####  “Statutory restrictions” can mandate judicial review, but are *enacted* by congress

Mortenson 11 (Julian Davis Assistant Professor, University of Michigan Law School, “Review: Executive Power and the Discipline of History Crisis and Command: The History of Executive Power from George Washington to George W. Bush John Yoo. Kaplan, 2009. Pp vii, 524,” Winter 2011, University of Chicago Law Review 78 U. Chi. L. Rev. 377)

At least two of Yoo's main examples of presidential power are actually instances of presidential deference to statutory restrictions during times of great national peril. The earliest is Washington's military suppression of the Whiskey Rebellion (III, pp 66-72), a domestic disturbance that Americans viewed as implicating adventurism by European powers and threatening to dismember the new nation. n60 The Calling Forth Act of 1792 n61 allowed the President to mobilize state militias under federal control, but included a series of mandatory procedural checks--including judicial [\*399] approval--that restricted his ability to do so. n62 Far from defying these comprehensive restrictions at a moment of grave crisis, Washington satisfied their every requirement in scrupulous detail. He issued a proclamation ordering the Whiskey Rebels to disperse. n63 When they refused to do so, he submitted a statement to Justice James Wilson of the Supreme Court describing the situation in Pennsylvania and requesting statutory certification. n64 Only when Wilson issued a letter precisely reciting the requisite statutory language (after first requiring the President to come back with authentication of underlying reports and verification of their handwriting n65) did Washington muster the troops. n66 Washington's compliance with statutory restrictions on his use of force continued even after his forces were in the field. Because Congress was not in session when he issued the call-up order, Washington was authorized by statute to mobilize militias from other states besides Pennsylvania--but only "until the expiration of thirty days after the commencement of the ensuing [congressional] session." n67 When it became clear that the Pennsylvania campaign would take longer than that, Washington went back to Congress to petition for extension of the statutory time limit that would otherwise have required him to [\*400] disband his troops. n68 Far from serving as an archetypal example of presidential defiance, the Whiskey Rebellion demonstrates exactly the opposite. FDR's efforts to supply the United Kingdom's war effort before Pearl Harbor teach a similar lesson. During the run-up to America's entry into the war, Congress passed a series of Neutrality Acts that supplemented longstanding statutory restrictions on providing assistance to foreign belligerents. Despite these restrictions, FDR sent a range of military assistance to the future Allies. n69 Yoo makes two important claims about the administration's actions during this period. First, he claims the administration asserted that "[a]ny statutory effort by Congress to prevent the President from transferring military equipment to help American national security would be of 'questionable constitutionality'" (III, p 300). Second, he suggests that American military assistance in fact violated the neutrality statutes (III, pp 295-301, 310, 327-28).

#### And, Restrictions are legal limitations on activities

Law.Com 9

(“restriction”, The People's Law Dictionary by Gerald and Kathleen Hill (legal writers), <http://dictionary.law.com/Default.aspx?selected=1835&bold=restrict>, accessed 9-9-9)

restriction

n. any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects managed by homeowners' associations or similar organizations, such organizations are usually required by state law to impose restrictions on use. Thus, the restrictions are part of the "covenants, conditions and restrictions" intended to enhance the use of common facilities and property which are recorded and incorporated into the title of each owner.

#### Second, can’t solve blowback- drones key to winning the war on terror-

Crandall, 2012

[Carla, Law Clerk to the Honorable Laura Denvir Stith, Supreme Court of Missouri and the author was previously employed by the National Geospatial-Intelligence Agency, READY . . . FIRE . . . AIM! A CASE FOR APPLYING AMERICAN DUE PROCESS PRINCIPLES BEFORE ENGAGING IN DRONE STRIKES, April, 2012 Florida Journal of International Law 24 Fla. J. Int'l L. 55, Lexis] /Wyo-MB

As important as these developments were to the burgeoning of drones, it was not until the U.S. government had a sustained requirement for their deployment that their full force became evident. That requirement came after the attacks of September 11th with the commencement of the global war on terror. Since the very first night of the U.S. invasion in Afghanistan, n27 drones have been used for a wide array of terrorism-related missions. For example, though their primary mission has remained reconnaissance, they have also been used for battle-damage assessments, relaying target information to on-ground operators, and spotting hazards to U.S. forces like roadside improvised [\*61] explosive devices. n28 The most contentious aspect of drone operations, however, has been their role in targeted killings.¶ 1. Killing via Drone¶ News articles are littered with reports of drone strikes against alleged terrorists around the globe-from Afghanistan and Iraq, to Yemen and Pakistan. n29 Though the classified nature of the drone program makes precise estimates difficult, one study indicates that in Pakistan alone, drones operated by the United States killed over one-thousand people between 2006 and 2009. n30 Among these were numerous senior al-Qaeda leaders, and other high-value targets. In fact, "[c]ounterterrorism officials credit drones with having killed more than a dozen senior Al Qaeda leaders and their allies in the past year, eliminating more than half of the C.I.A.'s twenty most wanted 'high value' targets." n31¶ Drones have played such a significant part in the war on terror largely because conventional military force has proven ineffective at combating the asymmetrical threats posed by small pockets of al-Qaeda terrorists. n32 Moreover, given that the war's battlefields have often been located in urban environments, using drones has arguably limited collateral damage that might otherwise have occurred with more conventional weapons systems. n33 Further, at least from the U.S. government's perspective, the results have been remarkable. During the early stages of the war, for example, General Tommy Franks, who was then commanding all U.S. troops in the Middle East, stated that drones [\*62] were his "most capable sensor[s] in hunting down and killing Al Qaeda and Taliban leadership and [that they proved] absolutely critical to [the U.S.] fight." n34 Moreover, as the lethality of drones became more evident to insurgents, their utility increased simply because strikes began to "serve as a deterrent to potential combatants and sow paranoia and distrust among terrorists groups." n35 Even those militants who remained true to their cause were forced to "operate far more cautiously, which divert[ed] their energy from planning new attacks." n36¶

