# 2AC

## Adventurism

#### Obama believes he is constrained by statute – won’t circumvent

Saikrishna **Prakash 12,** professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

#### No circumvention – review mechanism distributes power and insulates from pressure

**Siegel 12** - Senior Editor for UCLA Law Review, UCLA Law Review, April, 2012, 59 UCLA L. Rev. 1076Reconciling Caperton and Citizens United: When Campaign Spending Should Compel Recusal of Elected Officials, Samuel P. Siegel

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The influence of campaign expenditures is further lessened when an adjudicatory decision is made by a group of executive officials, even if each of those officials is directly accountable to the elected official. For example, the Committee on Foreign Investment in the United States - comprised of top-ranking officials from various executive departments n258 - is a body authorized by Congress to screen and investigate foreign-investment proposals "to determine the effects of the transaction on the national security of the United States," n259 negotiate mitigation agreements with foreign investors to minimize national security concerns, n260 and, should mitigation efforts fail, recommend to the president that she block the [\*1119] deal, n261 powers that are "like individual adjudications (or quasi-adjudications)." n262 Yet the very fact that a committee, rather than a single officer, exercises this adjudicatory power insulates its decisions from presidential control: "With a single agency, the President could credibly threaten to remove or otherwise pressure or discipline that agency's Secretary or Administrator. But there is strength in numbers." n263 Thus, even within a unitary executive, such a structure would likely temper the influence that campaign expenditures would have on the outcome of an adjudication.

## Leadership

#### Doesn’t turn the case – court stripping can’t reverse decisions

**Devins ’06** (Neal, Prof of Law and Prof of Government @ College of William & Mary,  May, 90 Minn. L. Rev. 1337 ln)

Fourth, jurisdiction-stripping measures do not nullify Supreme Court rulings (or, for that matter, any court ruling). Consequently, since proponents of court-stripping cannot count on state courts to back their policy agenda, these bills may not accomplish all that much. **131** Accordingly, interest groups may be better off pursuing their substantive agenda through funding bans, constitutional amendments, the enactment of related legislation, and the appointment of judges and Justices. Court-curbing measures, in contrast, seem more a rhetorical rallying call than a roadmap for change.

#### No backlash

Christina Wells. 2004. Missouri Law Review. 69 Mo. L. Rev. 903]

The judicial system is a powerful institution. In the context of resolving constitutional issues, many people, the Court included, believe that the judicial system has the final (and, thus, most powerful) say. 227 To be sure, executive officials, past and present, have asserted that national security matters are particularly within the executive branch's ambit, suggesting that they do not share this view of the Court's legitimacy. 228 Even so, executive officials rarely flout the Court's authority, instead preferring to enlist the Court's support (which the Court often willingly provides). Executive officials might prove more willing to deny the Court's authority if it engaged in more rigorous review of executive decisions regarding national security. However, popular support for the institution of judicial review would likely preclude outright executive defiance 229 and could eventually spur acceptance. This might be especially true if the Court's constitutional standards of review focused more explicitly on decision-making processes, thus avoiding the impression that the Court was substituting its judgment for the executive's.

## AT T

#### W/M – suspension clause is a restriction on WPA

Natelson 8/19/13 (After a quarter of a century as Professor of Law at the University of Montana, he recently retired to work full time at Colorado's Independence Institute.) “Where is the Power to Suspend Habeas Corpus?” http://blog.tenthamendmentcenter.com/2013/08/where-is-the-power-to-suspend-habeas-corpus/#.UmL\_E5TwIic

