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1. Counter-interp we prohibit suspending habeas rights Guiora 8 ( MILITARY COMMISSIONS AND NATIONAL SECURITY COURTS AFTER GUANTÁNAMO Amos N. Guiora\* Amos N. Guiora is a Professor of Law at the S.J. Quinney College of Law at the University of Utah. Professor Guiora served in the Judge Advocate General Corps of the Israel Defense Forces where he held senior command positions related to the legal and policy aspects of operational counter terror-ism. NU Law Colloquoy 08)

Professor McNeal begins his essay by citing the Supreme Court’s deci-sion in *Boumediene v. Bush*6 holding that detainees have certain constitu-tional rights—specifically, the right to habeas corpus.7 Professor McNeal cites *Boumediene* as an important case to consider for those seeking to reform military commissions.8 As the Supreme Court has acknowledged that detainees have certain constitutional rights, it is critical to define the term ―detainee.‖ Precisely because the individuals I refer to as ―post 9/11 detainees‖ are neither criminals under the traditional criminal law paradigm nor prisoners of war according to international law, we must establish a legal definition of ―detainee‖ so that we may determine the rights and privileges to accord them. While various terms have been used to label detainees including enemy combatant, illegal belligerent, and enemy belligerent, all fail to de-fine the rights such individuals should be granted. Admittedly, this process has been made more difficult by a continued inability—perhaps unwilling-ness—to define the conflict in a consistent manner. Is this a war? Is this a ―war on terror?‖ Is this police action?

### Politics

#### 1.Economic collapse is inevitable for several reasons- expert predictions

Investment bank over-loaning, billionaires dumping stocks, global recessions spillover now

**Shjarback 9-13**-13 [Jeff, M.B.A. from Pfeiffer University, Award winning internet marketing consultant specializing in SEO Search Engine Optimization, “Is A Financial Collapse Imminent For U.S. Economy?” http://wallstreetsectorselector.com/2013/09/is-a-financial-collapse-imminent-for-u-s-economy/]

The American government and economy is in rather dire circumstances due to an overwhelming series of decisions which are shaping our entire country for the next few decades and likely beyond. As we take a look at the overall track record of our economy, we find that a financial collapse is more than just likely – it may be highly imminent. But why? Why is our government, as massive and established as it is, finding itself in a downward trajectory with little to stop it? Since 1776, we have continuously built up efforts towards being a global powerhouse, and circa-1944 around the close of World War II, we arguably achieved it. Reinstating Israel. Destroying the Nazis. Rebuilding Japan. The United States became the heartfelt center of our entire world. However, politics continued and finances became less stable, causing inflation to rise to astounding rates. Our financial collapse could be quite imminent and three core trends lead us to this theory. Billionaires Dumping Their Stocks A financial collapse would undoubtedly consist of billionaires unloading their stocks in droves. Unfortunately, this is already occurring. On the surface, the stock market (NYSEARCA:DIA) is surfacing from an ugly few years. Numbers are steadily rising, and the stability in the stock market is starting to be set once again. But this trickle-down effect applies in the market. Arguably, the greatest stock investor is Warren Buffet. For better or worse, millions follow his steps because he is so unbelievably successful, and billionaire stock investors follow his investment moves. So when Warren Buffet sells $19 million worth of stock in Johnson & Johnson (NYSE:JNJ) and 21% of his overall stock in consumer spending, others follow suit with the same general strategies. Billionaire, John Paulson, also unloaded 14 million shares in JPMorgan Chase (NYSE:JPM), as reported at Money News. The World is Suffering Financially The overall predictions state that the stock market may witness a 90% overall collapse. Though many are aghast at the numbers, those who predicted this have been notoriously accurate in the past. Robert Weidemer, PHD is open about this prediction. His acclaimed team predicted the sub prime mortgage crisis and consumer spending collapse a few years earlier. When the financial system collapses, other countries will follow suit with their own level of disaster. Unfortunately, again, this is already occurring at alarming rates. Greece has been essentially bankrupt for close to five years running. According to Simon Black of the Economic Collapse Blog, the situation is dire in the country. ‘There are roughly 11 million people in this country. 3.4 million of them are employed, of which roughly one third work for the government.’ These unemployment rates are shocking. Italy is no better off. The country’s unemployment rate is currently 12.2%, the highest in 35 years. Furthermore, Italy witnesses 134 retail closings each and every day. Doing the math, one can calculate close to 1,000 employees are becoming not-so-much employed every single day. Investment Bank Over-Loaning and Over-Spending This specific situation is astonishingly convoluted, and would take a series of books and essays and documentaries to even scratch the surface. But in its purest form, the investment banking companies are simply spending money they do not have. Due to excessive loan expenditures in the last decade plus, banks found they were not earning the income back. This, of course, caused the massive mortgage crisis that almost ended the country financially, however, the banks are not out of the situation yet. They still spend more than what is being brought in, and their overall closing of the doors for loans is destroying small business. Furthermore, Jim Willie, popular economist, is reporting that Deutsche Bank is on the brink of a full collapse. Considering their magnitude in the financial sphere, this could send momentous shockwaves throughout the economy. There is a light at the end of the tunnel, if we take serious steps immediately to rectify the situation. However, with each passing day, the light closes and we are further left in the dark emptiness of financial ruin if we continue on this path.

#### No impact to econ collapse; recession proves.

Thomas P.M. Barnett, senior managing director of Enterra Solutions LLC, “The New Rules: Security Remains Stable Amid Financial Crisis,” 8/25/2009, http://www.aprodex.com/the-new-rules--security-remains-stable-amid-financial-crisis-398-bl.aspx

When the global financial crisis struck roughly a year ago, the blogosphere was ablaze with all sorts of scary predictions of, and commentary regarding, ensuing conflict and wars -- a rerun of the Great Depression leading to world war, as it were. Now, as global economic news brightens and recovery -- surprisingly led by China and emerging markets -- is the talk of the day, it's interesting to look back over the past year and realize how globalization's first truly worldwide recession has had virtually no impact whatsoever on the international security landscape. None of the more than three-dozen ongoing conflicts listed by GlobalSecurity.org can be clearly attributed to the global recession. Indeed, the last new entry (civil conflict between Hamas and Fatah in the Palestine) predates the economic crisis by a year, and three quarters of the chronic struggles began in the last century. Ditto for the 15 low-intensity conflicts listed by Wikipedia (where the latest entry is the Mexican "drug war" begun in 2006). Certainly, the Russia-Georgia conflict last August was specifically timed, but by most accounts the opening ceremony of the Beijing Olympics was the most important external trigger (followed by the U.S. presidential campaign) for that sudden spike in an almost two-decade long struggle between Georgia and its two breakaway regions. Looking over the various databases, then, we see a most familiar picture: the usual mix of civil conflicts, insurgencies, and liberation-themed terrorist movements. Besides the recent Russia-Georgia dust-up, the only two potential state-on-state wars (North v. South Korea, Israel v. Iran) are both tied to one side acquiring a nuclear weapon capacity -- a process wholly unrelated to global economic trends. And with the United States effectively tied down by its two ongoing major interventions (Iraq and Afghanistan-bleeding-into-Pakistan), our involvement elsewhere around the planet has been quite modest, both leading up to and following the onset of the economic crisis: e.g., the usual counter-drug efforts in Latin America, the usual military exercises with allies across Asia, mixing it up with pirates off Somalia's coast). Everywhere else we find serious instability we pretty much let it burn, occasionally pressing the Chinese -- unsuccessfully -- to do something. Our new Africa Command, for example, hasn't led us to anything beyond advising and training local forces. So, to sum up: \* No significant uptick in mass violence or unrest (remember the smattering of urban riots last year in places like Greece, Moldova and Latvia?); \* The usual frequency maintained in civil conflicts (in all the usual places); \* Not a single state-on-state war directly caused (and no great-power-on-great-power crises even triggered); \* No great improvement or disruption in great-power cooperation regarding the emergence of new nuclear powers (despite all that diplomacy); \* A modest scaling back of international policing efforts by the system's acknowledged Leviathan power (inevitable given the strain); and \* No serious efforts by any rising great power to challenge that Leviathan or supplant its role. (The worst things we can cite are Moscow's occasional deployments of strategic assets to the Western hemisphere and its weak efforts to outbid the United States on basing rights in Kyrgyzstan; but the best include China and India stepping up their aid and investments in Afghanistan and Iraq.) Sure, we've finally seen global defense spending surpass the previous world record set in the late 1980s, but even that's likely to wane given the stress on public budgets created by all this unprecedented "stimulus" spending. If anything, the friendly cooperation on such stimulus packaging was the most notable great-power dynamic caused by the crisis. Can we say that the world has suffered a distinct shift to political radicalism as a result of the economic crisis? Indeed, no. The world's major economies remain governed by center-left or center-right political factions that remain decidedly friendly to both markets and trade. In the short run, there were attempts across the board to insulate economies from immediate damage (in effect, as much protectionism as allowed under current trade rules), but there was no great slide into "trade wars.ffff" Instead, the World Trade Organization is functioning as it was designed to function, and regional efforts toward free-trade agreements have not slowed. Can we say Islamic radicalism was inflamed by the economic crisis? If it was, that shift was clearly overwhelmed by the Islamic world's growing disenchantment with the brutality displayed by violent extremist groups such as al-Qaida. And looking forward, austere economic times are just as likely to breed connecting evangelicalism as disconnecting fundamentalism. At the end of the day, the economic crisis did not prove to be sufficiently frightening to provoke major economies into establishing global regulatory schemes, even as it has sparked a spirited -- and much needed, as I argued last week -- discussion of the continuing viability of the U.S. dollar as the world's primary reserve currency. Naturally, plenty of experts and pundits have attached great significance to this debate, seeing in it the beginning of "economic warfare" and the like between "fading" America and "rising" China. And yet, in a world of globally integrated production chains and interconnected financial markets, such "diverging interests" hardly constitute signposts for wars up ahead. Frankly, I don't welcome a world in which America's fiscal profligacy goes undisciplined, so bring it on -- please! Add it all up and it's fair to say that this global financial crisis has proven the great resilience of America's post-World War II international liberal trade order.