#### And can’t solve judicial independence, amendments undermine court legitimacy

Sullivan 96

(Kathleen, Professor of Law at Stanford University, January, "Constitutional Constancy: Why Congress Should Cure Itself of Amendment Fever", 17 Cardozo L. Rev. 691, Lexis)

Increasing the frequency of constitutional amendment would undermine the respect and legitimacy the Court now enjoys in this interpretive role. This danger is especially acute in the case of proposed constitutional amendments that would literally overturn Supreme Court decisions, such as amendments that would declare a fetus a person with a right to life, permit punishment of flag-burning, or authorize school prayer. Such amendments suggest that if you don't like a Court decision, you mobilize to overturn it.¶ Justice Jackson once quipped that the Court's word is not final because it is infallible, but is infallible because it is final. That finality, though, has many salutary social benefits. For example, it allows us to treat abortion clinic bombers as terrorists rather than protesters. If every controversial Supreme Court decision resulted in plebiscitary overruling in the form of a constitutional amend- [\*703] ment, surely the finality of its word would be undermined, and with it the social benefits of peaceful conflict resolution. The fact that we have amended the Constitution only four times in order to overrule the Supreme Court is worth remembering.

#### And no solvency- Courts would roll back the amendment

Sullivan 96

(Kathleen, Professor of Law at Stanford University, January, "Constitutional Constancy: Why Congress Should Cure Itself of Amendment Fever", 17 Cardozo L. Rev. 691, Lexis)

As a second illustration of the problem of amendments inconsistent with the Constitution, consider the flag-desecration amendment that will go to the states for ratification if the Senate approves it this fall. The First Amendment forbids Congress from abridging the freedom of speech. The flag amendment would permit Congress and the states to prohibit "desecration" of the flag. Now it's hard to see the flag as anything but a symbol. And it's hard to see its "desecration" as anything but a form of symbolic expression too. If "flag desecration" is not to be construed absurdly as applying to people who get mustard on their flag napkins on the Fourth of July, then it will apply only to symbolic protestors who desecrate flags in order to express anti-patriotic sentiments. And if that's the case, then flag-desecration laws passed under the authority of the amendment would quite literally abridge the freedom of (symbolic) speech. For just these reasons, the Supreme Court struck down as unconstitutional both a Texas flag-desecration law and Congress's Flag Protection Act of 1992. If the flag-desecration amendment were to pass, it would not only overrule these two decisions of the Court, but would also for the first time ever amend the original Bill of Rights. In effect it would hold that "Congress may not abridge the freedom of speech, except for flag-burning." Once embedded in the Constitution, the amendment might lead to other arguments by analogy: if flag-burning is not protected speech, why protect wearing a jacket that says "Fuck the Draft"? Or a rap recording with a refrain "Kill the Pigs"? Chief Justice Rehnquist, in dissent from the Court's flag-burning decisions, called flag-burning the "inarticulate" equivalent of a "grunt or roar." But much of the offensive speech the Court has long protected is hardly more articulate or elegant. It is possible that courts would treat flag desecration as sui generis, confining the amendment to its terms. But it is also possible that the amendment would have unintended spillover effects on other speech contexts, altering the habits of mind that had led courts presumptively to strike down all abridgements of speech. The proposed religious equality amendment would likewise amend the Bill of Rights if enacted. This amendment would bar government from prohibiting "prayer or other religious expression in circumstances in which expression of a nonreligious character would be permitted," treating this as discrimination against reli- [\*700] gion. To be sure, the original First Amendment protects the free exercise of religion. But it also bars government from establishing religion. The Establishment Clause is unique; there is no issue other than religion on which government is barred from taking an official position. Thus, the original Constitution required religion to be treated differently from activities "of a nonreligious character." The amendment would rewrite the First Amendment by requiring them to be treated the same. Proponents of the amendment suggest it would simply allow student-initiated, not government-mandated prayer. But as with the flag-desecration amendment, courts would be free to extend the force of this amendment further than its proponents publicly contemplate. Perhaps a properly enacted constitutional amendment cannot literally be unconstitutional. This would appear to be a contradiction in terms - although, to be sure, a few scholars have argued that some amendments would be so beyond the pale (imagine an amendment requiring racial apartheid) that the Court would have the power to strike them down. But it is clear that amendments can cause tension with the original document, and may exert a gravitational force extending beyond their specific subject matter. This is at least an additional argument for keeping amendments to an essential minimum.

#### 1st, Debates on drone courts now—legislation being written and proposed—thumps the disad

Wolverton, 3-12-13

[Joe, professor of American Government at Chattanooga State and was a practicing attorney until 2009, Federal Courts Rubber Stamp Federal Spying, http://tenthamendmentcenter.com/2013/05/12/federal-courts-rubber-stamp-federal-spying/comment-page-1/#.UfqaW2T70bh] /Wyo-MB

Although certainly not one to recognize checks on the executive, the White House indicated several months ago that it would entertain any legislative proposal for the establishment of such a tribunal. An Obama administration official told Reuters early this year, “The White House has been discussing various ways there could be independent review of counterterrorism actions for more than a year.”¶ In a press release issued in February, Senator King announced that he had sent a letter to Senators Feinstein and Saxby Chambliss (R-Ga.), chairwoman and vice-chairman of the Intelligence Committee, to consider a bill creating the new court.¶ King wrote, “As the Committee begins preparing the Intelligence Authorization Act for Fiscal Year 2014, I ask that you work with me to contemplate legislative solutions, such as the creation of an outside judicial process similar to the FISA court, that might provide an independent perspective in the distinctive case of a U.S. citizen who is a senior operational leader of al Qaeda.”¶ According to comments made by “congressional aides” cited in Reuters, “discussions are at a preliminary stage.” They also reportedly said that several similar proposals made by legal experts were being kicked around on Capitol Hill.¶

#### 2nd, Link turn drone courts popular in congress—particularly with Feinstein and King

Hosenball, 2-8-2013

[Mark, Reuters news service, Support grows for U.S. "drone court" to review lethal strikes, http://www.reuters.com/article/2013/02/09/us-usa-drones-idUSBRE91800B20130209] /Wyo-MB