The Constitution’s Suspension Clause (Art. I, Section 9, cl. 2) limits when the writ of habeas corpus can be suspended. But the Constitution doesn’t seem to grant the federal government power to suspend the writ in the first place. Why not? And why limit a power never given?¶ In an Aug. 17 Wall Street Journal piece, constitutional law professor Nicholas Quinn Rosenkrantz infers that Congress has the sole suspension authority from the structure of the constitutional text. He writes:¶ “Since the Suspension Clause appears in Article I of the Constitution, which is predominately about the powers of Congress, there is a strong argument that only Congress can suspend the habeas writ.”¶ He concludes that when President Abraham Lincoln suspended the writ, he probably intruded on Congress’s prerogative, and thereby exceeded his constitutional authority. (Professor Rosenkrantz also gives Lincoln credit for trying to cure the constitutional defect.)¶ This is largely correct, but the organization of the text is not the sole reason. When read in legal and historical context, the language of the Constitutiondoes give the federal government authority to suspend the writ.¶ Here’s why: At the time of the Founding, suspending habeas was a recognized incident of war powers—repeatedly resorted to both by Parliament and by the Continental Congress. When the Constitution granted Congress authority to declare war, this grant carried with it the incidental power to suspend the writ. (The Necessary and Proper Clause confirmed this.) For more on that, see my book The Original Constitution: What It Actually Said and Meant, pp. 106-07.¶ The President’s power to serve as commander-in-chief also carried with it incidental authority to suspend the writ. (The Necessary and Proper Clause doesn’t apply to the President, but for other reasons the doctrine of incidental powers does.) However, the President’s suspension authority was limited to the actual theater of war. See p. 134.¶ Thus, Professor Rosenkranz was correct to conclude that Lincoln exceeded this authority by suspending the writ over large areas outside the war theater.

## Bond DA

### 2AC Insulation No Link

#### The Court decides each case on the facts, not based on political calculations.

Rosen 12 (Jeffrey, legal affairs editor of The New Republic, “Welcome to the Roberts Court: How the Chief Justice Used Obamacare to Reveal His True Identity,” June 29, http://www.newrepublic.com/blog/plank/104493/welcome-the-roberts-court-who-the-chief-justice-was-all-along#)

Of course, it didn’t all come down to judicial temperament. In the most divisive constitutional cases, the substance of legal arguments will always play a part. Arguments by liberal scholars who care about constitutional text and history, such as Neil Siegel of Duke Law School, were reflected in Chief Justice Roberts’s opinion about the taxing power. Justice Ginsburg’s defense of Congress’s power to pass the mandate under the commerce clause adopted New Textualists arguments by Jack Balkin of Yale Law School about how the framers of Article VI of the Virginia Plan during the Constitutional Convention would have wanted Congress to coordinate economic action in areas where the states were powerless to act on their own. The majority opinion also vindicated Solicitor General Don Verrilli’s decision to emphasize the breadth of Congress’s taxing power. But in the end, there are good arguments on both sides of any constitutional question, and justices have broad discretion to pick and choose among competing legal arguments based on a range of factors—including concerns about text, history, precedent, or institutional legitimacy. The fact that Roberts chose to place institutional legitimacy front and center is the mark of a successful Chief. As Roberts recognized, faith in the neutrality of the law and the impartiality of judges is a fragile thing. When I teach constitutional law, I begin by telling students that they can’t assume that it’s all politics. To do so misses everything that is constraining and meaningful and inspiring about the Constitution as a framework for government. There will be many polarizing decisions from the Roberts Court in the future, and John Roberts will be on the conservative side of many of them. But with his canny performance in the health care case, Roberts has given the country a memorable example of what it means to be a successful Chief Justice.

#### The judges are mocking the chemical convention - won't be a narrow ruling

Holland 13 - Reporter (http://www.huffingtonpost.com/2013/11/05/supreme-court-bond-case\_n\_4219658.html, Supreme Court Skeptical Of Chemical Weapons Law In Bond Case, November 5th 2013)

