution of 1973. ¶ If the War Powers Resolution of 1973 is repealed and replaced with the War Powers Consultation Act of 2009, we ﬁrmly believe that there will be greater opportunities and incentives for the President and Congress to engage in meaningful consultation. The Joint Congressional Consultation Committee, which the Act creates, provides such a vehicle. The statute also provides clear mechanisms by which Congress can state its support or disapproval of signiﬁ - cant armed conﬂ icts. ¶ When congressional consultation and support are obtained during times of war, our country can most effectively execute a uniﬁ ed response to hostilities. That is particularly important today, with the face of war changing and with non-state actors being one of the greatest threats to national security. The more the President and Congress work together to confront these threats, the more likely it is that the country can avoid political and constitutional controversies and also devise the best strategies for defending against those threats. Almost all of the witnesses with whom we met — even outspoken advocates respectively of executive or congressional power — agreed that our nation is best served when the President and Congress work jointly to achieve a common objective, not when they test the limits of their respective powers. In the conduct of war against a foreign adversary, the Commander in Chief clause, the President’s executive powers under Article II of the Constitution, and military realities ensure that the President will play the dominant role. However, no matter the strength of the President’s claims to power in this domain, experience teaches us that the President’s powers are not unlimited and, in some instances, beneﬁ t by consultation with or statutory approval from Congress.

### Schonberg

#### Schonberg is wrong about constitutional history an authorization requirement undermines interbranch collaboration and destroys Congress’s ability to implicitly support use of force---best constitutional scholarship concludes authority to initiate war is shared between the branches---their aff follows the flawed WPR model which ignores decades of effective war powers cooperation

Geoffrey Corn 10, Associate Professor of Law at South Texas College of Law, Summer 2010, “ARTICLE: TRIGGERING CONGRESSIONAL WAR POWERS NOTIFICATION: A PROPOSAL TO RECONCILE CONSTITUTIONAL PRACTICE WITH OPERATIONAL REALITY,” Lewis & Clark Law Review, 14 Lewis & Clark L. Rev. 687

In order to achieve this asserted purpose, Congress built the Resolution around a core principle: With the exception of a military response to an attack on the United States or its armed forces, the President was required to obtain express legislative authorization as a condition precedent to engaging the nation in conflict or in situations where conflict was imminent. This is reflected in § 2(c) of the Resolution, which establishes that express congressional authorization (either a declaration of war or a statute) is required in all situations other than responses to sudden attack. n83

In addition, in order to dispel any doubt as to the exclusivity of these sources of authority, the Resolution also explicitly deprived the President of the ability to use sources of implied legislative support as constitutional authority for such commitments: [\*706]

Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred -

(1) from any provision of law (whether or not in effect before November 7, 1973), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this chapter; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this chapter. n84

Even the ubiquitous "sixty-day clock" n85 was not, as is often erroneously asserted, a grant of limited commitment authority. The War Powers Resolution is explicit that neither that provision - nor any other provision in the statute - may be asserted as a source of constitutional or statutory authority for the use of the armed forces. As a result, the sixty-day clock is simply a recognition that situations may arise involving uncertainty as to the existence of sufficient constitutional war-making authority, and that while the President may act on a belief that such authority exists, the lack of express legislative confirmation would resolve such uncertainty in favor of no authority.

As I have asserted in prior articles, the irony in these provisions is profound. Under the guise of "fulfilling the intent of the framers," n86 Congress utterly eviscerated the war powers constitutional modus operandi that had by that time become historically validated by decades of flexible inter-branch war powers cooperation. n87 This is, of course, unsurprising, as Congress was reacting to the pervasive reliance on this historical model by the judiciary as the basis for rejecting every war powers constitutional challenge litigated during the Vietnam conflict. n88 However, irrespective of how dismayed Congress may have been that courts were unwilling to invalidate presidential orders to conduct that war in the absence of clear and express congressional opposition, those cases exposed the true merit of this historically validated constitutional war powers framework. n89

 [\*707] As noted earlier in this Article, the great weight of scholarly opinion concludes that the Constitution diffuses war powers between the two political branches. Most scholars also conclude that the Declaration Clause, when coupled with the power of the purse and the Necessary and Proper Clause, vest in Congress the ultimate power to decide when the nation should initiate war, when the nation should not initiate war, and when war should be terminated. n90 However, as the Vietnam era war powers decisions revealed, this ultimate authority does not also include the exclusive authority to initiate war. n91 That authority, like the war powers themselves, is diffused between the President and Congress.

Throughout the nation's history, it has been more common for Presidents to initiate armed hostilities than Congress. n92 This does not, however, indicate that these hostilities have been authorized on the exclusive authority of the President. Instead, a careful balance has evolved between the two political branches, a balance that can generally be understood to reflect the legitimacy of presidential reliance on implied congressional support. n93 Pursuant to this paradigm - a paradigm consistent with Justice Jackson's three-tiered conception of the exercise of executive power in national security affairs n94 - the vagaries of foreign affairs coupled with the often ambivalent position of Congress on matters of hostilities almost invited executive initiative in this proverbial constitutional "twilight zone." When the President acts within this tier of authority, the key constitutional consideration becomes the nature of the congressional response. n95

## SOP

### Preemption---Drones Alt-Cause---2NC

#### Preemptive drone use is sufficient to cause an international preemption norm for all uses of force---not just TKs

Craig Martin 11, Associate Professor of Law at Washburn University School of Law, 11/7/11, “Going Medieval: Targeted Killing, Self-Defence, and the Jus Ad Bellum Regime,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.