During a fresh round of debate this week over President Barack Obama's claim that he can unilaterally order lethal strikes by unmanned aircraft against U.S. citizens, some lawmakers proposed a middle ground: a special federal "drone court" that would approve suspected militants for targeting.¶ While the idea of a judicial review of such operations may be gaining political currency, multiple U.S. officials said on Friday that imminent action by the U.S. Congress or the White House to create one is unlikely. The idea is being actively considered, however, according to a White House official.¶ At Thursday's confirmation hearing for CIA director nominee John Brennan, senators discussed establishing a secret court or tribunal to rule on the validity of cases that U.S. intelligence agencies draw up for killing suspected militants using drones.¶ The court could be modeled on an existing court which examines applications for electronic eavesdropping on suspected spies or terrorists.¶ Senator Dianne Feinstein, Democratic chairwoman of the Senate Intelligence Committee, said Thursday that she planned to "review proposals for ... legislation to ensure that drone strikes are carried out in a manner consistent with our values, and the proposal to create an analogue of the Foreign Intelligence Surveillance Court to review the conduct of such strikes."¶ Senator Angus King, a Maine independent, said during the hearing that he envisioned a scenario in which executive branch officials would go before a drone court "in a confidential and top-secret way, make the case that this American citizen is an enemy combatant, and at least that would be ... some check on the activities of the executive."

#### Feinstein key to agenda- can wrangle in both parties

Tate 13

(Curits, Mcclatchy Newspapers, “Sen. Dianne Feinstein presses her decades-long crusade on guns,” March 10, 2013, <http://www.mcclatchydc.com/2013/03/10/185261/sen-dianne-feinstein-presses-her.html#.Uhp4YpKThSQ>) /wyo-mm

Feinstein is a veteran lawmaker who knows how to work behind the scenes and across the aisle, which is how much of the real business of Capitol Hill gets done. “She’s developed a chain of colleagues she can call on,” Kennedy said. “She knows very well how to use her position on other committees.” Feinstein is an influential member. She ranks 14th in Senate seniority. Besides her seat on the Judiciary Committee, she serves on the powerful Appropriations Committee and chairs the Intelligence Committee. Her political roots took hold at a time before bitter partisanship began to color every debate, and even relationships on Capitol Hill. One of her closest friends has been Kay Bailey Hutchison, a Texas Republican who left the Senate in January. And Feinstein has warm relations with many more lawmakers, in an era fraught with political polarization. Sen. Jeff Sessions, R-Ala., a staunch conservative who serves alongside the liberal-leaning Feinstein on the Judiciary Committee, said that while they disagreed on many issues, including the assault weapons ban, he admired her ability to forge compromise. “I’d say on the 16 years I’ve been on it, she’s been one of the more effective Democratic senators at reaching across the aisle on key issues,” he said. “She battles for what she believes in, but she’s also very able at finding common ground and solving problems.”

#### 3rd, Link turn – plan popular in congress

Jakes 13

(Laura Jakes, writer for the Associate Press. “Congress Considers Putting Limits on Drone Strikes” 2-6-13 http://www.military.com/daily-news/2013/02/06/congress-considers-putting-limits-on-drone-strikes.html//wyoccd)

WASHINGTON -- Uncomfortable with the Obama administration's use of deadly drones, a growing number in Congress is looking to limit America's authority to kill suspected terrorists, even U.S. citizens. The Democratic-led outcry was emboldened by the revelation in a newly surfaced Justice Department memo that shows drones can strike against a wider range of threats, with less evidence, than previously believed.¶ The drone program, which has been used from Pakistan across the Middle East and into North Africa to find and kill an unknown number of suspected terrorists, is expected to be a top topic of debate when the Senate Intelligence Committee grills John Brennan, the White House's pick for CIA chief, at a hearing Thursday.¶ The White House on Tuesday defended its lethal drone program by citing the very laws that some in Congress once believed were appropriate in the years immediately after the Sept. 11 attacks but now think may be too broad.¶ "It has to be in the agenda of this Congress to reconsider the scope of action of drones and use of deadly force by the United States around the world because the original authorization of use of force, I think, is being strained to its limits," Sen. Chris Coons, D-Del., said in a recent interview.¶ Rep. Steny Hoyer of Maryland, the No. 2 Democrat in the House, said Tuesday that "it deserves a serious look at how we make the decisions in government to take out, kill, eliminate, whatever word you want to use, not just American citizens but other citizens as well."¶ Hoyer added: "We ought to carefully review our policies as a country."¶ The Senate Foreign Relations Committee likely will hold hearings on U.S. drone policy, an aide said Tuesday, and Chairman Robert Menendez, D-N.J., and the panel's top Republican, Sen. Bob Corker of Tennessee, both have quietly expressed concerns about the deadly operations. And earlier this week, a group of 11 Democratic and Republican senators urged President Barack Obama to release a classified Justice Department legal opinion justifying when U.S. counterterror missions, including drone strikes, can be used to kill American citizens abroad.¶ Without those documents, it's impossible for Congress and the public to decide "whether this authority has been properly defined, and whether the president's power to deliberately kill Americans is subject to appropriate limitations and safeguards," the senators wrote.

#### 4th, Political capital theory not true—and if the plan causes a fight it means Obama will get to pass more legislation—winning wins

Hirsh, 2013

[Michael, national journal chief correspondent, There’s No Such Thing as Political Capital, 3-30-13, http://www.nationaljournal.com/magazine/there-s-no-such-thing-as-political-capital-20130207] /Wyo-MB

But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote.¶ Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

#### 5th, Obama wont spend PC and he won’t be effective if he does

Jay Cost, staff writer, 2-11-2013, “Obama the Bargainer,” The Weekly Standard, http://www.weeklystandard.com/articles/obama-bargainer\_699205.html?page=1