Carol Anne Bond, from Lansdale, Pa., is challenging her conviction, saying that the federal government's decision to charge her using a chemical weapons law was an unconstitutional reach into a state's power to handle what her lawyer calls a domestic dispute. Bond, unable to bear any children of her own, was excited when her best friend Myrlina Haynes announced her pregnancy. But later Bond found out her husband of more than 14 years, Clifford Bond, had impregnated Haynes. Bond, a laboratory technician, then stole the chemical 10-chloro-10H phenoxarsine from the company where she worked and purchased potassium dichromate on Amazon.com. Both can be deadly if ingested or exposed to the skin at sufficiently high levels. Bond spread the chemicals on Haynes' door handle and in the tailpipe of Haynes' car. Haynes, noticing the chemicals, called the local police, who didn't investigate to her satisfaction. She then found some on her mailbox, and called the United States Postal Service, which videotaped Bond going back and forth between Haynes' car and the mailbox with the chemicals. Postal inspectors then arrested her, and a federal grand jury indicted her on two counts of possessing and using a chemical weapon, applying a federal anti-terrorism law. The law was passed to fulfill the United States' international treaty obligations under the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on Their Destruction. Bond pleaded guilty and received six years in prison. A couple of justices were very critical of government prosecutors for choosing even to prosecute Bond using the chemical weapons law. "If you told ordinary people that you were going to prosecute Ms. Bond for using a chemical weapon, they would be flabbergasted," said Justice Samuel Alito. "It's so far outside of the ordinary meaning of the word." Justice Anthony Kennedy said it "seems unimaginable that you would bring this prosecution." Justices went down a long list of everyday items that could be prosecuted under the law since they could cause harm to humans or animals, including the use of kerosene, matches, performance-enhancing drugs used in sports, and even vinegar — which would poison goldfish if introduced to a fishbowl. Alito later drove home his point by saying under the law, even innocent ordinary actions could become questionable if the government's power is not limited. "Would it shock you if I told you that a few days ago my wife and I distributed toxic chemicals to a great number of children?" he said to laughter from the courtroom. "On Halloween we gave them chocolate bars. Chocolate is poison to dogs, so it's a toxic chemical under the chemical weapons" law. Solicitor General Donald Verrilli assured Alito he would probably get away with it, but warned justices that the issue was no joke and they shouldn't get involved in trying to decide what treaty terms mean.

## AT Politics

#### Talks are failing now---Obama will veto sanctions, or they’re inevitable because of US Treasury circumvention

Sara Rajabova 12-28, December 28th, 2013, "U.S. not likely to impose new sanctions on Iran: expert," www.azernews.az/analysis/62959.html

There is a struggle between the White House and Congress, for a while, on imposing new sanctions on Iran if it fails to conclude a nuclear agreement with world powers.¶ The U.S. Congress introduced legislation on new sanctions on Iran last week, which was sharply criticized by the Iranian officials.¶ However, the U.S. President Barack Obama urged the Congress to refrain from imposing new sanctions against Iran, saying these sanctions could scuttle the negotiations.¶ Obama warned he would veto a bill imposing new sanctions on Iran, because it could sink a final deal over Tehran's nuclear program. He said he would support tougher sanctions later if Iran violates the agreement.¶ The author of book "The Evolution of Macroeconomic Theory and Policy", professor of economics at U.S. Northeastern University, Kamran Dadkhah shared his views on this issue with AzerNews.¶ Dadkhah said currently, there is little chance of imposing new significant sanctions on Iran.¶ "Even the bill introduced in the U.S. Senate imposes sanctions if Iran violates the deal reached in Geneva or if it is expired with no long-term agreement. The proponents of the bill argue that this is a clear signal to Iran and will strengthen the hand of the president in negotiations. Iranians have said that such a move would be against the spirit of negotiations and could cause them to abandon the process altogether. Indeed, should this bill pass, President Rohani's team of negotiators would be under pressure from domestic opponents of negotiations to withdraw; hence President Obama has threatened to veto the bill. But the U.S. Treasury has a freehand to strengthen financial sanctions," Dadkhah said.¶ He noted that the American oil companies are reluctant to contact Iran and other oil companies would wait for a strong signal before getting serious.¶ "In the meantime, the Pentagon is investigating Anham FZCO, a large military supplier, for moving supplies through Iran to Afghanistan. In sum, the new sanctions will not be imposed till it is obvious that no long term accord would be reached, but in the meantime existing crucial sanctions will be enforced vigorously," Dadkhah said.¶ He noted that such sanctions would give excuse to the hardliners in Iran to accuse the West of insincerity and the Rohani government of capitulation. Dadkhah said even without new sanctions, the negotiations aren't progressing that much, and the failure of the two rounds of technical negotiations supports the idea.