We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.

## Accidents

### Congress Fails---Warfighting---1NC

#### Congress doesn’t solve “better wars” or adventurism

Jide Nzelibe 6, Asst. Profesor of Law @ Northwestern, and John Yoo, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, “Rational War and Constitutional Design,” Yale Law Journal, Vol. 115, SSRN

But before accepting this attractive vision, we should ask whether the Congress first system produces these results. In other words, has requiring congressional ex ante approval for foreign wars produced less war, better decision making, or greater consensus? Students of American foreign policy generally acknowledge that comprehensive empirical studies of American wars are impractical, due to the small number of armed conflicts. Instead, they tend to focus on case studies. A cursory review of previous American wars does not suggest that congressional participation in war necessarily produces better decision making. We can certainly identify wars, such as the Mexican-American War or the Spanish-American War, in which a declaration of war did not result from extensive deliberation nor necessarily result in good policy.14 Both wars benefited the United States by expanding the nation’s territory and enhanced its presence on the world stage,15 but it seems that these are not the wars that supporters of Congress’s Declare War power would want the nation to enter – i.e., offensive wars of conquest. Nor is it clear that congressional participation has resulted in greater consensus and better decision making. Congress approved the Vietnam War, in the Tonkin Gulf resolution, and the Iraq war, both of which have produced sharp division in American domestic politics and proven to be mistakes.

The other side of the coin here usually goes little noticed, but is just as important for evaluating the substantive performance of the Congress-first system. To a significant extent, much of the war powers literature focuses on situations in which the United States might erroneously enter a war where the costs outweigh the expected benefits. Statisticians usually label such errors of commission as Type I errors. Scholars rarely, if ever, ask whether requiring congressional ex ante approval for foreign wars could increase Type II errors. Type II errors occur when the United States does not enter a conflict where the expected benefits to the nation outweigh the costs, and this could occur today when the President refuses to launch a preemptive strike against a nation harboring a hostile terrorist group, for example, out of concerns over congressional opposition. It may be the case that legislative participation in warmaking could prevent the United States from entering, or delaying entry, into wars that would benefit its foreign policy or national security. The clearest example is World War II. During the inter-war period, Congress enacted several statutes designed to prevent the United States from entering into the wars in Europe and Asia. In 1940 and 1941, President Franklin D. Roosevelt recognized that America’s security would be threatened by German control of Europe, and he and his advisers gradually attempted to bring the United States to the assistance of Great Britain and the Soviet Union.16 Nonetheless, congressional resistance prevented Roosevelt from doing anything more than supplying arms and loans to the Allies, although he arguably stretched his authority to cooperate closely with Great Britain in protecting convoys in the North Atlantic, among other things. It is likely that if American pressure on Japan to withdraw from China had not helped triggered the Pacific War, American entry into World War II might have been delayed by at least another year, if not longer.17 Knowing what we now know, most would agree that America’s earlier entry into World War II would have been much to the benefit of the United States and to the world. A more recent example might be American policy in the Balkans during the middle and late 1990s.

### Group think

#### No groupthink---executives are fragmented and pluralistic---Congress is far more prone to flawed decision-making

Posner 7 – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND Adrian Vermeule \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary. The contrast is drawn too sharply, because in practice **the executive is a they, not an it**. Presidential oversight is incapable of fully unifying executive branch policies, which means that **disagreement flourishes within the executive as well, dampening panic and groupthink** and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections. It is not obvious, then, that statutory authorization **makes any difference at all**. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities. Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and **slow down stampedes toward good policies**. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, **always** produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

#### Obama’s cabinet solves groupthink

Pillar 13 -- Brookings Foreign Policy Senior Fellow [Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the polar opposite of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

### AT Blumrosen

#### Blumrosen says Congress can’t solve – no resources or experts

Blumrosen 11 – Alfred W. Blumrosen, Professor Emeritus at the Rutgers School of Law and Steven M. Blumrosen, J.D., Quinnipiac University School of Law, "Restoring the Congressional Duty to Declare War", Rutgers Law Review, Winter, 63 Rutgers L. Rev. 407, Lexis

Professor Phillip Bobbit has focused on the difficulties of assigning ―blame‖ for a terrorist attack from an uncertain source, and the dangerous consequences of a rush to judgment.516 An attack against our water supply, electrical grid, or the transportation system, where the perpetrators plant phony evidence that the plot originated in Russia, China, or Iran could lead us to a nuclear response that would ―bomb us all‖ into the stone age. This would suit only those who believe that western civilization is an abomination.¶ **=====THEIR CARD ENDS=====**¶

Congress must be alert to determine what actions a President plans to take after a ―terrorist incident‖ against the United States, and satisfy itself and the public that the President has not ―rushed to judgment‖ about the culprits and their backers. The President‘s claim that time is of the essence, is rarely the case. In connection with the Second Iraq War, the President pressured Congress to act favorably just before the bi-annual election in 2002, then waited five months to commencee hostilities. The Gulf of Tonkin Resolution was rushed through on flimsy evidence in August, 1964. Johnson had no intention of using it until after the presidential elections in ¶ November, so he could run for election on a policy of keeping our boys out of Vietnam.517 After his victory, he made the decision to deploy more than half a million troops to Vietnam. ¶ Congress should gird itself for negotiations with the White House and for serious reviews of the facts, rather than the meaningless speechmaking that accompanied the 2002 AUMF against Iraq or the worry about the political consequences of a serious review of the Gulf of Tonkin Resolution. Congress has a problem of resources.518 The presidential staff consists of thousands of professionals in the Departments of Justice, Defense, State and the Intelligence agencies.519 Congress needs a stand-by committee of experts on both war and diplomacy to evaluate proposals for military action.520 While we believe that Presidents and Congresses will continue to rely on the AUMF because it simplifies life at both ends of Pennsylvania Avenue, we also believe that the AUMF has served the nation so badly that we cannot continue to rely on the Vietnam War cases. Congress may reform itself, but at the moment, hope lies with a judiciary that may yet absorb the significance of June 1, 1787.