Thus, with the festivities finished and the glow of the inauguration fading, it is fair to ask: Just how powerful will President Obama be in his second term? In other words, how successful will he be at persuading the diverse agents of our government to do what he wants them to do? If the lessons of his first term guide our expectations for the second, then the most likely answer is: not very. At first blush, this assertion might sound absurd. A weak President Obama? Proof of the contrary is in the pudding: The massive stimulus, the health care bill, and financial reform were all epic in their scope and ambition. Surely both left and right agree—whether they celebrate or bemoan the fact—that Obama is a very strong, liberal president. But presidential power—the ability to persuade—has many sources, some external, some internal. The external sources are all reducible to “the political context.” How many seats does the president’s party control in Congress? What is the status of the opposition party? What was the relative strength of the president and his party in the last election? What is his job approval rating? And so on. All of these factors set the boundaries for how easily the president can persuade others. In 2009 and 2010, President Obama enjoyed a very favorable political context. Today, the political context is more favorable to him than it was in 2011, but markedly diminished from the heady days of 2009. So, for instance, President Obama can call for action on “climate change” until he is blue (or, perhaps, green) in the face, but the political environment—including arguably the most conservative House of Representatives since the 1920s—means he lacks the power to make it happen. The internal sources of strength are the president’s political skills, which he deploys in particular circumstances. So the question becomes: How good is he at persuading others, given the political context? If political context is the science of presidential power, quantifiable in electoral results and congressional voting scores, persuasive skill is the art. Here, we must put down the American Political Science Review and pick up Machiavelli’s Prince. As for President Obama’s first term, no other incoming president in recent history had such a surplus of political capital and misused it so terribly. The reason? He lacks important skills that are integral in the exercise of presidential power. All presidents are unique, each possessing or lacking skills useful to a chief executive. Obama is notable in that he has mastered some vital skills better than any recent predecessor, but he exhibits virtually no facility with others. His strengths have been enumerated extensively by a fawning press corps. His favorable coverage is due not only to the media’s ideological commitment to his policy goals, but also to his natural gifts. He awes the press, and many other groups in society, by his very presence. Moreover, he knows he has this power over them. This ability, more than any other, made him president and remains his single greatest source of power. Yet though he affects some people intensely, he himself seems largely unaffected by others. This helps explain why he has used his speaking ability so unevenly: He is wont to misread people, and therefore situations. His Tucson speech, for instance, after the shooting of Rep. Gabrielle Giffords, was a political stroke of genius. He intuited what the moment called for and delivered it perfectly. By contrast, his 2009 speech to the International Olympic Committee pitching Chicago was a waste of time and made him look small. Similarly, he has time and again left business leaders feeling nonplussed, inviting them to the White House mainly to serve as window dressing for another teleprompter performance. It is on Capitol Hill that Obama seems most out of touch with his audience. In particular, he does not understand what the key players in Congress expect, yet he is convinced he knows them better than they know themselves. What’s more, he gives little and inconsistent guidance as to what he expects from them. That goes for both Republicans and Democrats. For Republicans, the warning signs appeared early, on the stimulus bill passed in the president’s first month in office. Obama and his team were supremely confident that they could get a $900 billion package through Congress with solid Republican support, so much so that when House minority whip Eric Cantor warned that they would receive no backing from House Republicans, they told him not to embarrass himself with such an absurd prediction. Team Obama failed to anticipate how turned off the congressional GOP would be by the spending side of the package: Democratic appropriators were unloading a wish list that had accumulated during more than a decade of Republican governance. The White House also thought the Republicans would be attracted to the tax cuts that constituted roughly one-third of the package. But the White House did not understand how Republicans view taxes—specifically, the difference between tax credits, which the stimulus favored heavily, and rate cuts, which Republicans prefer. None of this should have come as a surprise to anyone who had done any homework on the congressional GOP. After all, Republicans killed a 1993 stimulus bill that was qualitatively similar, but less than a tenth the size of the 2009 package. What did Team Obama surmise when its predictions fell flat? It certainly did not take time to gauge the congressional GOP more carefully, to build a more nuanced picture of Republicans’ motives and expectations. Instead, it adopted the cartoonish caricature one finds in a Paul Krugman column: Republicans are contemptible knaves, willing to let the economy go down the drain to embarrass the president. The stimulus also featured another theme of presidential-congressional relations under Obama: mixed messages from the White House. Early in the negotiations over the bill, President Obama told House minority leader John Boehner and Cantor that he was interested in their ideas. He did not want to play partisan games; he just wanted to jump-start the economy. Yet when Cantor presented the president a list of suggestions, Obama brought the dialogue to an icy conclusion by infamously declaring, “I won, so I think I trump you on that.” During the deliberations on the bill, the president’s chief of staff, Rahm Emanuel, was known to respond to other GOP suggestions by shouting, “We have the votes. F— ’em!” For the first two years of Obama’s tenure, congressional Republicans did not register with the White House at all. Contact was so sparse that when the GOP took control of the House of Representatives, the White House did not even have Boehner’s cell phone number so the president could place a congratulatory call. The case of Michigan Republican Dave Camp is illustrative. According to Bob Woodward in The Price of Politics, The administration’s approach to Congress was different from what he was used to. He had first come to Washington as a congressional staffer during the Reagan administration. Reagan had deployed administration liaisons all over Congress. Camp could remember Reagan getting on the phone with a lowly freshman congressman to discuss legislation. .  .  . During Obama’s first two years in office, Camp was the ranking Republican on the Democrat-controlled Ways and Means Committee. He was one of the more politically moderate House Republicans. Yet the administration’s Hill staff didn’t even seem to know who he was. He never saw them. During the debt ceiling battle of 2011, the president again exhibited cluelessness about the motivations of congressional Republicans. Precious time during the month of July was wasted as Obama insisted again and again on decoupling the Bush-era tax cuts, making permanent the cuts for those making under $250,000, and letting the cuts in the high-end rates expire. His argument was that the congressional GOP could avoid the wrath of Grover Norquist because it would not actually have to vote to increase taxes. It seemed never to cross his mind that tax rate increases such as he was proposing were anathema to congressional Republicans. The bigger problem during the debt ceiling fight, and probably the biggest contributor to the near-default of the country that summer, was Obama’s failure to heed Boehner’s warning that $800 billion in additional tax revenue was his “red line,” above which he could not go. The justification for that figure was that it was all that could be squeezed out of tax reform (and even that was optimistic according to many analysts); beyond that, tax rates would have to be raised in order to bring in more revenue. In late July, after Boehner had made a “grand bargain” offer that included $800 billion in new revenue, Obama asked for another $400 billion. Memories diverge on exactly who said what—Boehner is convinced Obama said he had to have the extra money, while Obama believes he only suggested it. This ambiguity might have been avoided if Obama had not made the rookie mistake of making such a big request over the phone instead of in person. And, anyway, he should have known not to ask, given Boehner’s previous warnings about his red line. Unsurprisingly, the deal blew up shortly afterwards. It boils down to the difference between listening and waiting to talk. With congressional Republicans, Obama always seems to do the latter. So, once again, he was left disappointed, and once again he assumed the worst of his negotiating partners. He surmised that there were simply too many extreme Tea Party Republicans who were prepared to breach the debt ceiling, and that Boehner lacked control of his caucus. Again, a basic understanding of Republican history would have corrected this notion. Like Newt Gingrich and Denny Hastert before him, Boehner is responsible to a majority of the Republican caucus, which for generations has opposed the kinds of rate increases that $1.2 trillion in new revenue would have required. Not only did Obama fail to listen during the debt ceiling struggle, he consistently sent the other side mixed messages. A case in point: Obama’s demagogic April 2011 speech blasted Paul Ryan’s budget as “leaving seniors at the mercy of the insurance industry” and abandoning “the fundamental commitment this country has kept for generations.” In private, however, Obama had praised Ryan for offering a serious proposal and emphasized that both sides had to avoid scaring the elderly for political points. Worse, he had held a bipartisan summit that very day to encourage the two sides to come together on a plan. Obama’s problems communicating with Congress are not limited to the right side of the aisle. Although Democrats need not worry about White House demagoguery or fret that Obama fails to understand their concerns, he has nevertheless done a poor job of engaging them in dialogue. In particular, the White House has often cut congressional Democrats out of the loop, inhibiting interbranch coordination and angering leaders by what they feel is trampling on their institutional rights. Indeed, the president’s signature achievement—Obamacare—almost did not happen because of this. The process by which the health care bill was written was chaotic, to say the least. At one point five bills were circulating on Capitol Hill, three in the House and two in the Senate. Each differed, sometimes dramatically, in how to expand coverage and how to pay for it. And yet the White House did virtually nothing in 2009 to coordinate these efforts. In fact, White House aides privately thought the final House bill was a liberal fantasy, and they had worked out a deal with medical providers that did not include the so-called public option. Yet the president never came out against that proposal, or any other, for that matter. After multiple calls over the summer of 2009 for President Obama to set some ground rules on what he expected, he gave a speech in early September that, though his aides promised specificity, was once again vague. Finally, in early January, when the two chambers had passed their bills and it came time to work out the finer points, President Obama actually stormed out of a meeting after Nancy Pelosi tartly expressed her frustration with his lack of leadership. It was left to Emanuel to finish the negotiations. Worse, the needless delays due to the lack of presidential leadership sapped public support for the reform effort, led to Scott Brown’s victory in the Senate race in Massachusetts that January, and eventually forced Democrats to pass a gratuitously slipshod and ill-conceived bill that otherwise never would have become law. After the 2010 midterms, House Democrats lost their majority, but not all of their clout. It would have been virtually impossible for Boehner to pass a compromise debt ceiling plan through the House in 2011 without at least some Democratic support, so it was appropriate for Pelosi and her leadership team to be kept in the loop. For a while, they were, but as Boehner and Obama approached a grand bargain, House Democrats were excluded. Amazingly, so was Harry Reid. Any deal would obviously have to bear the imprimatur of the Senate majority leader, yet he was cut out of the final talks. It was only after the New York Times scooped the Boehner-Obama grand bargain that the White House brought Senate Democrats into the loop. Unsurprisingly, they were apoplectic, believing that the deal extracted too little from the congressional GOP, and feeling that they had been ignored. In fact, it was the outrage of the Senate Democrats that prompted the White House to go back to Boehner at the last minute to ask for more tax revenue, scuttling the big deal once and for all. All of these stories point in the same direction: This president does not have a solid congressional outreach program, does not have a steady grasp of the expectations of legislators in either party, and does a notably poor job of communicating to them what he expects. Thus, a drifting and listless policy process, finally given direction by some power player outside the White House, often acting to avert imminent disaster, has marked almost every major deal during his tenure. There is little reason to expect anything different in the next four years. In the end, President Obama simply does not spend enough time talking to members of Congress. He is too aloof, and most accounts suggest he dislikes the seemingly petty, parochial nature of Capitol Hill. In an interview with journalist Ron Suskind, President Obama articulated what he believes to be the core of a president’s job, and what he learned from the troubles of his first term: The reason people put me in this office is people felt that I had connected our current predicaments with the broader arc of American history and where we might go as a diverse and forward-looking nation. And that narrative thread we just lost, in the day-to-day problem solving that was going on. .  .  . What the president can do, that nobody else can do, is tell a story to the American people about where we are and where we need to go. While this statement would surely make the republicans of the founding generation turn over in their graves, it does encapsulate the job of the modern president, but only in part. Yes, he is to stand, almost godlike, above the political process and tell a story, but the modern presidential deity is not in line with the watchmaker God of the 18th-century rationalists. It is not enough to put the pieces in motion, then stand back. Instead, a president must be more like the God of the Old and New Testaments, above the world and sovereign over it, but also intimately involved in it, guiding, encouraging, cajoling, and threatening people to make the right choices. The ideal modern president, to borrow a phrase from Theodore Roosevelt, is one “actually in the arena, whose face is marred by dust and sweat and blood.” President Obama does not much care for the arena, and his successes came despite this distaste, not because of it. In fact, Nancy Pelosi probably deserves most of the credit for the legislative victories of 2009-2010. She functioned as a de facto prime minister, with her eyes always on big, national projects while she dealt with the provincial concerns of this committee chair or that subcommittee member. She, not Obama, was the one “in the arena.” What this means is that major breakthroughs on legislation in the next four years are likely to depend on political actors outside the White House. Pelosi’s power is only a fraction of what it was, but policy success will still depend on congressional entrepreneurs as long as the White House remains disengaged. Thus, a whole host of issues will likely go unaddressed, above all, the looming entitlement crisis. One issue that could see movement is immigration reform, a topic of discussion where there is overlap between the parties and there are potential leaders in Congress, like Marco Rubio, who could help in whipping his party and negotiating a compromise with the other side.