#### Laundry list of income and healthcare fights pound the agenda

Jules Witcover 1/1, Chicago Tribune, "After a fruitless year in Washington, New Year's blues ahead", 2014, www.chicagotribune.com/news/columnists/sns-201312311630--tms--poltodayctnyq-a20140101-20140101,0,2474617.column

Dampening down administration pleasure that a budget compromise was reached through the rare bipartisan teamwork of Republican Paul Ryan in the House and Democrat Patty Murray in the Senate, the opposition party has renewed and sustained its pushback against Obamacare.¶ The White House had hoped to pivot from this exhausting fight to such objectives as immigration reform and another try at stiffer gun controls. Instead, Obama must count on a more robust public response to the health care program, not at all guaranteed, to clear the political playing field.¶ Also, while trying to fire up lower-income support with a proposal to boost the federal minimum wage, the White House must attempt to extend long-term unemployment benefits to more than a million hard-strapped jobless beneficiaries who now face a cutoff.¶ Prominent economists warn that if Congress fails to extend those benefits, it will only hamper the still-struggling recovery. Nevertheless, the political universe seems mired again in the old ideological class warfare: the Republicans as beneficent creators of largess against the Democrats as extravagant redistributors of it to a nation of moochers.¶ It's a sad rerun of the final weeks of the 2012 presidential campaign, in which Mitt Romney sealed his doom with his witless declaration that the votes of "47 percent of Americans" were beyond his reach. The theme that they had been bought off by Democratic handouts through various social safety programs echoes again in the current debate.¶ Added to the old GOP insistence that Big Brother government has no right to require Americans to buy health insurance they don't want, more persuasive argument has blossomed that bureaucratic incompetence botched the heart of the Obama's domestic agenda.¶ Visions of a businessman's efficiency dance in the imaginations of the Republican faithful, if only one of their own were in charge. Yet, had they won the last election, Obamacare probably would be dead and buried by now, Romney having disavowed the law that was based, ironically, on his own health-care reform as Massachusetts governor.¶ In the midst of all this second-term gloom, the Democratic administration has sought to find political refuge and new energy by focusing on income inequality. The phenomenon is seen glaringly in the booming stock market and skyrocketing profits for big business, which is thriving on higher productivity from fewer workers, and its reluctance to hire more.¶ But the Democrats' effort to address this key issue also facilitates the old Republican ideological bromide of "socialistic" redistribution of wealth, which would make every conscientious attempt to heat up the economy sound like heated-up Karl Marx. Which apparently will be fine to the likes of the rabble-rousing Texas Sen. Ted Cruz and his merry tea party band, who are more than willing to fire up "class warfare" rhetoric.¶ In all, the outlook for Obama's fifth presidential year is neither bright nor hopeful for any positive resolution of current divisions, at least until the midterm congressional elections in November. Then, either one-party control will return on Capitol Hill, one way or the other, or divided government will likely slog on for the final two years of an Obama presidency born more of hope than of achievable aspirations.

#### Court shields and prevent backlash—star this card

Stimson 9 [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

#### The plan pacifies the base and gets their support

Goldsmith and Wittes 9, Prof at Law School ex-assistant attorney general and senior fellow at Brookings [12/22/09, Jack Goldsmith teaches at Harvard Law School and served as an assistant attorney general in the Bush administration. Benjamin Wittes, a former Post editorial writer, is a senior fellow at the Brookings Institution and the editor of "Legislating the War on Terror: An Agenda for Reform." Both are members of the Hoover Institution's Task Force on National Security and Law, “A role judges should not have to play”, http://articles.washingtonpost.com/2009-12-22/opinions/36890191\_1\_detention-policy-judges-judicial-system]

Congress has avoided these issues for a number of reasons. Initially, it was a combination of the Bush administration's failure to seek congressional help and lawmakers' natural inclination to avoid taking responsibility for hard decisions for which they might later be held accountable. More recently, the Obama administration has been loath to spend any more political capital than necessary in cleaning up what it views as its predecessor's messes. Instead of dealing with detention policy proactively, it has largely adopted the Bush approach of grinding out detention policy in the courts. Ironically, the president's political base seems to prefer his adoption of the Bush approach -- an approach liberals previously decried -- to any effort to write detention rules and limitations into statutory law.