#### Courts shield

Whittington 5 Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592

There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Recently released NSA decision thumps all links

Gallagher 9/17 (Ryan, slate magazine. How the Surveillance Court Ruled the NSA's Domestic Snooping Was Legal http://www.slate.com/blogs/future\_tense/2013/09/17/claire\_eagan\_fisc\_how\_surveillance\_court\_ruled\_the\_nsa\_s\_domestic\_snooping.html)

The secret court that oversees NSA surveillance has declassified documents that reveal for the first time the legal justification for the spy agency’s daily collection of virtually all Americans’ phone records. On Tuesday, a previously top-secret opinion and order signed off by Foreign Intelligence Surveillance Court Judge Claire Eagan was [published](http://www.uscourts.gov/uscourts/courts/fisc/br13-09-primary-order.pdf). The opinion, dated Aug. 29, shows how the court decided to deem the NSA’s mass collection of domestic phone records constitutional and in line with section 215 of the Patriot Act, which allows the government to secretly grab so-called “business records.” The NSA’s operation of a vast database storing metadata on millions of calls made by Americans daily was [first revealed](http://www.slate.com/blogs/future_tense/2013/06/06/nsa_verizon_phone_records_national_security_agency_order_collects_metadata.html) by the Guardian in June, based on documents leaked by former NSA contractor Edward Snowden. The release of the court opinion and order on the phone records program comes after a declassification review of the secret legal files was conducted, primarily due to the huge backlash prompted by Snowden’s leaks. The opinion shows that the court is relying on a Supreme Court case from 1979 to conclude that the bulk collection of phone records is not a violation of the Fourth Amendment, which protects against unreasonable searches and seizures. In [Smith v. Maryland](http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=442&invol=735), at issue was the warrantless monitoring of a robbery suspect’s phone calls. The Supreme Court judges in Smith found that the monitoring was permissible because “a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties” and that they doubted “people in general entertain any actual expectation of privacy in the numbers they dial.” Grounded in the same logic, the newly released FISC opinion states: In sum, because the application at issue here concerns only the production of call detail records or "telephone metadata" belonging to a telephone company, and not the contents of communications, Smith v. Maryland compels the conclusion that there is no Fourth Amendment impediment to the collection. Furthermore, for the reasons stated in [REDACTED] and discussed above, this Court finds that that the volume of records being acquired does not alter this conclusion. Aside from the bizarre redaction here, which appears to have censored a crucial detail for inexplicable reasons, the reliance on Smith v. Maryland is contentious. The 1979 case concerned the monitoring of a single individual, already a criminal suspect, for a period of only a few days. The NSA’s metadata program involves the daily mass collection of billions of phone records from millions of Americans not suspected of committing any crime. These records can be mined using sophisticated software that draws relationships between people, and they can be used to conduct retrospective surveillance of people dating back several years. This raises constitutional questions that were simply not a consideration in the Maryland case more than three decades ago. Notably, the opinion also indicates that no company that was ordered to turn over the bulk metadata has challenged its legality in the court, despite having the ability to do so. The publication of the legal documents will add fuel to the already simmering debate about the phone records program, which several lawmakers have blasted since it was revealed in June. According to the ACLU, there are at least 19 NSA-related bills are pending in Congress, with some of them aimed at reforming and effectively shutting down the phone records database in its current form. Last week, [separately released documents](http://www.slate.com/blogs/future_tense/2013/09/11/dni_surveillance_documents_show_how_badly_nsa_managed_phone_database.html) about the phone records program showed how the NSA had unlawfully violated court rules governing the use of the database, while providing the court false information about how it was being operated for a period of almost three years.

#### PC theory is wrong

Hirsh 13 – National Journal chief correspondent, citing various political scientists

[Michael, former Newsweek senior correspondent, "There’s No Such Thing as Political Capital," National Journal, 2-9-13, www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207, accessed 2-8-13, mss]

The idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get itwrong. On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of **this** talk **will have** no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The **political tectonics** have **shift**ed **dramatically** in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. Bobby Jindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. 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 [they]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**.” ALL THE WAY WITH LBJ Sometimes, a clever practitioner of power can get more done just because [they’re]he’s aggressive and knows the hallways of Congress well. Texas A&M’s Edwards is right to say that the outcome of the 1964 election, Lyndon Johnson’s landslide victory over Barry Goldwater, was one of the few that conveyed a mandate. But one of the main reasons for that mandate (in addition to Goldwater’s ineptitude as a candidate) was President Johnson’s masterful use of power leading up to that election, and his ability to get far more done than anyone thought possible, given his limited political capital. In the newest volume in his exhaustive study of LBJ, The Passage of Power, historian Robert Caro recalls Johnson getting cautionary advice after he assumed the presidency from the assassinated John F. Kennedy in late 1963. Don’t focus on a long-stalled civil-rights bill, advisers told him, because it might jeopardize Southern lawmakers’ support for a tax cut and appropriations bills the president needed. “One of the wise, practical people around the table [said that] the presidency has only a certain amount of coinage to expend, and you oughtn’t to expend it on this,” Caro writes. (Coinage, of course, was what political capital was called in those days.) Johnson replied, “Well, what the hell’s the presidency for?” Johnson didn’t worry about coinage, and he got the Civil Rights Act enacted, along with much else: Medicare, a tax cut, antipoverty programs. He appeared to understand not just the ways of Congress but also the way to maximize the momentum he possessed in the lingering mood of national grief and determination by picking the right issues, as Caro records. “Momentum is not a mysterious mistress,” LBJ said. “It is a controllable fact of political life.” Johnson had the skill and wherewithal to realize that, at that moment of history, he could have unlimited coinage if he handled the politics right. He did. (At least until Vietnam, that is.)

#### The Tea Party won’t compromise –

Some people just like to watch the world burn

Surowiecki 10/1/13 (James, The New Yorker, "After The Shutdown: The Debt Ceiling")

What the Republican hard-liners have decided instead is that even though they don’t have the necessary votes they should still get their way, and, in order to accomplish that, they’re going to hold the economic well-being of the country hostage. This is a radical and far-reaching demand, and acceding to it would in effect mean that controlling one house of Congress would be all you need to set policy. (Had congressional Democrats followed the Republican playbook in the nineteen-eighties, when they controlled the House but not the Senate, they would have demanded a repeal of the Reagan tax cuts in exchange for voting to raise the debt ceiling.)¶ There’s no obvious place where this process would stop, since there’s no distinct connection between Obamacare and the national debt. (At least the 2011 showdown was over fiscal issues.) Any law that hard-liners wanted to repeal (or pass), from abortion to gun control, could be pegged to a debt-ceiling vote. The ability to push through legislation would no longer be about which party was better at winning elections; it would be about which party was more willing to take the government, and with it the economy, over the cliff. Indeed, if the Republicans were to win this standoff, the result would be far more general uncertainty, since every debt-ceiling increase would become an occasion for rewriting laws.¶ This is why the Republican approach to the debt ceiling is not, as people like Zeke J. Miller, of Time, [have argued](http://swampland.time.com/2013/09/27/government-shutdown-wont-change-debt-ceiling-d-day/), the kind of hostage-taking that’s a “standard way of doing business in Washington.” This is really an attempt to remake the legislative process itself, and to do so by threatening to do something—default—that no one, including the people making the threat, believes to be in the best interest of the United States. We can’t be sure of exactly what would happen if the U.S. stopped paying its bills, but at the very least it would lead to havoc in the bond market and the financial system (which depends on U.S. Treasuries as risk-free collateral), higher interest rates, and an immediate hit to economic growth. It’s not a road that anyone should want to go down.

### CP

#### SCOTUS would have to review the CP- either the CP links to the net-benefit, or the CP is struck down and doesn’t solve- durable fiat only applies to the agency taking action

Howell 5 (William G. Howell, Associate Prof Gov Dep @ Harvard 2005 (Unilateral Powers: A Brief¶ Overview; Presidential Studies Quarterly, Vol. 35, Issue: 3, Pg 417)

Plainly, presidents cannot institute every aspect of their policy agenda by decree. The checks and balances that define our system of governance are alive, though not always well, when presidents contemplate unilateral action. Should the president proceed without statutory or constitutional authority, the courts stand to overturn his actions, just as Congress can amend them, cut funding for their operations, or eliminate them outright. (4) Even in those moments when presidential power reaches its zenith--namely, during times of national crisis--judicial and congressional prerogatives may be asserted (Howell and Pevehouse 2005, forthcoming; Kriner, forthcoming; Lindsay 1995, 2003; and see Fisher's contribution to this volume). In 2004, as the nation braced itself for another domestic terrorist attack and images of car bombings and suicide missions filled the evening news, the courts extended new protections to citizens deemed enemy combatants by the president, (5) as well as noncitizens held in protective custody abroad. (6) And while Congress, as of this writing, continues to authorize as much funding for the Iraq occupation as Bush requests, members have imposed increasing numbers of restrictions on how the money is to be spent.

#### Self-restraint doesn’t provide clarity or certainty for future due process decisions- this risks future liberty violations

Policy Mic ’12 [Henry Zheng. <http://www.policymic.com/articles/14856/ndaa-terrorism-law-obama-and-his-unchecked-power-grab> ETB]

Despite his promises to end the war, President Obama has continued to expand his presidential powers in the War on Terror, which are legal executive privileges that began in the Bush administration. The key difference is that Obama's authority seems to be more ambiguous, more powerful, and less defined than in the previous administrations. When Obama was accused of violating the Constitution with the passage of his Affordable Care Act, at least the Supreme Court could justify the legitimacy of the legislation by invoking the Constitution's Taxing and Spending Clause. However, with the passage of the National Defense Authorization Act for Fiscal Year 2012, he is vested with extrajudicial powers that at times contradict the very principles codified by the Founding Fathers.¶ One such power is granted under the [NDAA's section 1021 and 1022](http://tenthamendmentcenter.com/2012/02/06/ndaa-sections-1021-and-1022-scary-potential/), which contain the provisions that allow the president to indefinitely detain a terrorist suspect without a trial. In an [interview with John Cusack on Truthout.com](http://truth-out.org/opinion/item/11264-john-cusack-and-jonathan-turley-on-obamas-constitution), the George Washington University law professor Jonathan Turley observes that this effectively undermines the due process guaranteed by the Fifth Amendment of the Constitution that could be detrimental to our civil liberties if the power is used irresponsibly.¶ This violation of the due process of law is viewed by Turley as a dangerous concession by U.S. citizens that could lead to greater encroachment on our liberties in the future. According to Turley, it is "meaningless" that Obama has pledged to not use his powers against U.S. citizens because he still possesses the legal authority to do so. It is uncertain whether future administrations will be so "disciplined" in its refrain from indefinitely detaining or killing U.S. citizens (on home soil) who speak out against the government, tasks that can be legally accomplished by labeling them terrorists and subsequently circumventing the mechanisms of the judicial process guaranteed by the Constitution.¶ In response to such concerns, President Obama issued a [policy directive](http://www.justice.gov/opa/documents/ppd-14.pdf) in February that narrows the coverage of indefinite detention to non-U.S. citizens and does not allow those under his administration to detain citizens or legal permanent residents captured on U.S. soil.¶ However, legal columnist Joanne Mariner still finds the issue unresolved because the directive could just as easily be rescinded by future presidents. She suggests that American citizens on U.S. soil have not ensured that their constitutional liberties are protected as long as section 1021 and section 1022 of the NDAA remain as they are now because we are subjected to the executive branch's "discretion" unless there are changes to the statute itself. Currently, a bill called the [Due Process Guarantee Act](http://www.opencongress.org/bill/112-s2003/) that would make it illegal to detain a citizen or lawful permanent resident has been in review by the Senate Judiciary Committee since last year.