#### 1st, Pres powers low now—Syria decision undermined Obama’s presidential powers

Nather and Palmer, 9-1-13

[David and Anna, Politico, Bushies fear Obama weakening presidency, http://www.politico.com/story/2013/09/bushies-fear-obama-weakening-presidency-96143.html] /Wyo-MB

President Barack Obama just turned decades of debate over presidential war powers on its head.¶ Until Saturday, when Obama went to Congress to ask for permission to strike Syria, the power to launch military action had been strongly in the hands of the commander in chief. Even the 1973 War Powers Resolution allows bombs to start falling before the president has to ask Congress for long-term approval.¶ For three decades after Watergate, conservatives like Dick Cheney and those of his ilk sought to increase executive branch power that they felt had been eroded by liberal congressional reformers. George W. Bush’s legal team crafted controversial opinions that emboldened the White House on a wide range of national security areas, from interrogation to surveillance.¶ That makes the move by Obama to hand a piece of the messy situation in Syria to Congress a clear step in the other direction — an abdication of power to Congress at a moment when he has no good solutions.¶ And even if Obama ultimately balks at Congress if they vote down his ask, prominent conservatives who fueled the expansion of presidential power — especially Bush administration alums — are beside themselves, arguing that Obama has weakened the presidency.

#### 2nd, A multitude of other actors hamper presidential flexibility—thumps the disad

Rozell 12

(Mark Rozell, Professor of Public Policy, George Mason University, “From Idealism to Power: The Presidency in the Age of Obama” 2012, <http://www.libertylawsite.org/book-review/from-idealism-to-power-the-presidency-in-the-age-of-obama/>, KB)

A substantial portion of Goldsmith’s book presents in detail his case that various forces outside of government, and some within, are responsible for hamstringing the president in unprecedented fashion: Aggressive, often intrusive, journalism, that at times endangers national security; human rights and other advocacy groups, some domestic and other cross-national, teamed with big resources and talented, aggressive lawyers, using every legal category and technicality possible to complicate executive action; courts thrust into the mix, having to decide critical national security law controversies, even when the judges themselves have little direct knowledge or expertise on the topics brought before them; attorneys within the executive branch itself advising against actions based on often narrow legal interpretations and with little understanding of the broader implications of tying down the president with legalisms.

#### And, the link turn outweighs the link—Judicial oversight serves to legitimize executive decisions

Kwoka 11

(Lindsay, University of Pennsylvania Law School, J.D, Journal of Constitutional Law, “Trial by Sniper: The Legality of Targeted Killing in the War on Terror,” 2011, Lexis) /wyo-mm

Providing an intra-executive process is not sufficient in the context of targeted killing of a U.S. citizen outside of a war zone.122 Murphy and Radsan argue that due process would be satisfied if, after a strike has already occurred, the executive branch launched an investigation of its legality.123 They argue that interference from the judicial branch would undermine the executive’s decisionmaking and compromise state secrets.124 On the contrary, judicial intervention would not undermine the executive’s decisionmaking, but rather would serve to legitimize the executive’s actions. Even during wartime, many are critical of actions taken by the executive to deprive individuals of rights without intervention by the judicial branch. For instance, many objected to the Military Commissions Act on the grounds that it did not afford the accused of an independent judiciary.125 Furthermore, as noted above, the concerns about minimizing the disclosure of state secrets would be alleviated by permitting only the decisionmaker to review the evidence. The hearing would be conducted privately and the information would be conveyed on a “need-to-know” basis only. Thus the confidentiality problems associated with affording suspected terrorists a full jury trial are not present in a process where the judge reviews the evidence in confidence. Not only would judicial intervention decrease public skepticism of the executive’s decisions, but would also promote accuracy and fairness.126 Because mistakes are possible and have happened regarding misclassification of terrorists, accuracy is better preserved by allowing the judiciary to check the actions of the executive.127 The process would likely be fairer because federal judges are appointed for life tenure, and thus are less likely to be subject to public pressure.128 Moreover, having a federal judge decide on whether targeted killing is permissible would alleviate executive branch pressure. If a member of the executive branch were to be the neutral decisionmaker, he would have incentive to permit the President to do whatever he deems necessary. A federal judge would not likely be subject so such influence.

#### 4th, Political power is not zero sum—no trade off

Read, 3-1-12

[James, College of Saint Benedict/Saint John's University, jread@csbsju.edu, Is Power Zero-Sum or Variable-Sum? Old Arguments and New Beginnings, Political Science Faculty Publications.Paper 4, http://digitalcommons.csbsju.edu/cgi/viewcontent.cgi?article=1004&context=polsci\_pubs] /Wyo-MB

The specific question with which this essay is concerned is whether power – and ¶ especially political power – should be regarded as inherently zero-sum, one‟s agent‟s gain ¶ entailing by definition an equivalent loss for another or others; or variable-sum, whereby it is ¶ possible to have mutual gains of power not offset by equivalent losses somewhere else (positivesum), and mutual losses of power not offset by equivalent gains somewhere else (negative-sum). ¶ This essay is part of a larger book-length project that will systematically examine zero-sum and ¶ variable-sum understandings of power; and argue that a variable-sum understanding of power is ¶ at least as fruitful in describing actual power relations – including relations characterized by ¶ significant conflict – as the zero-sum view (see Read 2009a; 2010).