## Article 9

### No militarization

#### Japanese militarization structurally impossible – no budget

Philippe de Konig 13, Foreign Policy, 7/30, The Land of the Sinking Sun, www.foreignpolicy.com/articles/2013/07/30/the\_land\_of\_the\_sinking\_sun\_japan\_military\_weakness

There is a paradox at the heart of Abe's bluster. Although his calls for a stronger military have worried his neighbors, **a decade of budget cuts and a struggling economy means that Japan's military is surprisingly feeble**. Despite Abe's bluster, the real threat posed by Japan is not that its military is growing too strong, but that it is rapidly weakening. Even accounting for the 0.8 percent increase contained in Abe's 2013 budget, Japan's annual defense budget has declined by over 5 percent in the last decade. During the same period, China's defense budget increased by 270 percent (South Korea's and Taiwan's grew by 45 percent and 14 percent, respectively.) In U.S. dollar terms, Japan's defense budget was 63 percent larger than China's in 2000, but barely one-third the size of China's in 2012. In fact, since 2000, Japan's shares of world and regional military expenditures have fallen by 37 percent and 52 percent, respectively. Japan's defense review will likely frighten its neighbors more than it will improve the military. These figures understate Japan's predicament. Steady declines in defense expenditures over the past decade forced Japan into a series of measures that are beginning to take a toll. In a nation where lifetime employment is the norm, aversion to layoffs and pension cuts have made personnel expenditures virtually impossible to reduce. Consequently, much of the burden fell on the equipment procurement budget, which has declined by roughly 20 percent since 2002. Japanese defense policymakers have coped by extending the life of military hardware, such as submarines, destroyers, and fighter jets. As a result, Japan's focus has shifted from acquisition to preservation, and maintenance costs have skyrocketed: at the end of the Cold War, maintenance spending was roughly 45 percent the size of procurement expenditures; it is now 150 percent. Because of declining procurement budgets and higher unit costs, Japan now acquires hardware at a much slower rate: one destroyer and five fighter jets per year compared to about three destroyers and 18 fighter jets per year in the 1980s. In the coming decade, Japan's fleet of destroyers stands to be reduced by 30 percent. Although Japan plans to order 42 F-35 fighter jets in the next decade to replace what remains of its aging F-4EJ aircraft, project delays and cost overruns will likely lead to the order's reduction or postponement. There is significant concern in U.S. policy circles that Abe's aggressive remarks, coupled with Japan's waning military power, could undermine U.S. interests. Power transitions are notoriously destabilizing: Japanese defense officials now publicly fret about the threats posed by China's improving maritime capabilities, while vessels from both countries patrol the waters around the disputed islands on a daily basis, raising the likelihood of unintended escalation. The United States, as Tokyo's principal ally, risks being drawn into a military confrontation. Japan's decline also threatens to undercut the Obama administration's "pivot" towards Asia, as the United States now needs to compensate for Japan's decline. The United States expects Japan to support its efforts in East Asia and to help ensure that China's rise is peaceful. Indeed, Tokyo played a similar role in the late 20th century, when, despite constitutional restrictions on the use of force, Japan was a respectable military power: as recently as 2002, Japan had the third largest defense budget in the world, with particularly robust, albeit defensive, naval capabilities. Japan's forces in East Asia helped the United States focus its military assets elsewhere without risking instability in the Asia-Pacific region. Getting back to that place won't be easy, and might even be impossible. A **deep structural and economic malaise is at the heart of Japan's military austerity**. Japan suffers from the highest public debt levels of any major nation -- 235 percent of GDP -- and a severe budget deficit of 10 percent of GDP in 2012. It has the most rapidly aging population in the world, which means its tax base is shrinking, and its pension and healthcare costs are rapidly mounting. The Japanese government now spends more on debt service and social security than it raises in tax revenues: all other spending, including national defense, is effectively financed through unsustainable debt. Whether fiscal consolidation comes through draconian austerity or a debt crisis, defense spending will continue to be squeezed. To compensate for the growing gaps in the Japanese military, the United States needs to cooperate ever more closely with Japan. Outstanding issues that threaten to undermine relations, such as Futenma air base relocation and host-nation support, must be resolved quickly. Joint capabilities need to be adapted in anticipation of further fiscal troubles, which may make it impossible to replace aging hardware such as Japan's Asagiri- and Hatsuyuki-class destroyers and F-4EJ fighter jets. Abe would be wise to use his new, large legislative majorities to pursue pragmatic reforms instead of ideological ones. A constitutional revision that relaxes constraints on Japan's military will be a hollow victory if the country's economy and military capabilities sink into oblivion. Japan would be better served if Abe's party expands the prime minister's bold economic plan into a long-term reform program that addresses the country's enduring problems: economic stagnation, public debt, and demographic decline. Indeed, Abe's attempts to boost defense spending are unsustainable unless these underlying structural issues are resolved.