#### More flex can’t solve ----

COHEN 2013 - fellow of the Century Foundation, foreign policy columnist for the Guardian (Michael Cohen, “Contrary to popular belief, President Obama doesn't have a magic wand”, May 8, http://www.theguardian.com/commentisfree/2013/may/08/obama-not-lame-duck-gop-obstructs-everything)

Yet, the belief that the president carries a leadership magic wand to convince recalcitrant political opponents (and some allies) to do his bidding is not merely restricted to Congressional relations, it's evident in foreign policy as well.

As death tolls have mounted in the Syrian civil war perhaps the loudest criticism of President Obama is that he won't act to stop violence. But this is based on the dubious notion that the US military can stop the violence in Syria. Consider, for example, the "plan" put forward by Bill Keller in the New York Times. The US should move "to assert control of the arming and training of rebels … cultivating insurgents who commit to negotiating an orderly transition to a nonsectarian Syria." In addition, the US must

 "make clear to President Assad that if he does not cease his campaign of terror and enter negotiations on a new order, he will pay a heavy price. When he refuses, we send missiles against his military installations until he, or more likely those around him, calculate that they should sue for peace."

What can President Obama be thinking in rejecting an idea as elegantly simple as this one?

Indeed, virtually every argument for the use of force in Syria – chronicled in great detail here by Micah Zenko – including maintaining US credibility, sending a message to Iran or North Korea, winning back the confidence of the Arab league, maintaining influence with the Syrian rebels all lead in one direction … success! **If** **only the president will show leadership, then good things will happen**. Yet, if **there is any lesson** that could be drawn **from the** wars fought by the US over the **past 10 years, it is that America's ability to shape events** in foreign locales **is limited and rarely works** out well as the proponents of military force promise.

To be sure, foreign policy is one of the few places where presidents can exercise significant institutional power (and largely because Congress has abdicated its oversight responsibilities). But **being able to act with greater flexibility does not equal an optimal outcome** – a point that the presidencies of Truman, Johnson, Nixon and Bush amply demonstrate.

In the end, presidents, like all of us, are prisoners to events outside their control. At home and abroad they are hamstrung both by the interests of other actors in our political system and by the national interests of other nations – and of course by adherence to a Constitution that was purposely written to prevent any president from becoming too powerful. If you want to blame anyone for why the president can't do what you believe he should, blame them. Obama just works here.

#### Relations also are key to bioterror prevention and response

Cerami and Baetjer, 06- \*Commandant of the U.S. Army War College, \*\*Retired U.S. Army Colonel and Director of the public Service Leadership Program for the Bush School of Government and Public Services at Texas A&M, Patrick Research Assistant to the Arleigh A. Burke Chair in Strategy (\*Richard, \*\*Joseph, The Future of Transatlantic Security Relations, May 12th 2006)

Atlantic Storm showed that even experienced international leaders, when faced with an unfolding epidemic and the resulting uncertainty, would have limited options and stark choices**,** given the conditions that exist today. Preparation is essential: international leaders cannot be expected to develop the requisite response systems in the midst of a crisis. The exercise made clear that there is much that can be done to improve overall biosecurity for both intentional and natural epidemics—a critical lesson given the growing possibility of an avian infuenza pandemic**.** Transatlantic and international initiatives to enhance biosecurity—the Global Health Security Action Group, the European Commission’s Heath Security Committee, the recently announced International Partnership on Avian and Pandemic Infuenza—are beginning to gain prominence, but much more work is needed. The nations of the Atlantic Community should lead this effort and include as many partners as possible. What is needed is a multilayered, comprehensive effort that seeks to render nations essentially immune to mass lethality and other destabilizing effects of the epidemics that would be caused by the most serious biosecurity threats. While no single tool holds the key to success, a variety of approaches could complement and reinforce each other**.** The core challenge in addressing bioterrorism (as also is true for naturally occurring epidemics) is to control and minimize the devastation of disease, thereby diminishing any reward that could result from pursuit of an intentional attackand the incentive for staging one**.**

#### That prevents extinction- even if the disease doesn’t kill everyone, the social chaos that results from the attack would end modern civilization

**Kellman ‘8** (Barry Kellman is the director of the International Weapons Control Center, “Bioviolence: A Growing Threat”, The Futurist, May-June 2008, http://www.wfs.org/March-April09/MJ2008\_Kellman.pdf)