#### War powers controversies cost the Court PC, empirically they have avoided the issue

Magee, 8

[James, University of Delaware Professor, “The Supreme Court, the Constitution, and Foreign Affairs,” October 2008, <http://www.udel.edu/poscir/faculty/JMycoff/tab2/ConferencePaperMAGEE.pdf> //uwyo-baj]

When the Court confronted the Vietnam War, it ducked—very often. Even the Court

under Chief Justice Earl Warren (1953-1969)—until the current Court, perhaps the most activist

Supreme Court in American history—repeatedly without explanation denied review of cases

brought by young men challenging the constitutionality of an undeclared war escalating in

Vietnam.35 Politically alert, at least six justices could always be counted on to avoid ruling on

the matter; a minimum of four justices must consent to grant review of any case, and hence the

Court never officially faced that issue. The official resolution would inevitably have framed the

issue in those cases as a “nonjusticiable political question,” an exercise of one of the “passive

virtues” of which Professor Bickel was so fond for keeping the Court out of trouble. The Warren

Court had another agenda—indeed, many—regarding civil rights and liberties and barely enough

political capital to move that agenda forward.

#### SO2 plays a primary role in global warming

Ward 9

[Peter L., geophysicist, “Sulfur Dioxide Initiates Global Climate Change in Four Ways

Notes for Science Writers,” Teton Tectonics, February 9, 2009, <http://www.tetontectonics.org/Climate/Notes%20For%20Science%20Writers.pdf> //uwyo-baj]

The recognition that sulfur dioxide appears to play the primary role in initiating climate change is good news. We know how to reduce sulfur dioxide emissions. We did an excellent job by 1980. We have the technology and we have examples of legislation and other political agreements that led to SO2-emission reductions. We also have experience at developing new technologies. The conclusion that CO2 is much less important than SO2 in causing climate change is a political shock. Countries around the world are looking for ways to reduce CO2 emissions. It is not yet clear that reducing CO2 is not important, but it is less important than reducing SO2. 11The burning of all fossil fuels emits sulfur dioxide. A particularly strong source is the burning of high-sulfur content types of coal often used in large amounts in plants that generate electricity. The major reduction of SO2 output around 1980 came from new methods of burning such coal, scrubbing SO2 from smokestacks, and, especially in Europe, converting power plants to gas, oil, or nuclear. Known coal resources in the world are significantly greater than the known resources of all other types of fossil fuels combined. The greatest supplies of coal in the world are in the United States. Thus developing clean-coal technologies should be a high priority. Regulating the burning of high-sulfur oil used especially by ships traversing our oceans should also be a high priority.

#### Warming threatens the existence of humanity: destroys biodiversity in multiple environments, increases the probability of violent natural disasters, and kills agriculture production

Srivastava 11

(Ashnu Srivastava is a frequent writer for the Journal of International Environmental Application. “Impact of Global Warming on Flora and Fauna” April-June 2011. Proquest//wyoccd)

Pollution is the real threat to mankind, as we emit contaminants into the environment. Since it being the main cause of instability and disorder of ecosystem, it has to be eradicated or at least controlled. The nature and all its components are interrelated and man relies on these components for its existence. The action of one affects the others and human evasion has caused the extinction of many species. The nature exists with us, both go side by side and both are inevitable. We have a responsibility to take care of the nature in an appropriate manner. One of the main threats which the Earth faces is global warming. It strips Mother Earth of her aura of invincibility. As the effect of global warming the sea level arises, and the catastrophic floods which follows, displace millions of people living in the coastal belt all over the world from their home land. The rise in global sea level affects the ocean circulation. The plains are being stripped of its moisture rich soil and we are on the verge of a fodder crisis. Many of the native temperature resistant plant species are being wiped out of the earth. Vector borne diseases like dengue malaria are expected to increase sharply across the globe as the temperature variations make it more conducive for mosquitoes to thrive. Diarrhoeal disease which is associated with drought and flood is also expected to register a sudden increase. The effect which global warming has on the flora and fauna of sea is unprecedented. Warmer sea ocean temperatures destroy vast coral reefs and the balance of marine life is lost. The increase in the number of violent hurricanes, unnaturally torrential rains, unusually hot summers are all indicators of the treacherous days which are yet to come. Renewable energy reduces the global warming. Hydroelectric energy, one of the dependable and eco-friendly renewable energy produces minimum pollution. The construction of dams for this purpose helps to control floods, provide water for irrigation and at the same time produce electricity. This energy source never pollutes water; but the vegetation, that is submerged on decaying produces methane, one of the deadly accelerators of global warming. This effect is more prominent in tropical region. The positive benefits of the hydroelectric power overweigh and hence people tend to turn a blind eye towards this problem. But we must not forget the fact that even though the source is localized the effect is universal. The present change in the Arctic Glaciers is the clear indicator of negative impacts of global warming. The temperature in the Arctic region is increasing gradually. It reduces the snow cover, the wide spread glaciers are melting down and the sea level is rising alarmingly. The frequency and intensity of floods are increasing. During autumn and winter, rain is occurring, rising permafrost temperature. The depletion of highly reflective Arctic cover is increasing the pace with which global warming is affecting our environment. The changes in ocean circulation pattern, which is another direct impact of glacier melting, are gradually affecting the global climate. Some birds are migratory and they rely on Arctic for breeding. The melting down of glaciers affects the biodiversity and extinction of these species. Polar bears are an example of a species which is on the verge of extinction as a result of this unwanted phenomenon. The reduction in sea level damages the marine habitat also. The coastal areas which are exposed to storms lead to coastal erosion. Change over ways so that we can protect the Arctic Ice Cap before it is too late. There is an increase in heat related deaths. The rise in average temperature increases the diseases carrying organisms like mosquitoes, rodents and bats. The respiratory illness increases due to global warming because grasses and allergic pollen grow more profusely in warmer environment. Violent storms and other extreme climate carrying deadly diseases occur frequently.