### Ext – No Article 9 Revision

#### No Article 9 revision --- poll numbers prove

Zachary Fillingham 14, contributor to the Geopolitical Monitor, “CHINA AND JAPAN HOLD THE KEY TO SENKAKU,” In Depth News, http://www.indepthnews.info/index.php/global-issues/2027-china-and-japan-hold-the-key-to-senkaku

The elixir of Abenomics has already worked its magic on the economy – at least for the time being. Now all that remains is the question of Japan’s role in East Asia: Will it be a passive pole of US military power, or an assertive regional player that actively leans into China’s expanding capabilities?¶ This is a question that Prime Minister Abe would happily answer if given the chance, and with his oft-stated dream of amending Japan’s pacifist constitution and incendiary visits to the Yasukuni Shrine, it’s no great secret what form his answer would take. Whether or not the Japanese public will allow him to do so is another story.¶ Although recent polls have shown a troubling anti-China trend (over 90% of the Japanese public have an “unfavorable” impression of China), Japan’s pacifist worldview is still largely intact, with 57% of the population opposing a government push to reinterpret Article 9, which would allow the Japanese military to participate in collective defense operations with the United States.

#### Abe has abandoned push for liberal Article 9 revision – too much domestic opposition to militarization, and Abe wouldn’t even let Japan use force in another state. Our ev postdates, it’s from today…

Japan Times, 3-30-2014, “Abe takes first swing at reinterpreting Constitution,” http://www.japantimes.co.jp/news/2014/03/30/national/abe-takes-first-swing-at-reinterpreting-constitution/#.UzgRjvldU4A

The government has drafted a new interpretation of the war-renouncing Constitution that would enable Japan to come in a limited way to the defense of an ally under attack, according to a government source. Under the draft, the Self-Defense Forces would be allowed to respond within Japan’s territorial land, sea and airspace as well as on the high seas — although it would not, in principle, be dispatched to foreign territory. Prime Minister Shinzo Abe’s team initially intended to give the SDF free rein on where it could operate when exercising the right to collective self-defense. The proposed reinterpretation revolves around the argument that Japan’s right to defend itself to the minimum extent necessary also allows it to exercise some form of collective self-defense. That interpretation is a departure from the government’s long-standing interpretation that Japan has the right to collective self-defense but cannot exercise it due to the limits imposed by Article 9, since doing so would exceed the minimum response limit for defending the country. Abe’s team wants to enable Japan to exercise the right in a limited manner out of consideration for its junior coalition partner New Komeito, which is wary of changing the current interpretation and lifting the self-imposed ban on collective defense. Abe’s team aims to reinterpret the Constitution with a simple Cabinet decision. If it succeeds, however, the government will likely avoid listing the range of activities conceived of for an SDF response, or the concrete ways in which it might engage in collective self-defense. It is believed such a policy will serve the government well in responding to emergency situations. Therefore, to secure the backing of New Komeito, the government also plans for Abe to make a verbal commitment in the Diet stating that the government, when engaging in collective self-defense, will not send the SDF into another country or its territorial waters or airspace, the source said. It remains uncertain whether that promise will be enough to win over New Komeito. On Sunday, New Komeito quickly reacted to the plan. Secretary-General Yoshihisa Inoue said on NHK that even the limited exercise of the right to collective self-defense would equate to permitting Japan to use force overseas, which is banned by the Constitution. “It won’t obtain public support easily,” he said. “We have to deliberate the matter cautiously.” Inoue added that even the limited use of the right would change the way Japan has developed in the past several decades under the Constitution. Given the range of perceived threats facing Japan, including North Korea’s nuclear and missile programs, the government wants Japan to have the ability to exercise the right to collective self-defense, but only when national security would be greatly affected in the absence of a response. The government planned to make the semantic change through a Cabinet decision by June 22, which is when the current session of the Diet ends. But amid calls from within the ruling coalition for a careful debate on the matter, it may postpone changing it until the summer or later, according to government and coalition sources.

## Politics

### AT: Not Pushing/Won’t Pass/Won’t Solve (Lloyd 2-27)

#### It’ll pass and include fee shifting

Reuters 3-27 – “Senators seek to crackdown on patent trolls by making losers pay for frivolous lawsuits,” 3/27/14, http://www.rawstory.com/rs/2014/03/27/senators-seek-to-crackdown-on-patent-trolls-by-making-losers-pay-for-frivolous-lawsuits/

U.S. senators seeking to curb frivolous patent litigation plan to add a “loser pays” amendment into a bill that many believe has a good chance of becoming law, a leading lawmaker said on Thursday.

The change would require parties that lose lawsuits to cover winners’ legal bills, and is expected to deter prolonged, frivolous and vexatious litigation. Such measures have been pushed by big technology companies such as Google Inc and Apple Inc.

Patrick Leahy, chairman of the Senate Judiciary Committee, said in a committee meeting on Thursday that he and other senators planned to amend a bill introduced in November to “send a strong signal that patent trolls who pursue lawsuits with no reasonable basis should pay reasonable attorneys fees.”

Companies that buy up large numbers of patents to extract licensing fees or damages for infringement are often called patent trolls or patent assertion entities by critics.

The bill also would require patent holders to disclose ownership and allow manufacturers to step into lawsuits to protect customers accused of using an infringing device.

Some retailers, coffee shops and other low-tech companies that offer free wi-fi to customers say they have been threatened with lawsuits unless they paid licensing fees for using routers that allegedly infringe certain patents.

“I think we can do this (pass a bill). I do think we need time to do it,” Senator Dianne Feinstein, a California Democrat, said on Thursday. “I think we are united on the troll. The troll must go.”