A looming danger confronts the world—the threat of bioviolence. It is a danger that will only grow in the future, yet we are increasingly failing to confront it. With every passing day, committing a biocatastrophe becomes a bit easier, and this condition will perpetuate for as long as science progresses. Biological warfare is as old as conflict, of course, but in terms of the objectives of traditional warfare— gaining territory or resources, compelling the surrender of an opposing army—biological weapons weren’t very effective. If the objective is to inflict mass death and panic on a mixed population, however, emerging bioweapons offer remarkable potential. We would be irresponsible to presume that radical jihadists like al Qaeda have ignored said potential. What’s New in Bioviolence? Bioviolence refers to the many ways to inflict disease as well as the many people who might choose to do so, whether heads of states, criminals, or fanatics. Fortunately, doing bioviolence is technically far more difficult than using conventional explosives. Natural pathogens like anthrax are difficult to weaponize. Smallpox remains unavailable (presumably); plague is readily treatable; Ebola k i l l s t o o q u i c k l y t o i g n i t e a p a ndemic. But emerging scientific disciplines—notably genomics, nanotechnology, and other microsciences— could alter these pathogens for use as weapons. These scientific disciplines offer profound benefits for humanity, yet there is an ominous security challenge in minimizing the danger of their hostile application. For exampl e , highly dangerous agents can be made resistant to vaccines or antibiotics. In Australia, scientists introduced a gene into mousepox (a cousin of smallpox) to reduce pest populations—it worked so well that it wiped out 100% of affected mice, even those that had immunity against the disease. Various bacterial agents, such as plague or tularemia (rabbit fever), could be altered to increase their lethality or to evade antibiotic treatment. Diseases once thought to be eradicated can now be resynthesized, enabling them to spread in reg ions where there is no natural immunity. The polio virus has been synthesized from scratch; its creators called it an “animate chemical.” Soon, it may be resynthesized into a form that is contagious even among vaccinated popu l a t i o n s . Recreation of long eradicated livestock diseases could ravage herds severely lacking in genetic diversity, damage food supplies , and cause devastating economic losses. Perhaps the greatest biothreat is the manipulation of the flu and other highly contagious viruses, such as Ebola. Today, scientists can change parts of a virus’s genetic material so that it can perform specific functions. The genomic sequence of the Spanish flu virus that killed upwards of 40 million people nearly a century ago has been widely published; any savvy scientist could reconstruct it. The avian flu is even more lethal, albeit not readily contagious via casual aerosol delivery. A malevolent bioscientist might augment its contagiousness. The Ebola virus might be manipulat ed so that i t ki l l s more slowly, allowing it to be spread farther before its debilitating effects altogether consume its carrier. A bit further off is genetic manipulation of the measles virus—one of the great killers in human history—rendering useless the immunizations that most of us receive in early childhood. Soon , laboratory resynthesis of smallpox may be possible. Advanced drug delivery systems can be used to disseminate lethal agent s to broad populations . Bioregulators — small organic compounds that modify body systems— could enhance targeted delivery technologies. Some experts are concerned that new weapons could be aimed at the immune, neurological, and neuroendocrine systems. Nanotechnology that lends itself to mechanisms for advanced disease detection and drug delivery—such as gold nanotubes that can administer drugs directly into a tumor—could also deliver weaponized agents deep into the body, substantially raising the weapon’s effectiveness. Altogether, techniques that were on the frontiers of science only a decade or two ago are rapidly mutating as progress in the biological sciences enables new ways to produce lethal catastrophe. Today, they are on the horizon. Within a decade, they will be pedestrian. According to the National Academies of Science, “The threat spectrum is broad and evolving—in some ways predictably, in other ways unexpectedly. In the future, genetic engineering and other technologies may lead to the development of pathogenic organisms with unique, unpredictable characteristics.” For as far into the future as we can possibly see, every passing day it becomes slightly easier to commit a violent catastrophe than it was the day before. Indeed, the rapid pace of advancing science helps explain why policies to prevent such a catastrophe are so complicated. Bioviolence Jihad? Some experts argue that terrorists and fanatics are not interested in bioviolence and that the danger might therefore be overblown. Since there have been no catastrophic bioviolence attacks, these experts argue, terrorists lack the intention to make bioweapons. Hopefully, they are correct. But an enormous amount of evidence suggests they are wrong. From the dawn of biology’s ability to isolate pathogens, people have pursued hostile applications of biological agents. It is perilous to ignore this extensive history by presuming that today’s villains are not fervent about weaponizing disease. Not a single state admits to having a bioweapons program, but U.S. int e l l i g e n c e o f f i c i a l s a s s e r t t h a t a s many as 10 states might have active programs, including North Korea, Iran, and Syria. Moreover, many terrorist organizations have expressed interest in acquiring biological weapons. Whatever weight the taboo against inflicting disease might have for nation-states, it is obviously irrelevant to terrorists, criminals, and lunatics. Deterrence by threat of retaliation is essentially meaningless for groups with suicidal inclinations who are likely to intermingle with innocent civilians. Al -Qaeda and aff i l iat ed I s lami c fundamentalist organizations have overtly proclaimed their intention to develop and use bioweapons. The 11th volume of al-Qaeda’s Encyclopedia of Jihad is devoted to chemical and biological weapons. Indeed, alQaeda has acknowledged that “biological weapons are considered the least complicated and easiest to manufacture of all weapons of mass destruction.” Al-Qaeda is widely reported to have acquired legal pathogens via publicly available scientific sources. Before 9/11, al-Qaeda operatives reportedly purchased anthrax and plague from arms dealers in Kazakhstan, and the group has repeatedly urged followers to recruit microbiology and biotechnology experts. Follow ing th e Ta l iban ’ s fa l l , f iv e a l Qaeda biologi cal weapons labs in Afghanistan tested positive for anthrax. Documents calculating aerial dispersal methods of anthrax via balloon were discovered in Kabul, along with anthrax spore concentrate at a nearby vaccine laboratory. According to a lengthy fatwa commissioned by Osama bin Laden, jihadists are entitled to use weapons of mass destruction against the infidels, even if it means killing innocent women, children, and Muslims. No matter that these weapons cannot be specifically targeted. “[N]othing is a greater duty, after faith itself, than repelling an enemy attacker who sows corruption to religion and the world.” According to the fatwa, “No conditions limit this: one repels the enemy however one can.” The sentiment might be reprehen sible, but it is certainly not irrational. Even the most passionate terrorists must realize that conventional attacks are not bringing the West to its knees. The 9/11 strikes, the bombing of the Madrid and London subways, and numerous smaller attacks have all put civilization on edge, but history marches inexorably forward. A few thousand people can be killed, yet Western armies still traverse the world, and Western economies still determine winners and losers. From this perspective, the stakes must be raised. Bioviolence is perhaps the most dire, easiest means to execute existential danger. What Might Bioviolence Accomplish? Envision a series of attacks against capitals of developing states that have close diplomatic linkages with the United States. The attacks would carry a well-publicized yet simple warning: “If you are a friend of the United States, receive its officials, or suppo r t i t s po l i c i e s , thou sand s o f y o u r p e o p l e wi l l g e t s i c k . ” How many a t ta ck s in how many c i t i e s would it take before international diplomacy, to say nothing of international transit, comes to a crashing halt? In comparison to use of conventional or chemical weapons, the potential death toll of a bioattack could be huge . Al though the numbe r of victims would depend on where an attack takes place, the type of pathogen, and the sophistication of the weapons maker, there is widespread consensus among experts that a heightened attack would inflict casualties exceedable only by nuclear weapons. In comparison to nuclear weapons, bioweapons are far easier and cheaper to make and transport, and they can be made in facilities that are far more difficult to detect. The truly unique characteristic of c e r t a i n bioweapons t h a t d i s t i nguishes them from every other type of weapon is contagion. No other type of weapon can replicate itself and spread. Any other type of attack, no matter how severe, occurs at a certain moment in time at an identifiable place. If you aren’t there, you are angry and upset but not physically injured by the attack. An attack with a contagious agent can uniquely spread, potentially imperiling target populations far from where the agents are released. A b i o - o ff e n d e r c o u l d i n f e c t h i s minions with a disease and send them across borders before symptoms are obvious. Carriers will then spread it to other unsuspecting victims who would themselves become extended bioweapons, carrying the disease indiscriminately. There are challenges in executing such an attack, but fanatical terrorist organizations seem to have an endless supply of willing suicide attackers. All this leads to the most important characteristic of bioviolence: It raises incomparable levels of panic. Contagious bioviolence means that planes fly empty or perhaps don’t fly at all. People cancel vacation and travel plans and refuse to interact with each other for fear of unseen affliction. Public entertainment events are canceled; even going to a movie becomes too dangerous. Ultimately, bioviolence is about hiding our children as everyone becomes vulnerable to our most fundamental terror: the fear of disease. For people who seek to rattle the pillars of modern civilization and perhaps cause it to collapse, effective use of disease would set in motion political, economic, and health consequences so severe as to call into question the ability of existing governments to maintain their citizens’ security. In an attack’s wake, no one would know when it is over, and no government could credibly tell an anxious population where and when it is safe to resume normal life. While it is difficult to specify when this danger will strike, there should be no doubt that we are vulnerable to a rupture. Just as planes flying into the Twin Towers on September 11, 2001, instantly became a historical marker dividing strategic perspectives before from after, the day that disease is effectively used as an instrument of hate will profoundly change everything. If you want to stop modern civilization in its tracks, bioviolence is the way to go. The notion that no one will ever commit catastrophic bioviolence is simply untenable. What Can We Do? How can we confront these growing dangers? First, we must appreciate the global nature of the problem. Perpetrators from anywhere can get p a t h o g e n s f ro m v i r t u a l l y e v e r ywhe re . Biore s earch labs that onc e were concentrated in about two dozen developed states are proliferating, expanding the risk that lethal agents could be diverted and misused. The knowledge needed to weaponize pathogens is available on the Internet. An attack can be prep a r e d t h ro u g h e a s y n e tw o r k s o f transnational communication. Once a bioweapon is prepared, terrorists or other perpetrators from anywhere can slide across national boundaries and release disease anonymously. Once released, a contagious agent would spread without regard for boundaries, race, religion, or nationality. Public health responses would have to be internationally coordinated. New modes of international l egal coope rat ion would immediately be needed to investigate the crime. Thus, bioviolence dangers shrink the planet into an interdependent neighborhood. It makes no sense for any particular country to try to insulate its homeland from these dangers. No missile defense system will p ro t e c t u s f rom b i o v i o l e n c e . Improved border security will not keep disease at bay. National efforts to enhan c e m ed i ca l p repa redn e s s hav e virtues, but these defenses can be readily circumvented. To prevent bioviolence requires policies that focus on humanity as a species and that are implemented everywhere with centralized governance. Antibioviolence policies must be global. Ye t , advanc ing ant i -bioviol enc e policies is what the international community does worst. Bioviolence dangers are unnecessarily high because national and international antibioviolence strategies are gap-ridden, often incoherent, and not globally observed. As a result, we are all virtually naked in the face of unacceptable dangers. No ot her t hreat pre s ent s such a s tark cont ras t between severity of harm and a failure of leadership to reduce risks. Most important, existing institutional arrangements are inadequate. In sharp contrast to most other global security challenges, there is no responsible international authority that defines relevant prohibitions and responsibilities, implements policies over time, or evaluates whether obligations are being fulfilled. With regard to global bioviolence prevent i o n p o l i c i e s , t h e r e ’ s n o b o d y i n charge. No one is responsible; no one is accountable. The absence of authority is profoundly dangerous. Bioviolence prevention and preparedness requires a sizable orchestra, made up of various instruments, to play complicated music in harmony. Today, there is not a bad “conductor”, there is no conductor at all. The result is cacophony. Simply stated, bioviolence is the dark s ide of global izat ion, ye t int e rna tional alarms of bioviolence ring nowhere! We need a comprehensive national and international strategy for bioviol enc e prevent ion . [Se e box: “Five S t r a t e g i e s f o r P r e v e n t i n g B i oviolence,” page 30.] Policies should be pursued within an integrated approach that enables each policy to gain strength from all the others. Such policies are potentially available and effective, but they demand progressive changes in our global order. The Security Mission Global bioviolence prevention and preparedness policies are imperative, but also imperative is recognition that the world faces natural disease horrors. Where mass public health challenges are daily phenomena, the risks of terrorists using pathogens must be weighed against more tangible natural threats. Simply stated, it is illegitimate to insist that every nation adopt policies for preventing human-inflicted disease without acknowledging the silent genocide of natural disease that is responsible for millions of deaths. But neither is it legitimate to view bioviolence dangers as distractions from efforts to combat natural disease and therefore to put off beneficial measures until those afflictions are defeated. To do so frustrates forward movement on cost-effective initiatives that could help build an international security architecture for advancing science and health. Thus, bioviolence prevention must be a facet of a broad international commitment to: 1. Prevent the spread of disease ( e .g. , through publ i c -heal th measures). 2. Enhance protection against and cures for disease (e.g., through vaccination and drug therapies). 3. Supervise the conduct of biological science. 4. Criminalize unauthorized or improper use of pathogens. From this foundation should flow a policy commitment to the growth of bioscience as a global public good. Policies to encourage its worldwide spread deserve vigorous support. This governance mission should, therefore, be conceived as a global covenant . As bios c i enc e goe s forward as a fundamental pillar of human progress, all nations must undertake common responsibilities to prevent bioviolence even as the burdens associated with those responsibilities are differentiated according to wealth and capability. From everyone according to their abilities—to all for the benefit of all. The United Nations’ Importance The United Nations represents the b e s t venu e fo r a new gove rnanc e platform that can accommodate the need for an integrated global strategy agains t bioviol enc e . Only the United Nations has the necessary in ternational legitimacy, and only the Uni t ed Nat ions can int egrat e the many sectors—health, law enforcement, science, military, emergency preparedness—that must devote expertise and resources. A primary consideration here is to minimize any bureaucratic reshuffling. There is certainly no need to modify or replicate existing capabilities. Many relevant governance tasks are already addressed by one or more international organizations. For example, the World Health Organization should continue to be responsible for addressing the health implications of a pandemic, whether natural or malevolent. Interpol should continue to be responsible for a d d re s s i n g b i o v i o l e n c e ’ s l aw e nforcement implications. Indeed, the UN’s role should be only to coordinate the performance of these tasks. Broadly viewed, the United Nations should be able to undertake three functions: First, a specific UN agency should stimulate bioscience development by incorporating security concerns into the fabric of scientific undertakings and by assisting countries in using bioscience in ways that are consistent with policies for preventing bioviolence. Because science, development, and security can and must be mutually reinforcing, this agency’s primary responsibilities would be to promote and distribute knowledge and build capacity to fulfill obligations, especially in developing nations. Second, a UN office should coordinate activities among the relevant international/regional organizations, professional networks, and expert bodies. For example, three major international organizations focus on health (World Health Organization, Animal Health Organization, and the Food and Agriculture Organization); Interpol and Europol both focus on law enforcement; a large array of organizations focus on conveyance of dangerous items (e.g., International Maritime Organization, International Civil Aviation Organization). This UN office should be a steering mechanism to engage each of these orga nizations’ specialized expertise and to identify synergies. Third, a Security Council Committee should be authorized to investigate bioviolence preparations as well as respond and coordinate assistance to a bioviolence attack. Situations that call for investigation or response arise rarely, but they carry disproportionate significance for international peace and security. The Security Council Committee should not advance programmatic agendas, but it should be able to wield expertise and political muscle in volatile situations. Its primary mission would be to enable the international community to sustain global order in the face of a bioviolence challenge. Ever since someone harnessed a new technology to create a weapon with more devastating effects, there has been a link—a double helix—between the progress of science and the pursuit of security. This is inevitable. These dangers of bioviolence do not a rg u e f o r re l i n q u i s h i n g s c i e n t i f i c progress, but they disprove notions tha t n ew cha l l eng e s can b e e ff e ct ive ly addre s s ed wi th ye s t e rday’ s policies. At bottom is a condition unique to this historical era: Scientific progress is intertwined with escalating malevolence threatening human security. Progressing capabilities improve our l ive s and ye t , inext r i cably, enable truly harmful weapons against humanity. Here are the challenges to international peace and security at the beginning of the third millennium. Failing to do the right thing in response to these challenges could have dire consequences for all humanity.