#### Plan’s bipartisan---previous proposals prove support

Nick Sibilla 12, "Bipartisan effort to ban indefinite detention, amend the NDAA", May 18, www.constitutioncampaign.org/blog/?p=7479#.UjHhXz8uhuk

Democrats and Tea Party Republicans are advocating a new proposal to ban indefinite detention on American soil. After President Obama signed the National Defense Authorization Act (NDAA) last year, anyone accused of being a terrorist, committing any “belligerent act” or even providing “material support,” can now be detained indefinitely by the military without a trial. This includes American citizens.¶ Fortunately, a bipartisan coalition is working to stop the NDAA. Congressmen Adam Smith (D-WA), a Ranking Member of the House Armed Services Committee, and Justin Amash (R-MI), who Reason magazine called “the next Ron Paul,” have sponsored an amendment to the latest defense authorization bill, currently on the House floor.¶ If adopted, the Smith-Amash Amendment would make three significant changes to the NDAA. First, it would amend Section 1021 (which authorizes indefinite detention) to ensure that those detained will not be subject to military commissions, but civilian courts established under Article III of the Constitution. As Congressman Smith put it, this would “restore due process rights.”¶ Second, the Smith-Amash Amendment would ban “transfer to military custody:”¶ No person detained, captured, or arrested in the United States, or a territory or possession of the United States, may be transferred to the custody of the Armed Forces for detention…¶ Finally, their amendment would repeal Section 1022 of the NDAA, which mandates military custody for those accused of foreign terrorism.¶ Both Smith and Amash have criticized the NDAA. Amash blasted the NDAA as “one of the most anti-liberty pieces of legislation of our lifetime.” In a letter urging his Republican colleagues to support the amendment, Amash writes:¶ A free country is defined by the rule of law, not the government’s whim. Americans demand that we protect their right to a charge and trial.¶ Meanwhile, in an interview with The Hill, Smith was concerned about the potential abuses of power:¶ It is very, very rare to give that amount of power to the president [and] take away any person’s fundamental freedom and lock them up without the normal due process of law…Leaving this on the books is a dangerous threat to civil liberties.¶ The Smith-Amash Amendment is expected to be voted on later this week. So far, it has 60 co-sponsors in the House. Meanwhile, Senators Mark Udall (D-CO) and Patrick Leahy (D-VT) have introduced a similar bill in the Senate.

#### Political capital’s irrelevant and winners win—

Hirsch 2-7-13. Michael Hirsh “There’s No Such Thing as Political Capital.” chief correspondent for National Journal. He also contributes to 2012 Decoded. Hirsh previously served as the senior editor and national economics correspondent for Newsweek, based in its Washington bureau. [http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207]

The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

## AT Con Ammend

### 2AC Theory

#### Constitutional amendments are a voting issue—never happens and no advocate prove its not a germaine or legitimate opportunity cost

Baker 10

[Director of the Con Law Center at Drake, 10 Widener J. Pub. L. 1]

There is a reason that there have been only 27 amendments over more than 200 years: Constitutional amendments must have the sustained and one-sided support of great majorities in the Congress and across the states. Very few issues ever garner such importance and support.

#### The CP doesn’t do anything

Strauss ‘1 Law Prof at Chicago, 01 114 Harv. L. Rev. 1457

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

# 1AR

#### Indefinite Detention means detaining an arrested person without a trial

US LEGAL 13 [US Legal Forms Inc., Indefinite Detention Law and Legal Definition http://definitions.uslegal.com/i/indefinite-detention/]

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seems to violate many national and international laws. It also violates human rights laws. Indefinite detention is seen mainly in cases of suspected terrorists who are indefinitely detained. The Law Lords, Britain’s highest court, have held that the indefinite detention of foreign terrorism suspects is incompatible with the Human Rights Act and the European Convention on Human Rights. [Human Rights Watch] In the U.S., indefinite detention has been used to hold terror suspects. The case relating to the indefinite detention of Jose Padilla is one of the most highly publicized cases of indefinite detention in the U.S. In the U.S., indefinite detention is a highly controversial matter and is currently under review. Organizations such as International Red Cross and FIDH are of the opinion that U.S. detention of prisoners at Guantanamo Bay is not based on legal grounds. However, the American Civil Liberties Union is of the view that indefinite detention is permitted pursuant to section 412 of the USA Patriot Act.