She noted that companies of all sizes in California have been hurt by patent fights. But she and some senators also cautioned in a discussion that any legislation should ensure that companies whose legitimate innovations have been stolen can still sue for infringement.

The Senate measure is similar to a measure overwhelmingly passed by the U.S. House of Representatives on December 5.

The White House supports the legislation.

#### Reform will pass with fee-shifting---that’s the key to make it effective

Mike Dillon 3-21, attorney for Adobe, 3/21/14, “Part 3: Troll Wars: The Problem Can Only be Solved by Congress,” http://blogs.adobe.com/conversations/2014/03/part-3-troll-wars-the-problem-can-only-be-solved-by-congress.html

The real answer lies with Congress. There are currently a number of proposed bills in the Senate directed at patent reform and the patent troll problem. These contain different proposals that help address the issue; for example, requiring that patent troll lawsuits against customers be stayed, until the case against the company producing the allegedly infringing product is resolved. While helpful, however, most of these measures do not get at the root of the problem – the asymmetrical economics. The solution is to change the standard articulated in Section 285 to one in which the presumption is that legal fees and expenses will be awarded to the prevailing party.

Last December, the House passed what is referred to as the “Innovation Act” (H.R. 3309) that provides just this. It states: “The court shall award, to a prevailing party, reasonable fees and other expenses incurred by that party in connection with a civil action, unless the court finds that the position of the non-prevailing party was reasonably justified or that special circumstances make the award unjust.” Under this standard, Select Retrieval would have been required to reimburse Adobe the $200,000 we spent in defending our client unless it could show that the lawsuit was reasonably justified or that special circumstances existed that would have made this unjust. We doubt that it could have met this standard.

The Innovation Act is one of those rare pieces of proposed legislation these days that has true bipartisan backing in the House and from the President. Currently, Senator Leahy is considering incorporation of much of the Innovation Act – including a fee-shifting provision – in a proposed Senate bill. Let him know that you support this and passage of a Senate bill.

### AT: No Trolls Impact

#### Only legislative fixes solve trolls---there is an impact

Gary Shapiro 3-26, president and CEO of the Consumer Electronics Association, 3/26/14, “Senate should finish off the patent trolls,” http://thehill.com/blogs/congress-blog/technology/201701-senate-should-finish-off-the-patent-trolls

Essentially, this is an economic issue. Patent lawsuits are incredibly simple and inexpensive to bring, and extremely complex and costly to defend. Fighting a patent lawsuit can easily cost more than seven figures. No wonder so many victims are forced to “pay the toll to the troll” or simply shut their doors and go out of business. ¶ Fixing the problem requires changing the economic incentives and imposing a penalty on the trolls for their so-called “business model.” To truly free innovators and spark our economy, the system should follow the model of other countries and put the burden of frivolous lawsuits squarely on the shoulders of the trolls. ¶ That is why any Senate patent troll fix must include a fee shifting provision similar to the one found in the House bill. With this provision, if a troll brings a bogus lawsuit and loses, it could pay the winning party’s legal fees. Fee shifting gives defendants a chance to fight back against racketeers who capitalize on the outrageous expense of patent litigation to extort settlements. It does not disadvantage legitimate patent holders bringing actions to enforce their claims. Finally, it imposes a price tag on the patent trolls, which is important since the trolls overwhelmingly lose when their weak patents are actually litigated. ¶ A similarly important provision involves bonding – requiring patent trolls to put up some money at the outset of new litigation. Many trolls work through networks of dozens or even hundreds of thinly-capitalized shell companies. If the defendant manages to win a judgment against the troll, the troll simply declares bankruptcy and disappears, leaving the defendant empty-handed. ¶ A bonding provision would allow a court, if it suspects that a patent is weak, to require that plaintiff put aside money to cover the defendant's eventual legal fees. If the troll litigates and loses a bogus claim, it would be rightfully liable for the costs, and could no longer simply vanish into thin air. ¶ There is no silver bullet to the patent troll problem, but simple, common-sense reforms like these would go a long way to driving the trolls back under the bridge. ¶ Patent trolls are scaring off investors and killing innovation, putting a serious drag on our economy. This must end, for the sake of small businesses and the people they employ. The Senate must follow the president and Congress and enact solutions that drive at the heart of the problem, instead of tiptoeing around the edges. Let’s end the patent troll plague once and for all, and allow innovators to thrive.

### AT: Legislation Not Key

#### Fee-shifting and discovery limits are the keys to effectively stop trolling---that requires legislation

Eric Friedman 3-23, assistant professor and the director of the Legal Studies Program at Champlain College, 3/23/14, “ERIC FRIEDMAN: WE NEED PROTECTION FROM THE TROLLS,” http://vtdigger.org/2014/03/23/eric-friedman-need-protection-trolls/

The great news is that Congress recognizes the problem and there is a bipartisan effort to fix it. Congressman Peter Welch voted in favor of a bill in the House and we have seen several bills introduced in the Senate, including one by our own Sen. Patrick Leahy. As chair of the Senate Judiciary Committee, responsible for patent legislation, Sen. Leahy has committed to work together with the authors of other bills – Sens. Grassley, Schumer, Cornyn and Hatch — to move forward comprehensive legislation this spring.

There is no single solution to curbing patent troll abuses, and a number of measures have been proposed in Congress. The original America Invents Act created a very successful pilot program called the Covered Business Method (CBM) program for the financial industry. Run by the U.S. Patent Office, the program ensures that both sides have a fair review of questionable patents, which conserves resources of the courts. And when you are a startup in college, or your parents’ garage, this type of protection can mean all the difference. Many Vermont and national companies, large and small, would like to see the protections that financial services companies enjoy from bad patents expanded to Main Street.