#### OLC has a double bind ---- it has to be neutral, gutting solvency

POSNER 2011 - Kirkland & Ellis Professor, University of Chicago Law School (Eric A. Posner, “Deference To The Executive In The United States After September 11: Congress, The Courts, And The Office Of Legal Counsel”, http://www.harvard-jlpp.com/wp-content/uploads/2012/01/PosnerFinal.pdf)

A question naturally arises about the OLC’s incentives. I have assumed that the OLC provides neutral advice, in the sense of trying to make accurate predictions about how other agents like Congress and the courts would react to proposed actions. It is possible that the OLC could be biased—either in favor of the President or against him. If the OLC were biased against the President, he would stop asking it for advice (or would ask for its advice privately and then ignore it). 50 This danger surely accounts for OLC jurisprudence being pro‐executive. 51 But it would be just as dangerous for OLC to be excessively biased in favor of the President because it would mislead him and lose its credibility with Congress. 52 As a result, the OLC could not help the President engage in L policies. So the OLC must be neither excessively pro‐President nor anti‐President. If it can avoid these extremes, it will be an enabler; if it cannot, it will be ignored. In no circumstance could it be a constraint. 53

#### No uniqueness for Obama credibility

Karabell 9/6 (Zachary Karabell, Reuters, President of River Twice Research and River Twice Capital Advisors. His most recent book is Sustainable Excellence: The Future of Business in the 21st Century, “Obama and the End of the Imperial Presidency”, <http://www.theatlantic.com/politics/archive/2013/09/obama-and-the-end-of-the-imperial-presidency/279405/?google_editors_picks=true>, September 6, 2013)

The president's uphill battle to get congressional authorization for the use of force in Syria suggests the pendulum is swinging back from Bush-era excesses. In 1973, Arthur Schlesinger wrote about the tendency in American history for the president to assume sweeping powers in times of war and crisis. The balance of power established by the Constitution gets upended; Congress and the courts take a back seat; and the executive makes decisions about life and death largely unchecked. He called this “the imperial presidency.” Today, with President Obama turning to Congress to endorse a military strike on Syria, the imperial presidency is beginning to wane. It’s about time. The 1990s seemed to presage a return to a more balanced government, with Cold War defense spending slashed and “the peace dividend” contributing to a more balanced budget. But then 9/11 happened; America launched a war on terror; and the rest, as they say, is history. The imperial presidency has some justification in times of acute peril. The immediate aftermath of 9/11 certainly justified some degree of unilateral executive action, as did in its way the financial crisis in the fall of 2008. And few would argue that at times of all-out war, with the country fully mobilized to fight a genuine threat such as Germany and Japan during World War II, ceding powers to the executive branch is imperative. But it is equally vital to pare those back when they are no longer required -- though this is easier said than done. People do not cede power easily, and bureaucracies are far easier to construct than dismantle. The War on Terror has been conducted by an assertive executive branch and a compliant Congress and judiciary. Defenders will say that that’s a good thing, and a necessary one to keep the country safe. Either way, it tilts the balance toward the imperial presidency. It’s a sign of just how far down the imperial path we’ve gone that Obama’s decision to look for congressional authorization before sending missiles into Syria was greeted with surprise and not a little contempt. The decision, apparently made over the weekend before Labor Day, caught even Obama’s aides unawares. And rather than hailing the decision as a sign of respect for the congressional war-making power specified by the Constitution, a fair number of commentators and even congressional representatives decried the move. Rep. Peter King, a New York Republican, denounced the decision in blunt language: “His failure to act was a woeful abdication of the president’s powers as commander-in-chief and sent the entirely wrong signal to an increasingly dangerous world.” The assumption that the president has both the authority and the obligation to strike against Syria because of its use of chemical weapons, and that this authority does not require consultation with Congress, would have astonished generations of Americans. Yes, presidential overreach is hardly a product of recent history, and no, we are better served by treating the Constitution as a “living document” that needs adaptation rather than slavishly cleaving to its every clause, as some devotees of original intent clearly do. However, the degree to which presidents have since the 1950s assumed the power to unilaterally decide to go to war is clearly a level of power unintended by the founders of the United States, undesired by many today, and unconducive to the very openness and transparency of debate and decision-making that forms the foundation of a functional deliberative democracy. There is, in fact, a direct line between the issues raised by Edward Snowden’s revelations of government spying on domestic emails and communications and the near-decision to launch missiles against Syria. This isn’t about whether such policies are the right ones. They were not decided in the right way. That is, the way they were decided assumes not just competence and integrity on the part of the executive but that in most cases, the president is better able to make better decisions than a deliberative body such as Congress. You may think our current Congress is pitiful, but that is always a risk. The Constitution doesn’t say that “Congress shall have the power to declare war … but only if it’s a good Congress.” The point of the American system, at least in theory, is that too many factors play into key societal decisions to make it easy for individuals and institutions invested with great power to exercise that power lightly. That is more true than ever for the United States today. In pure military terms, the United States can do whatever it wants to whomever it wants, and precious few other countries can do a thing about it. As Iraq and Afghanistan demonstrate, of course, overwhelming military power only gets you so far, unless you are willing to indiscriminately kill civilians and then govern the country you’ve destroyed. And even then, the risks of blowback and failure are large. But in terms of firing missiles or deploying commandos or using drones or any number of military measures, the president can literally say go and it is done. Yes, he needs the consensus of his team, but the power is there. And once the missiles are flying, there is no turning back. That type of power is almost impossible to manage well. The temptation to use it is great. We know that because we use it frequently. China, also powerful in its way, does not. Russia, still well-armed, does not. France did dispatch troops to Mali recently, but even with its nuclear arsenal and not inconsiderable military, force is not a primary option. Those domestic systems are not ones most of us would trade for, yet it bears remembering that they are much less tempted to use force to resolve intractable international issues, including dire human rights abuses. There is one more reason to celebrate the waning of the imperial presidency. For too long, the United States has been locked into a role as the sole guardian of global order. Many Americans want to retain that, but in truth, we play that role selectively and erratically. Obama himself noted the contradictions in an interview with The New Republic and asked how any president could weigh the relative merits of intervening in Syria versus intervening in Congo. The very expectation that the United States must do something throughout the world feeds the domestic expansion of presidential powers. But while those powers grow, the ability and willingness of Americans to act as the global policeman and enforcer is erratic at best. That makes for the worst of possible worlds: an overweening domestic executive and an ineffectual global cop. The shifts afoot are partly structural. Without a clear and present danger, it’s natural that the pendulum begins to move away from the executive branch and toward other centers of influence. But Obama in recent months has been quietly accelerating the shift rather than fighting it. That may prove to be one of his greatest legacies, even though the diminution of presidential power is not the kind of thing that makes for compelling historical narrative. It is, however, exactly the sort of thing that makes for a compelling democracy, and I’d rather live in that than read books years hence about how the imperial presidency drove the country in precisely the wrong direction.

#### No terminal impact and Syria thumps

Mead ’13 (Walter Russell Mead, “White House Fiddles, Middle East Burns: Will Obama Make W Look Like a Bismarck?”, <http://blogs.the-american-interest.com/wrm/2013/06/19/the-middle-east-is-more-dangerous-than-the-president-thinks/>, June 19, 2013)

Could the Obama administration in its second term be making a series of Middle East policy mistakes even more expensive and destructive than those the Bush administration made in its first? That is admittedly a high bar, but the trends are unsettling to say the least. The region is unraveling and American policy is in deep disarray. Our strategic options are getting worse, and the stakes are getting higher. When former President Bill Clinton is warning that his successor risks looking “lame” or like a “wuss” or a “total fool,” it’s a safe bet that the Kremlin and Tehran aren’t impressed by White House statements. Meanwhile the Obama administration seems to be locked into a sterile, short-term policy approach driven by domestic considerations; it is following the path of least resistance to a place that in the end will please no one and is increasingly likely to lead to strategic disaster. An insightful article by the Democratic-leaning Bloomberg columnist Jeffrey Goldberg offers a deeply unsettling view of a Syria foreign policy process gone off the rails. If Goldberg has the story right—and he usually does—Secretary Kerry and the bulk of the White House security team want the President to authorize a no-fly zone and other strong measures in Syria, in part because they fear that American dithering in Syria is empowering the hardliners in Tehran and that by avoiding a small war in Syria now the White House risks a much uglier confrontation with Iran not all that far in the future. But the Chairman of the Joint Chiefs wants nothing to do with it, pointing to the difficulties and costs of the military mission. (One suspects that playing a role in this skepticism is military suspicion of a civilian leadership seen as indecisive and ready to order missions without providing the political backing necessary to bring the public along. The military fears—with some reason, alas—that the same White House that ordered it into action on day one would deep six the mission on day ten and throw the blame on the brass if things didn’t work out and the public wanted to bail.) As Goldberg tells it, the biggest problem for the administration is that its early aggressive, poorly judged rhetoric that Assad “must” go now makes it impossible to avoid Obama’s looking like an irresolute bluffer if the Butcher stays put. This is the conclusion, anyway, that both Russia and Iran will draw, and they will respond by pushing the US along other fronts as well. This is an entirely self-created problem; there was absolutely no objective reason for the administration to lay those markers on the table. There was no requirement in America’s foreign policy that the administration bounce in with the categorical demand that Assad step down. But at the time those statements were made, the administration was focused on making the humanitarian hawks happy and looking tough and resolute. Making empty threats and promises about Assad looked like the easy course of action and so the administration lightly and foolishly made commitments it had no ability or intention to keep. This is the kind of mistake that a lot of presidents make early in their first term; most second term presidents wise up and stop creating unnecessary problems for themselves. Apparently dissatisfied with just one way of narrowing its options and making itself look foolish and weak on Syria, the administration then set down another marker: chemical weapons were a “red line,” said our President in a headline grabbing statement, apparently, was uttered in haste and is now being repented at leisure. Syria would be a difficult problem under any circumstances, but it has now become a dangerous, no-win blind alley because of politically opportunistic bluffs that the White House made for political effect. Meanwhile at VM, we are beginning to worry that there are now no good options left in Syria. Intervention looks increasingly like it would lead to a nasty quagmire; we supported it at an earlier stage before things had unraveled to their present point but are increasingly convinced that the situation in Syria has deteriorated so much that there is not a lot the US can do that would help. The current policy appears to be to feed the rebels just enough arms to keep the civil war grinding on, further polarizing Syrian society and promoting the rise of fanatical jihadis with ties to rich backers in the Gulf. Victory for Assad, even partial victory, would leave the administration in the position of having its bluff called and standing revealed as an incompetent blowhard on a major world political issue. Russia would gain credit throughout the region and the world for forcing Obama to fold, and Iran’s prestige would grow as Obama’s wilts. We’ve always thought the outcome in Syria would have an important bearing on the negotiations with Iran. The mullahs (and the Kremlin) may now increasingly feel that they are dealing with the second coming of Jimmy Carter and will be more likely to push toward the nuclear red line now that they see just how weak the response is to crossing the chemical red line. And they will also feel that the hesitation, dithering and palpable desire to avoid ugly confrontations at all costs in Washington give them a license to push back at American interests and use every twist in the diplomatic process to further damage US prestige. Feeding those attitudes in Tehran makes war more likely across the region. It will lead the Saudis and others to step up their support for the rebels in Syria and radical Sunni forces elsewhere. The White House may think that its choices in Syria are now about as bad as they can get. If so, it is wrong. The current US policy of blustery rhetoric and weak gestures in support of the rebels is almost guaranteed to exchange already bad choices for even worse ones.