There are also some important provisions that zero in on trolls’ abuse of litigation costs. Trolls are able to drive up costs by requesting swaths of “core” discovery at the onset of a lawsuit. One proposal would create limits for discovery, one of the most expensive parts of litigation, so trolls can’t use it as an intimidation tactic, driving victims into far “cheaper” settlement. Another major provision makes a patent troll liable for legal fees if they lose a spurious patent lawsuit. But it’s important to note that most patent trolls are shell companies with only one asset – the patent itself. Legislation needs to address the many litigation loopholes trolls manipulate to avoid funding litigation.

As many have noted, there is no silver bullet solution to the patent troll problem. But what is clear is the need for a comprehensive bill that can be signed into law this year. The Senate must move forward, building on the president’s State of the Union and demands from employers across the country (from Main Street businesses to startups), and construct a bill that will restore our patent system to the innovator-supportive system it was created to be.

#### Courts can’t solve patent reform

Charles Duan, dir. Public Knowledge’s Patent Reform Project, 2-24-2014, “Big Businesses Are Filing Frivolous Patent Lawsuits To Stifle Innovative Small Competitors,” Forbes, http://www.forbes.com/sites/realspin/2014/02/24/big-businesses-are-filing-frivolous-patent-lawsuits-to-stifle-innovative-small-competitors/

There are two ways to fix this problem. One is to use the courts to attack those patent assertors’ abusive practices. Indeed, several state attorneys general have started filing consumer protection lawsuits against patent assertion entities, and Cisco even tried to use a racketeering statute against Innovatio. The problem is that an esoteric rule of Constitutional law makes such attacks difficult to win—precisely for the fact that the courts are being used as the tools of abuse.

### AT: Doesn’t Solve Innovation

#### Their ev is just about the Senate bill – PC ensures it’s not piecemeal and the House reconciliation solves

Jessica Meyers, 3-5-2014, "Lawmakers: Patent reform will advance," POLITICO, http://www.politico.com/story/2014/03/patent-reform-104278.html

The Leahy-Lee bill is expected to serve as the Senate’s main patent vehicle, and currently does not include controversial proposals such as expanding a review program for “business method” patents. Leahy said Tuesday that he is “working closely with members of the Committee to incorporate their ideas into a bipartisan compromise.” Lee said he and Leahy want to find a way to incorporate an amendment from Sen. John Cornyn (R-Tex.) that would force the loser to pay the winner’s fees in patent lawsuits. This “could produce something that ends up being pretty close to what passed in the House,” he said.

### AT: Pounders

#### There’s a short window of bipartisan compromise that’s currently distinct from other issues---answers thumpers

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, 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**.

#### Reform’s almost over the finish line---continued push is key because fee shifting is controversial---it’s top of the docket---markup starts next week

The Hill 3-27, “Senate panel ‘close’ to patent deal,” 3/27/14, http://thehill.com/blogs/hillicon-valley/technology/201934-senate-panel-close-to-patent-deal

The Senate Judiciary Committee is getting closer to a deal on legislation to stop patent “trolls,” lawmakers said on Thursday.

“I know we’re not at the finish line yet, but I think we’re close,” Sen. John Cornyn (R-Texas) said at a committee meeting.

There has been “a lot of ink,” he added, “about divisions and the fact that we’re in an election year and nothing is going to get done.

“I think this could get done if we keep our nose to the grindstone.”

For months, the Judiciary panel has been considering legislation from Chairman Patrick Leahy (D-Vt.) and Sen. Mike Lee (R-Utah) to fight off the trolls, which critics claim gum up the works of innovation by filing meritless lawsuits claiming patent rights are being violated. The panel considered the bill, called the Patent Transparency and Improvements Act, on Thursday, but put off a markup until next week.

“We have to get a bill done,” said Sen. Charles Schumer (D-N.Y.). “It’s one of the building blocks for the future of a job-growing America.”

Staff members have been meeting to discuss legislation in recent weeks, and lawmakers hoped that a final deal would be reached soon.

Stumbling blocks for the panel so far have been over whether or not to include a “fee-shifting” provision to the bill that would force losing parties to pay for the winner’s legal fees, a measure critics worry could discourage legitimate patent holders and inventors from bringing worthwhile lawsuits, as well as an effort from Schumer to make it easier to challenge weak software patents.

Sen. Dianne Feinstein (D-Calif.) told the panel that she was “a bit between sixes and sevens” on the bill, because she had the responsibility of looking out for different types of patent rights holder.

“I agree we need to do something about this,” she said, “but at the same time there are conflicts that call out that we’ve got to look carefully and not kill the incentives to invest in the startup companies and the small companies that are so often the ones that take the risks.”

President Obama called for the Senate to take action on a patent bill in his State of the Union Address this year. The effort comes after the House overwhelmingly passed the Innovation Act, from Judiciary Committee Chairman Bob Goodlatte (R-Va.), in December.

### AT: Ideology Outweighs/No Spillover (Edwards 3)

#### Political scientists and experts agree PC spills over to influence votes

Beckman 10 Matthew N. Beckman, Professor of Political Science @ UC-Irvine, 2010, “Pushing the Agenda: Presidential Leadership in U.S. Lawmaking, 1953-2004,” pg. 50

However, many close observers of the presidential–congressional relationship have **long cited prevoting bargaining** across Pennsylvania Avenue **as being** substantively important. For example, discussing President Eisenhower’s legislative record in 1953, CQ staffers issued a caveat they have often repeated in the years since:¶ The President’s leadership often was tested beyond the glare spotlighting roll calls. . . . Negotiations off the floor and action in committee sometimes are **as important as the recorded votes**. (CQ Almanac 1953, 77)¶ Many a political scientist has agreed. Charles Jones (1994), for one, wrote, “However they are interpreted, roll call votes cannot be more than they are: one form of floor action on legislation. If analysts insist on scoring the president, concentrating on this stage of lawmaking can provide no more than a partial tally” (195). And Jon Bond and Richard Fleisher (1990) note that even if they ultimately are reflected in roll-call votes, “many important decisions in Congress are made in places other than floor votes and recorded by means other than roll calls . . . ” (68).

### AT: Hirsch

#### Reject Hirsch---he’s a staff writer with no qualifications---hasn’t conducted any studies

#### Hirsh agrees with the thesis of the politics DA even if he disagrees with the term “political capital”

Michael Hirsh, National Journal, 2/7/13, There’s No Such Thing as Political Capital, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207

Presidents are limited in what they can do by time and attention span, of course, just as much as they are by electoral balances in the House and Senate. But this, too, has nothing to do with political capital. Another well-worn meme of recent years was that Obama used up too much political capital passing the health care law in his first term. But the real problem was that the plan was unpopular, the economy was bad, and the president didn’t realize that the national mood (yes, again, the national mood) was at a tipping point against big-government intervention, with the tea-party revolt about to burst on the scene. For Americans in 2009 and 2010—haunted by too many rounds of layoffs, appalled by the Wall Street bailout, aghast at the amount of federal spending that never seemed to find its way into their pockets—government-imposed health care coverage was simply an intervention too far. So was the idea of another economic stimulus. Cue the tea party and what ensued: two titanic fights over the debt ceiling. Obama, like Bush, had settled on pushing an issue that was out of sync with the country’s mood.¶ Unlike Bush, Obama did ultimately get his idea passed. But the bigger political problem with health care reform was that it distracted the government’s attention from other issues that people cared about more urgently, such as the need to jump-start the economy and financial reform. Various congressional staffers told me at the time that their bosses didn’t really have the time to understand how the Wall Street lobby was riddling the Dodd-Frank financial-reform legislation with loopholes. Health care was sucking all the oxygen out of the room, the aides said.

### AT: Immigration Thumper

#### Immigration’s dead, no one’s pushing it, no one cares

Esther J. Cepeda 3-24, Herald Review columnist, 3/24/14, “Immigration reform dies another slow death,” http://herald-review.com/news/opinion/editorial/columnists/immigration-reform-dies-another-slow-death/article\_1aa9ab61-a01a-5011-8e3d-1d0cbf1a60fa.html

The San Jose Mercury News has ventured to say what everyone is taking as a foregone conclusion: "Immigration reform appears dead for 2014." I hate to admit it sure looks that way. ¶ Over the past 10 years, the so-called immigration debate -- a more descriptive term would be fact-challenged shouting match -- has evolved little and now seems to be devolving. ¶ Now the helplessness surrounding the issue is palpable and the tactics that immigration activists use to rally the troops have proved to have little effect. ¶ It's hard to remember, but in the winter of 2004 the big stories centered around President George W. Bush's principles for the immigration overhaul he worked so hard, in vain, to pass -- and whether the Sierra Club should advocate tough immigration restrictions in order to control environmental damage along the borders. Many people were chattering about the upcoming Sergio Arau movie, "A Day Without a Mexican," released in May of that year. ¶ Mobilization against the Bush proposal began in 2005 when Wisconsin Republican Rep. Jim Sensenbrenner sponsored a bill that would have made assisting unlawful immigrants illegal. It threatened to make criminals of the medical establishment, religious communities and legal immigrants who gave succor to the unlawfully present. ¶ Then came the big immigration reform marches of 2006 -- which upset many because crowds took to the streets waving the flags of foreign countries. Bush's reform effort failed the following summer. ¶ Subsequent marches gave way to a three-pronged effort by immigrant advocates: to make voting the tool for change; recruit coalitions of law enforcement, business and religious leaders to push for reform; and, as a last-ditch effort, try for legislation that would at least give immigrants who came to this country as young children a path to citizenship. You know how that turned out. ¶ And here we are again, beginning another loop that starts with a lame-duck president, upcoming election naysayers and a less-than-fired-up electorate. ¶ It's true: Immigration is not at the top of the agendas of America's policymakers. ¶ President Obama, flummoxed by intractable international troubles, a sluggish economy and problems with his health care program, was recently denounced as the deporter in chief by some of the same high-profile Latino advocates who practically promised Hispanic voters he'd pass reform in his first term. ¶ But now jobs, the economy and health care take precedence over immigration. And those who do think about immigration reform have mixed feelings. A recent Pew Research Center survey found that nearly three-quarters of Americans think that immigrants living here illegally should be allowed to stay if they meet certain requirements. At the same time, nearly half of respondents said the increased deportations under the Obama administration are a good thing.

### AT: Ukraine Aid Pounder

#### No controversy now and final vote on Tuesday---means our link comes first

ABC 3/28 "House to Vote Next Week on Aid to Ukraine" abcnews.go.com/Politics/

wireStory/congress-backs-bill-cash-strapped-ukraine-23094729

Aid to cash-strapped Ukraine and sanctions on Russia remain on track in the U.S. Congress, but it will take a few days longer before the legislation gets to President Barack Obama.