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### PLTX

#### Interest rates cause collapse

Reeves, 13 -- Raleigh Metro Magazine editor

[Bernie, "The Debt Ceiling Is a Red Herring," American Thinker, 9-27-13, www.americanthinker.com/2013/09/the\_debt\_ceiling\_is\_a\_red\_herring.html, accessed 10-4-13, mss]

The Debt Ceiling Is a Red Herring

Federal Reserve chairman Ben Bernanke announced last week the US central bank will continue its "quantitative easing" program, basically printing money like an African dictatorship to buy US debt. The harsh truth behind Bernanke's action makes the upcoming debate on raising the **debt ceiling a red herring** that diverts attention away from reality: the US ship of state has hit a giant financial iceberg. Captain Bernanke's response is to continue to bail water. The Federal Reserve buys billions of dollars of US debt at near-zero interest to fund the ever-increasing deficit to keep up the charade that the good faith and credit of the nation is intact. In effect, Fed policy is a lie surrounding a bigger lie -- that Obama's economic recovery plan is on course. If the Fed does not step up and purchase US debt at ridiculously low interest, rates would have to float upwards dramatically to attract the usual buyers. Interest on the debt is already running at $26 billion per month; an increase caused by allowing rates to equate to investor requirements could easily double the staggering current monthly outlay. And what is the effect of squandering the US money supply on US debt that provides scant return? The rate the US should have to pay in the real world to sell our debt would translate to rates charged to Fed member banks, who add vigorish for themselves and lend it out. But despite Fed rates artificially kept below one percent by Bernanke's sleight-of-hand, lending in the US to small businesses is at a 12-year low. If the Fed rate followed the appropriate level needed to attract buyers of our national debt, **interest rates** on bank lending will rise dramatically. The already suffering **small business** sector, which represents **90 percent of the economy** and provides **all new jobs**, will be facing ruin.

#### Global short-term alt causes- China, Europe, commodity prices

Korea Herald, 13 -- citing Harry Dent, financial newsletter writer

["Next global crash could come next year," 8-13-13, l/n, accessed 10-4-13, mss]

Despite the continued economic stimulus policies across the world since the 2008 financial crisis, the global economy is likely to face another crash next year, according to U.S.-based economic forecaster Harry Dent. He says the world faces three major short-term risks: falling commodity prices, a depression in southern Europe and the bursting of China's real estate bubble. Regarding the outlook for the U.S. economy, Dent, who has for decades followed the booms and busts of the global economy, remained skeptical. Baby boomers who led consumption will cut back their spending with retirement, regardless of any kind of stimulus packages. Falling consumption linked with the changing demographic trends will dampen the U.S. economy once again, Dent predicted. In response to rising concerns over an imminent exit plan by the U.S. Federal Reserve, he said it was not likely that the U.S. Fed would drop its quantitative easing policies soon, as it was not certain that the housing market, a key indicator of economic recovery, would remain as strong as it had been. Dent also predicted a hard landing for the Chinese economy, pointing to over-investments in every type of infrastructure, in particular the real estate sector and its shadow banking system. He said China may be the most likely trigger for the next global financial crisis. When it comes to the outlook for the Japanese economy, Dent, who predicted Japan's decade-long slump in the late 1980s, forecast that the government's expansionary economic policies, dubbed Abenomics, would have a temporary positive effect on its economy because its demographic trends do point up into 2020. But he warned that continued high levels of stimulus would be dangerous, especially if inflation did rise to Japan's targeted 2 percent. Japanese bond rates would rise, and then Japan would feel the weight of its massive debt. Based on his famous demographics method, Dent said Korea shows similar demographic trends with those of Japan, but 22 years behind. Korea's demographic trends plateau into 2018, then turn negative decades, he added. The high level of debt of Korean households, will challenge positive short-term demographic trends, Dent noted, saying the 136 percent debt-to-GDP ratio in Korea's household sector is higher than in most other advanced nations. To cope with remaining uncertainties, Dent advised Korean companies to get lean and mean quickly. He advised companies to cut fixed costs as much as possible and weed out weak product lines or sell marginal businesses before the next crash. Cash and cash flow are king in a deflationary downturn such as in the 1930s or 2008-2009, he added. Following are excerpts of an email interview with Harry Dent on the outlook for the global and Korean economy based on demographic trends and economic cycles. Harry Dent Outlook for global economy Q: U.S. Federal Reserve Chairman Ben Bernanke mentioned a possible exit plan from the Fed's monetary easing policy in June for the first time. When do you expect the U.S. Fed to move toward the exit policy? What does the Fed's exit mode mean for the U.S. and the global economy? A: The U.S. Fed will only exit if the economy stays strong and it is not clear yet whether housing will stay as strong as it has been as investors seem to be backing away from housing, and rising mortgage rates are likely to hurt sales to consumers. If the economy slows a bit then the Fed will not taper its $85 billion per month; it may even increase it. But an increase in stimulus would likely cause interest rates to keep rising and that would not be good for housing or stocks. Hence, I think that the Fed is getting boxed in here. If the economy grows too fast, it will have to taper its quantitative easing policies, and the demographic trends are such that the economy would slow and stocks would correct if the Fed does taper. If the economy slows, then it is a sign that the quantitative easing is not working, more like in Europe, and that could cause market weakness. Q: The risk of a hard landing of China's economy was not envisaged at the latest Group of 20 ministerial meeting. Do you agree with the G20's stance? What are some implications of slower growth of China for the global economy? A: I think China may be the most likely trigger for the next global financial crash that I see as very likely in 2014. China has been seriously overbuilding everything â€• factories, housing, offices, malls, roads, railways, etc. Now their shadow banking system is getting out of control, like the U.S. into 2008. There is a vicious cycle of falling commodity prices that hurt the export growth of emerging countries, and that in turn hurts China's exports to such countries. Then China slows, and that causes commodity prices to fall further and so on.

#### Financial sector

Wilbanks, 13 -- CBS News MoneyWatch

[Charles, "Lehman is gone but new financial crises may await," CBS News MoneyWatch, 9-14-13, www.cbsnews.com/8301-505123\_162-57602957/lehman-is-gone-but-new-financial-crises-may-await/, accessed 10-4-13, mss]

Lehman is gone but new financial crises may await

It's been five years since the collapse of Lehman Brothers. Has anything changed? Far from being jailed, bankers who presided over the frauds that brought down the U.S. economy in 2008 have kept their money and are living large. "Too big to fail" is now part of the national lexicon, describing banks that remain so big and leveraged that their collapse could imperil economies around the world. An overhaul of financial laws is in limbo as regulators tasked with writing the rules move at a glacial pace. And the apparent front-runner for the country's next central banker is a man who helped create and defend many of the policies blamed for creating the mess in the first place. With the major pieces of the previous crisis still in place, many experts worry that it's just a question of time before another crisis occurs. A bit of history is in order. In the run-up to the meltdown, the world's biggest banks, unencumbered by Depression-era legislation separating commercial banking from investment banking, began creating and selling bonds backed by thousands of mortgages. As investor demand for these derivatives, a security whose value derives from another asset, Wall Street banks urged mortgage lenders to issue more and more loans. Standards for evaluating whether borrowers qualified for a mortgage, such as income and employment, were jettisoned, resulting in what came to be known as "liar loans." Exempt from regulation, subprime lenders such as Ameriquest, First Alliance Mortgage and Countrywide turned their businesses into assembly lines of bad loans. Fraud was rife. As the banks packaged loans into derivatives that neither the firms' own CEOs nor investors fully understood, the idea of risk went out the window. As the crisis erupted the country's largest financial institutions, swollen with debt used to buy and sell worthless financial products, were at the heart of the scandal. While there were voices warning of disaster as the housing bubble inflated, the country's regulators and other institutions were sanguine. Credit ratings agencies such as Standard & Poor's and Moody's (MCO) -- paid by the banks to evaluate the securities -- gave them clean bills of health. As for the government, deregulation and lax supervision ruled the day. Instead, top officials across the agencies charged with policing the banks preached the merits of laissez-faire. It was inevitable that the securitized garbage would ignite. After Bear Stearns collapsed in 2008 and was sold to JP Morgan Chase (JPM) with government aid, political pressure on the Bush administration by Republicans who opposed bailouts helped prompt officials to refuse any such help to Lehman. But the experiment in selective free market consequences ended badly: Insurance giant AIG (AIG), which had guaranteed many of the mortgage-backed securities issued by Wall Street, was swamped with red ink, money market funds plunged in value and global panic set in. "Lehman was a systemically dangerous institution which was allowed to fail," said William Black, a former banking regulator and prosecutor who now teaches law and economics at the University of Missouri in Kansas City. "It prompted the largest run in history on money market mutual funds -- over $30 billion in two days. They absolutely lost their minds at Treasury and the Fed. Then when AIG went down, they had no clue what the risk was." "The regulators had created such a regulatory black hole that they had no clue how to even get information about what was going on," he added. "They were scared. Five years later? **We've made the problem worse** -- Bear Stearns, CountryWide, Washington Mutual have all been acquired by banks that were already systemically dangerous." For Black, whose investigations led to prison terms for such people such as Charles Keating during the savings and loan crisis in the 1980s, the size of the banks isn't the only problem. He argues that the structure encouraging fraudulent behavior in finance is still firmly in place. One active ingredient: massive executive compensation. The outsized pay on Wall Street not only spurs top executives to take dangerous risks, but also filters down to rank-and-file employees, discouraging whistle-blowing and encouraging dishonesty. "You can't go to thousands of Enron employees and say, 'I want you to engage in fraud.' But you can say that through compensation," he said. As such problems continue to fester on the Street, the federal watchdogs tasked with overseeing Big Finance remain mostly toothless. "When you look at who has been hired at the SEC recently, starting with Mary Jo White, every last one of them worked for a Wall Street defense firm," said Former U.S. Senator Ted Kaufman, author of defeated legislation to break up the big banks. Dodd-Frank, the massive law passed in 2010 and touted as a safeguard against future financial crises, is by many lights a deeply flawed bill that failed to address fundamental issues, such as the conflict of interest between ratings agencies, the size of banks or their fundamental structure. In any case, it remains largely dormant, with more than half the rules yet to be written by the SEC. Meanwhile, even Dodd-Frank's biggest proponents, including President Barack Obama, acknowledged that additional legislation would be required to protect the financial system. But for now the door to further reform is shut -- despite the broad consensus across the political spectrum that the biggest banks are over-leveraged and as dangerous as ever. "There's nothing moving," Kaufman said. "As long as Congress and the administration don't want to do anything, nothing is going to happen. There's an unholy alliance between Wall Street, Obama and Congress." Kaufman is gratified that the Federal Reserve under Ben Bernanke has sought to raise capital requirements for banks. That effectively makes them smaller since they must keep more money on hand to offset potential losses and makes it harder to borrow recklessly. But he and others believe another crisis is entirely possible, perhaps inevitable. "I was an engineer," said Kaufman, who began his career working at DuPont before becoming a top aide to then Sen. Joe Biden and later a senator representing Delaware himself. "If you build a rocket and it falls on its side and blows up, and then you build an identical rocket, it will fall on its side and blow up, too." Kaufman thinks the next problem could take years to surface -- or happen at any moment. If the cause isn't another real estate frenzy fueled by dishonest lending, he said the trigger could come from abroad, say, if a eurozone country defaults or because of an economic meltdown in China. And where are the people who were at the heart of the scandal now? Lawrence Summers, an acolyte of former Treasury Secretary Robert Rubin and one of the most strident advocates of financial deregulation, is now being touted as Mr. Obama's leading candidate to lead the Fed. "Rubin and Summers were the chief architects of the crisis," Black said. "The idea that you would bring back the leading architect of the crisis and promote him, precisely because he's a failure and will do the will of the banks, is the ultimate embracing of crony captialsim by the Obama administration." As for the others, the Center for Public Integrity has compiled a deeply reported series detailing their post-crisis lives, noting dryly that "none of them are hurting for money." Among the regulators, ex-SEC chief Christopher Cox, ridiculed for doing nothing in the run-up to the crisis, now advises and defends companies that run into regulatory trouble. Former Treasury Secretary Henry Paulson, who argued strenuously against government rules that would hobble the "competitiveness" of the nation's biggest banks, was already rich from his role as head of Goldman Sachs (GS). He has written a book and takes in even more money on the lecture circuit. Mr. Obama's recently departed Treasury chief, Timothy Geithner, who two years before the crisis claimed that banks regulated themselves, is working on a memoir and is a member of the Council on Foreign Relations. As for the bankers, Kaufman notes that none, in contrast to the stock market collapse of 1929, have jumped out of windows from shame. Jimmy Cayne, Bear Stearns' CEO at the time of the 2008 crisis, who famously played in a bridge tournament while his firm was going down in flames, is still playing bridge and living in a multi-million dollar condo in New York's storied Plaza Hotel. The Center for Public Integrity estimates he brought home about $375 million. Former Lehman CEO Dick Fuld repaired to his Greenwich, Conn., mansion, where he maintains contacts with some former colleagues and underlings. Among mortgage bankers, former CountryWide CEO Angelo Mozillo exited the business with well over $100 million. By contrast, CPI reports that senior executives with the 25 biggest subprime lenders during the bubble remain in the mortgage racket. "The fact is, we have demonstrated that you can get extremely wealthy with immunity from criminal laws and virtual immunity from civil laws," Black said. "We've proven that fraud pays. That makes the next fraud much more likely."

The court will rule on all of the things

Pieklo 9/17 ([Jessica Mason Pieklo](http://rhrealitycheck.org/author/jessica-pieklo/), Senior Legal Analyst, RH Reality Check. “6 Supreme Court Cases to Watch This Term” http://rhrealitycheck.org/article/2013/09/17/six-supreme-court-cases-to-watch-this-term/)