House leaders decided to vote Tuesday on the package, putting off an expected Friday vote. Congressional aides said the decision by the International Monetary Fund on Thursday to release billions of dollars to Ukraine lessened the urgency to act.

The delay ensures that House members will have a chance to go on record with a roll-call vote in backing the Senate version of the bill.

#### Plan will come first—there’s no urgency, and it won’t be controversial

National Journal 3/28 "Blame the Doc Fix! Congress Fails to Send Obama Ukraine Bill This Week" www.nationaljournal.com/defense/blame-the-doc-fix-congress-fails-to-send-obama-ukraine-bill-this-week-20140328

After much back and forth this week about how the House and Senate would finally send substantially similar legislation to aid Ukraine to the White House, the legislation is rolling over to next week, congressional aides said Friday.

The House and Senate have each passed essentially the same set of measures designed to provide loan guarantees to Ukraine while imposing sanctions against Russia meant to punish President Vladimir Putin. But they are not in the same package, which is necessary to send a bill to the president's desk.

Late Thursday the Senate approved by unanimous consent funding for Voice of America and similar European broadcasts into eastern Ukraine and Crimea geared toward ethnic Russian communities, which was included in the House legislation.

House lawmakers had been expected to approve the Senate Ukraine package Friday on voice vote, while the chamber is adjourned in a pro forma session. But after heartburn over a quick voice vote on the so-called doc-fix legislation Thursday, the chamber decided to instead put the remaining Ukraine legislation on its suspension calendar, **for quick debate and approval on Tuesday**.

The latest delay is only for a few days, but comes at the end of a long month of uncertainty as lawmakers' overwhelming disapproval of Russia's invasion and annexation of Crimea struggled to translate into a straightforward legislative path—despite widespread bipartisan agreement on the fundamental necessity of a U.S. response.

A House aide said **the urgency lessened after Ukraine received aid** from the International Monetary Fund this week, **allowing Congress** more **breathing room** to come up with a legislative deal.

#### 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.

### Link Debate

#### Loses on authority spillover to the rest of the agenda

Mike Lillis 13, writer @ The Hill, and Erik Wasson, “Fears of wounding Obama weigh heavily on Democrats ahead of vote,” The Hill, http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria.¶ Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling.¶ Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies.¶ But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights.¶ That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East.¶ “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said.¶ Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles.¶ "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."¶ “Clearly a loss is a loss,” a Senate Democratic aide noted.¶ Publicly, senior party members are seeking to put a firewall between a failed Syria vote — one that Democrats might have a hand in — and fiscal matters.¶ Rep. Gerry Connolly (D-Va.) said Friday that the fear of damaging Obama just eight months into his second term "probably is in the back of people's minds" heading into the Syria vote. But the issue has not percolated enough to influence the debate.¶ "So far it hasn't surfaced in people's thinking explicitly," Connolly told MSNBC. "People have pretty much been dealing with the merits of the case, not about the politics of it — on our side."¶ Moran said he doesn't think the political aftershocks would be the “deciding factor” in their Syria votes.¶ "I rather doubt that most of my colleagues are looking at the bigger picture," he said, "and even if they were, I don't think it would be the deciding factor."¶ Moran said the odds of passing the measure in the House looked slim as of Friday.¶ Other Democrats are arguing that the Syria vote should be viewed in isolation from other matters before Congress.¶ “I think it’s important each of these major issues be decided on its own — including this one,” Rep. Sander Levin (Mich.), senior Democrat on the House Ways and Means Committee, said Friday.¶ With Obama scheduled to address the country Tuesday night, several Democrats said the fate of the Syria vote could very well hinge on the president's ability to change public opinion.¶ “This is going to be a fireside chat, somewhat like it was in the Thirties," Levin said. "I wasn’t old enough to know, one has to remember how difficult it was for President Roosevelt in WWII."¶ Rep. Elijah Cummings (D-Md.), who remains undecided on the Syria question, agreed.¶ "It's very, very important that the case for involvement in Syria not only be made to the members of Congress and the Senate, but it must also be made to the American people," Cummings said Friday in the Capitol.¶ Still other Democrats, meanwhile, are arguing that the ripple effects of a Syria vote are simply too complicated to game out in advance. Some said the GOP has shown little indication it will advance Obama’s agenda even after his reelection, so a Syria failure would do little damage.¶ “There is a constant wounding [of Obama] going on with the Tea Party on budgets, appropriations and the debt ceiling,” said Rep. Sheila Jackson Lee (D-Texas). “I am going to reach out to my colleagues, Tea Party or not, and ask is this really the way you want to project the political process?”¶ Jackson Lee said using Syria to score political points would be “frolicking and frivolity” by the Tea Party.¶ Yet others see a more serious threat to the Democrats' legislative agenda if the Syria vote fails.¶ A Democratic leadership aide argued that Republicans — some of whom are already fundraising on their opposition to the proposed Syria strikes — would only be emboldened in their fight against Obama's agenda if Congress shoots down the use-of-force resolution.¶ "It's just going to make things harder to do in Congress, that's for sure," the aide said Friday.¶ But other aides said Obama could also double down on fighting the cuts from sequestration if he becomes desperate for a win after Syria, and the net effect could be positive.¶ A leading Republican strategist echoed that idea.¶ “Should the President lose the vote in Congress, he will be severely weakened in the eyes of public opinion, the media, the international crowd and the legislative branch," The Hill columnist John Feehery said Friday on his blog.