The United States Supreme Court term begins in October, and while the entire docket has not yet been set, already it’s shaping up to be a historic term, with decisions on abortion protests, legislative prayer, and affirmative action, just to name a few. Here are the key cases we’re keeping an eye on as the term starts up. 1. Cline v. Oklahoma Coalition for Reproductive Justice The Supreme Court looks poised to re-enter the abortion debate, and it could do so as early as this year if it takes up Cline, the first of the recent wave of state-level restrictions to reach the high court. Cline involves a [challenge to an Oklahoma statute](http://rhrealitycheck.org/article/2013/06/28/scotus-poised-to-enter-medical-abortion-ban-debate/) that requires abortion-inducing drugs, including [RU-486](http://rhrealitycheck.org/tag/ru-486/), to be administered strictly according to the specific Food and Drug Administration labeling despite the fact that new research and best practices make that labeling out of date. Such “off-label” use of drugs is both legal and widespread in the United States as science, standards of care, and clinical practice often supercede the original FDA label on a given drug. In the case of cancer drugs, for example, the American Cancer Society [notes](http://www.cancer.org/treatment/treatmentsandsideeffects/treatmenttypes/chemotherapy/off-label-drug-use) that “New uses for [many] drugs may have been found and there’s often medical evidence from research studies to support the new use [even though] the makers of the drugs have not put them through the formal, lengthy, and often costly process required by the FDA to officially approve the drug for new uses.” Off-label use of RU-486 is based on the most recent scientific findings that suggest lower dosages of the drug and higher rates of effectiveness when administered in conjunction with a follow-up drug (Misoprostol). According to trial court findings, the alternative protocols are safer for women and more effective. But, according to the state and defenders of the law, there is great uncertainty about these off-label uses and their safety. When the issue reached the supreme court of Oklahoma, the court held in a very brief opinion that the Oklahoma statute was facially invalid under [Planned Parenthood v. Casey](http://www.oyez.org/cases/1990-1999/1991/1991_91_744). In Casey, a plurality of justices held that a state may legitimately regulate abortions from the moment of gestation as long as that regulation does not impose an undue burden on a woman’s right to choose an abortion. Later, in [Gonzales v. Carhart](http://www.oyez.org/cases/2000-2009/2006/2006_05_380), a majority of the Supreme Court, led by Justice Anthony Kennedy, interpreted Casey to allow state restrictions on specific abortion procedures when the government “reasonably concludes” that there is medical uncertainty about the safety of the procedure and an alternative procedure is available. Cline, then, could present an important test on the limits of Casey and whether, under Gonzales, the Court will permit states to ban medical abortions. But it’s not entirely clear the Court will actually take up Cline. At the lower court proceedings, the challengers argued that the Oklahoma statute bars the use of RU-486’s follow-up drug (Misoprostol) as well as the use of Methotrexate to terminate an ectopic pregnancy. If so, the statute then bars both any drug-induced abortion and eliminates the preferred method for ending an ectopic pregnancy. Attorneys defending the restriction deny the law has those effects, and do not argue that if it did such restrictions would be constitutional. With this open question of state law—whether the statute prohibits the preferred treatment for ectopic pregnancies—the Supreme Court told the Oklahoma Supreme Court those disputed questions of state law. So a lot depends on how the Oklahoma Supreme Court proceeds. Should the Oklahoma Supreme Court hold that the Oklahoma statute is unconstitutional because it prohibits the use of Misoprostol and Methotrexate, this case could be over without the Supreme Court weighing in. But if the Oklahoma Supreme Court invalidates the law insofar as it prohibits alternative methods for administering RU-486, the Supreme Court will almost certainly take a look. 2. Town of Greece v. Galloway The Roberts Court is set to weigh in on the issue of when, and how, [government prayer](http://rhrealitycheck.org/article/2013/05/24/reason-for-concern-as-roberts-court-agrees-to-hear-government-prayer-case/) practices can exist without violating the Establishment Clause’s ban on the intermingling of church and state. In [Marsh v. Chambers](http://www.oyez.org/cases/1980-1989/1982/1982_82_23), the Supreme Court upheld Nebraska’s practice of opening each legislative session with a prayer, based largely on an unbroken tradition of that practice dating back to the framing of the Constitution. In Marsh, the Court adopted two apparent limits to a legislative prayer practice: The government may not select prayer-givers based on a discriminatory motive, and prayer opportunities may not be exploited to proselytize in favor of one religion or disparage another. Prior to 1999, the town of Greece, New York, opened every legislative session with a moment of silence. Then, in 1999 and at the request of the town’s supervisor, the town switched to opening its legislative sessions with a prayer. Nearly all of those prayers were delivered by Christian clergy members and, unlike other city councils, there was no requirement that the prayers be inclusive or non-denominational. City officials selected speakers off a list of local religious leaders provided by the Greece Chamber of Commerce. From 1999 through 2007, Christians delivered every single invocation prayer, in part because the list provided by the area Chamber of Commerce included only Christian religious officials despite the fact that other denominations exist in the community. The practice was challenged by a group of citizens who argued it violated the Establishment Clause. The U.S. Court of Appeals for the Second Circuit acknowledged that the Town of Greece had not violated either of Marsh’s limits in its practices, but still invalidated the town’s practices. Applying the “reasonable observer” standard drawn from [County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter](http://www.oyez.org/cases/1980-1989/1988/1988_87_2050), the court concluded that a reasonable observer would view the town as endorsing Christianity over other religions, because its process of composing a list of prayer-givers from clergy within its geographic boundaries and volunteers virtually guaranteed the person delivering the prayer would be a Christian, because most of the prayers contained uniquely Christian references, and because prayer-givers invited participation and town officials participated in the prayers. The reasonable observer test appears headed for a fall. In County of Alleghany, Justice Kennedy in his dissent criticized the reasonable observer test as insensitive to traditions and unworkable for governments and courts to apply. He argued that religious accommodations are consistent with the Establishment Clause as long as they do not coerce attendance at, or participation in, a religious observance, or directly fund religion. Justice Kennedy’s perspective is an important one. To begin with, the makeup of the Court is different now than the last time it considered these issues. Justice Sandra Day O’Connor has been replaced by Justice Samuel Alito, for example, and the Court has veered hard to the right. It is conceivable then that the Court could view this case as an opportunity to abandon, or at least reconsider and revise, the reasonable observer test. If so, the decision could affect not only the constitutionality of legislative prayers, but also all religious accommodations, including the public display of religious symbols. It could also offer a glimpse into the Court’s thinking on another religious accommodation likely to come before it this term: the challenges under the [Religious Freedom Restoration Act](http://www.law.cornell.edu/uscode/text/42/chapter-21B) to the [contraception benefit](http://rhrealitycheck.org/tag/birth-control-benefit/) in the Affordable Care Act. 3. McCullen v. Coakley Regardless of whether or not the Supreme Court ultimately takes up Cline v. Oklahoma Coalition for Reproductive Justice, the Court will take up the issue of abortion clinic protests in [McCullen v. Coakley](http://www.scotusblog.com/case-files/cases/mccullen-v-coakley/), a challenge that looks at the constitutionality of Massachusetts’ clinic buffer zone law. The last time the Supreme Court looked at the issue of clinic buffer zones was in [Hill v. Colorado](http://www.oyez.org/cases/1990-1999/1999/1999_98_1856). In Hill, the Court held that a law limiting protest and “sidewalk counseling” within eight feet of a person entering a health-care facility in order to protect persons entering the facility from unwanted speech did not violate the First Amendment. Critical to the Court’s decision in Hill was its conclusion that the prohibition was content neutral because it arguably prevented both pro-choice and anti-choice speakers from entering the eight-foot zone. The Massachusetts statute at issue in McCullen takes a different approach to get to the same purpose as the law upheld in Hill. The Massachusetts law prohibits anyone from entering a public sidewalk within 35 feet of a reproductive health-care facility, but exempts from that buffer employees of the facility acting within the scope of employment. The Massachusetts statute raises questions not resolved in Hill, including whether the employee exemption renders the Massachusetts statute content-based, meaning that it places a limitation on free speech depending on the subject matter, since arguably employees can use the exemption to deliver pro-choice messages. The Massachusetts statute differs in two other potentially significant differences also. First it applies only to reproductive health-care facilities, making its abortion-specific purpose more apparent, and has a larger buffer zone, making conversational speech more difficult. Ultimately, this case may end up being more about whether the Supreme Court sympathizes with anti-abortion protestors rather than the differences between the Massachusetts statute and Hill. In Hill, the justices in the majority were especially sympathetic to the plight of patients who want to undergo a private medical procedure in peace, without being subjected to the emotional turmoil of confrontational protests. The dissenters in Hill now find themselves in the conservative majority under the Roberts Court, a fact that could drive the outcome here. In Hill, conservative justices like Antonin Scalia ignored the plight of patients and instead accused the majority of creating a special brand of reduced First Amendment protection for abortion protesters that would be viewed as intolerable if applied to any other speaker. And that perspective shift—from concerns over patients’ rights to concerns over protesters’ rights—could make all the difference in this case. 4. McCutcheon v. Federal Election Commission If you thought Citizens United was bad, just wait until you hear about [McCutcheon v. Federal Election Commission](http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/) (FEC). In [Citizens United v. FEC](http://www.oyez.org/cases/2000-2009/2008/2008_08_205), the Court held that restrictions on independent campaign expenditures that prohibited corporations from direct election spending violate the First Amendment. As bad as that decision was, it left intact the underlying holding in [Buckley v. Valeo](http://www.oyez.org/cases/1970-1979/1975/1975_75_436) that Congress may limit campaign contributions on the reasoning that limits on campaign contributions are thought to impinge less on First Amendment freedoms and have a stronger nexus to preventing corruption. At issue in McCutcheon is this underlying holding in Buckley when the Court considers the constitutionality of federal aggregate contribution limits—that is, the total amount that can be contributed to all candidates, party committees, or political action committees (PACs). Those are in contrast to base limits on candidate contributions that set limits on individual donations. In Buckley, the Court summarily upheld aggregate contribution limits as a means of preventing circumvention of the base limits on candidate contributions. The rationale was that, without aggregate limits, persons could circumvent the base limits on candidate contributions through massive un-earmarked contributions to political committees likely to contribute to a person’s favored candidate. The Roberts Court appears eager to take up aggregate limits because they limit not only the amount a person can contribute to a candidate, but the number of persons to whom a person can make a full base-level contribution. These kinds of restrictions appear all but certain to fall in a post-Citizens United world. At the time Buckley was decided, there were no base limits on party committees or PACs. Now there are. If the Supreme Court feels those new base limits adequately address the risk of circumvention that justified Buckley’s upholding aggregate contribution limits, then by Supreme Court logic there’s no reason to keep the aggregate limits in place. The Obama administration is defending the aggregate limits, arguing it is just as easy now to circumvent the base limits as when Buckley was decided, which is why the aggregate limits are necessary. Given the slow unwind of campaign finance law by the Roberts Court, it seems unlikely they will be persuaded by the Obama administration’s reasoning. 5. Schuette v. Coalition to Defend Affirmative Action If the Roberts Court appears set on dismantling individual contribution limits, it also appears set to strike another blow to affirmative action plans. Last summer, in [Fisher v. University of Texas at Austin](http://www.law.cornell.edu/supct/cert/11-345), the Court held that universities have limited authority to consider race in admissions to further diversity. At issue in [Schuette](http://www.scotusblog.com/case-files/cases/schuette-v-coalition-to-defend-affirmative-action/) is whether or not Michigan violated the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public university admissions decisions. In 2006, Michigan voters approved the Michigan Civil Rights Initiative (MCRI), a measure that amended the state constitution to prohibit all use of race in public university admissions, as well as in public contracting and employment. A coalition of African-American student groups, faculty members, and public-sector labor unions immediately challenged the MCRI as a violation of the Fourteenth Amendment. In answering that question, the Court will have to tackle the restricting doctrine. Under the restricting doctrine, a state may not remove authority to decide a racial issue from one political entity and lodge it in another when doing so creates a more burdensome political hurdle. The Court has applied that doctrine only twice, first in [Hunter v. Erickson](http://holmes.oyez.org/cases/1960-1969/1968/1968_63), to invalidate a reallocation of authority over the decision to prohibit racial discrimination in housing, and then in [Washington v. Seattle School District No. 1](http://www.oyez.org/cases/1980-1989/1981/1981_81_9), to invalidate a reallocation of authority over the decision whether to bus students to achieve racial integration in the schools. The question before the Roberts Court is whether the political restructuring doctrine invalidates the MCRI. The Sixth Circuit Court of Appeals held that it did, because affirmative action is a racial issue of particular concern to racial minorities, and it is more difficult for minorities to obtain favorable action through the constitutional amendment process. In defending the MCRI, Michigan argues the political restructuring doctrine applies to reallocations of authority over measures to ensure equal opportunity, not those that give racial preference. It’s difficult to see the distinction, especially given the connection between graduating college and economic opportunity, but it is a distinction Michigan stands by. Michigan also argues that the political restructuring doctrine should not apply to admission decisions made by unelected university officials because they are not part of any “political process” as envisioned in earlier decisions. Should the Court accept Michigan’s argument, voters in any state dissatisfied with the affirmative action policies at their state universities could follow Michigan’s lead and vote to eliminate them through constitutional amendment. On the other hand, a decision finding the MCRI did in fact violate equal protection guarantees of the 14th Amendment would protect current policies from falling victim to voter dissatisfaction like in Michigan. 6. Township of Mount Holly v. Mount Holly Gardens Citizens in Action The Supreme Court is also poised to gut federal housing discrimination protections when it considers [whether to limit the federal housing discrimination law](http://www.scotusblog.com/case-files/cases/mount-holly-v-mt-holly-gardens-citizens-in-action-inc/) to cases of actual and proven bias against racial minorities. Mount Holly, New Jersey, argues it cannot be held liable for housing discrimination for redeveloping a depressed neighborhood and reducing the number of homes that are available to African Americans and Latinos. Specifically, the Roberts Court will examine whether the Fair Housing Act forbids actions by cities or mortgage lenders that have a “discriminatory effect” on racial minorities. According to census data, Mount Holly has a white majority. The town council decided that one neighborhood of about 330 homes was “in need of redevelopment.” Known as Mount Holly Gardens, this neighborhood was home to most of the Black and Latino residents in the town. The town council then voted to buy all the homes in the Gardens area for prices ranging from $32,000 to $49,000. They were to be replaced with new homes ranging from $200,000 to $250,000. In 2008, a community group representing the Gardens residents sued the city, arguing that its redevelopment plan was discriminatory and illegal because it would have a disparate impact on low-income African Americans and Latinos. City officials counter that they were not trying to displace minorities—rather, they were trying to improve a blighted part of town, not engage in illegal discrimination. Furthermore, they claim, the [Fair Housing Act](http://www.justice.gov/crt/about/hce/title8.php) does not cover these kinds of discrimination claims. Given the Roberts Court’s willingness to severely restrict the scope of other key pieces of civil rights legislation, like Title VII and the Voting Rights Act, there’s plenty of reason to believe the Fair Housing Act is the next to get gutted. In addition to these high-profile challenges, the Supreme Court will also look at whether individual government workers can be held liable for [age discrimination claims](http://www.scotusblog.com/case-files/cases/madigan-v-levin/), whether or not federal labor laws allow employees to [change clothes at work](http://www.scotusblog.com/case-files/cases/sandifer-v-united-states-steel-corporation/), and the extent of President Obama’s [recess appointment powers](http://www.scotusblog.com/case-files/cases/national-labor-relations-board-v-noel-canning/). In many ways, the Roberts Court is picking up right where it left off last term—with an eye toward narrowing as much as possible the reach and effect of the greatest achievements of the civil rights movement.

#### Hedges appeal coming out- the court will rule on INDEFINITE DETENTION

RT 9/3 (Supreme Court to rule on fate of indefinite detention for Americans under NDAA http://rt.com/usa/ndaa-scotus-hedges-suit-359/)

The United States Supreme Court is being asked to hear a federal lawsuit challenging the military’s legal ability to indefinitely detain persons under the National Defense Authorization Act of 2012, or NDAA. According to Pulitzer Prize-winning journalist Chris Hedges — a co-plaintiff in the case — attorneys will file paperwork in the coming days requesting that the country’s high court weigh in on Hedges v. Obama and determine the constitutionality of a controversial provision that has continuously generated criticism directed towards the White House since signed into law by President Barack Obama almost [two years ago](http://rt.com/trends/national-defense-authorization-act-indefinite-detention/) and defended adamantly by his administration in federal court in the years since.