#### 1. Drone Courts key – Congress should establish Judicial Review, it is the best check on the president, all other mechanisms insufficient

Bazzle 12

(Timothy, George Mason University Civil Rights Law Journal, “Shutting the courthouse doors: invoking the state secrets privilege to thwart judicial review in the age of terror,” 2012, Hein Library Online) /wyo-mm

By design, courts serve as a bulwark against the excesses of the political branches. The challenge courts face when confronted with a claim of state secrets is reconciling their Article III duties with the Executive’s potentially competing Article II duties.212 While the temptation for the Executive to concentrate its power is understandable, a robust state secrets privilege insulates an overreaching Executive from meaningful oversight. To the extent courts are able to fashion judicial devices for determining when and how the states privilege applies, they may represent the most important method of controlling Executive Branch activity.213 Given the inability of Congress to enact legislation to constrain the application of the privilege,214 courts are perhaps also the best equipped to block the Executive Branch from self-interestedly invoking the privilege to protect itself from embarrassment and potential civil and criminal liability.215 Academic arguments claiming that courts should automatically defer to the Executive’s expertise in national security and foreign affairs matters216 ignore the potentially more serious—and structural—conflict of interest problem that occurs when an Executive, accused of wrongdoing, can self-servingly invoke the state secretes privilege to conceal its action from public view.217 Reinforcing judicial review of state secrets claim represents an important check on the potential for Executive Branch abuse of the privilege.

#### Judicial review is essential to judicial independence

Gerber, 2007

[Scott D. Gerber is an associate professor at Ohio Northern University College of Law and a senior research scholar in law and politics at the Social Philosophy and Policy Center, The Political Theory of an Independent Judiciary, 116 YALE L.J. POCKET PART 223 (2007), http://thepocketpart.org/2007/01/09/gerber.html] /Wyo-MB

Judicial review fits into the political theory of an independent judiciary in at least two ways. First, judicial review is a core component of the Constitution’s system of checks and balances, a system in which each branch of the federal government is endowed with, in the words of The Federalist No. 48, “a constitutional control over the others.” The President has, among other checks, a veto over congressional bills and the power to nominate federal judges. Congress has, among other checks, the power to override presidential vetoes and to control the size and jurisdiction of the federal courts, as well as the power to impeach all federal officials. Without the power of judicial review, what check—what “constitutional control”—would the federal judiciary have on the President or Congress? The answer is none. As a consequence, judicial review is an inevitable component of the Constitution’s commitment to checks and balances.¶ Judicial review also fits into the political theory of an independent judiciary in another, equally straightforward, fashion: judicial review is the ultimate expression of judicial independence, because without judicial independence no court could safely void an act of a coordinate political branch. Bluntly stated, the risk to a judge who exercises judicial review when he or she is not independent of the executive and the legislature is either removal from the bench or a reduction in salary. John Adams knew this, and so did the Framers who met in Philadelphia during the summer of 1787 when they wrote Adams’s theory of judicial independence into Article III of the Constitution.

#### Judicial independence is critical to democratic consolidation

Herron and Randazzo, 2003

[Erik, University of Kansas and Kirk, University of Kentucky, The Relationship Between Independence and Judicial Review in Post-Communist Courts, THE JOURNAL OF POLITICS, Vol. 65, No. 2, May 2003, Pp. 422–438, http://people.cas.sc.edu/randazzo/herron\_randazzo\_2003\_jop.pdf] /Wyo-MB

Although independent judiciaries are important actors in democratic consolidation, how expressions of judicial independence evolve in transitional societies¶ remains unclear. Ideally, courts review legislation and government decisions¶ under the rubric of constitutionality. That is, the judiciary is able to declare laws¶ and actions unconstitutional and serve as a check against excesses by other¶ branches of government. A strong judiciary in newly independent countries helps¶ the state break with its authoritarian past and develop a constitutional culture that¶ teaches state actors that the legal system cannot be transgressed for political gain¶ (Brewer-Carias 1989; Larkins 1996). However, the development of an independent judiciary can be constrained by a weak institutional legacy, limited training¶ and support for judges, and the strength of other political actors. If the judiciary¶ does not have the authority to make independent decisions, democratic progress may falter, potentially returning the country to “the darkness and chaos of a totalitarian and dictatorial regime” (Mohan 1982, 110).1

#### Solves global wars,

Epstien et al, 2007

[Susan B. Epstein, Nina M. Serafino, and Francis T. Miko Specialists in Foreign Policy Foreign Affairs, Defense, and Trade Division Congressional research service, Democracy Promotion: Cornerstone of U.S. Foreign Policy?, 12-26-7, http://www.au.af.mil/au/awc/awcgate/crs/rl34296.pdf] /Wyo-MB

A common rationale offered by proponents of democracy promotion, including¶ former Secretary of State Madeleine Albright and current Secretary of State¶ Condoleezza Rice, is that democracies do not go to war with one another. This is¶ sometimes referred to as the democratic peace theory. Experts point to European¶ countries, the United States, Canada, and Mexico as present-day examples.¶ According to President Clinton’s National Security Strategy of Engagement and¶ Enlargement: “Democracies create free markets that offer economic opportunity,¶ make for more reliable trading partners, and are far less likely to wage war on one¶ another.”22¶ Some have refined this democracy peace theory by distinguishing between¶ mature democracies and those in transition, suggesting that mature democracies do¶ not fight wars with each other, but that countries transitioning toward democracy are¶ more prone to being attacked (because of weak governmental institutions) or being¶ aggressive toward others. States that made transitions from an autocracy toward¶ early stages of democracy and were involved in hostilities soon after include France¶ in the mid-1800s under Napoleon III, Prussia/Germany under Bismarck (1870-1890),¶ Chile shortly before the War of the Pacific in 1879, Serbia’s multiparty constitutional¶ monarchy before the Balkan Wars of the late 20th Century, and Pakistan’s military guided pseudo-democracy before its wars with India in 1965 and 1971.23¶ The George W. Bush Administration asserts that democracy promotion is a¶ long-term antidote to terrorism. The Administration’s Strategy for Winning the War¶ on Terror asserts that inequality in political participation and access to wealth¶ resources in a country, lack of freedom of speech, and poor education all breed¶ volatility. By promoting basic human rights, freedoms of speech, religion, assembly,¶ association and press, and by maintaining order within their borders and providing¶ an independent justice system, effective democracies can defeat terrorism in the long¶ run, according to the Bush White House.24¶ Another reason given to encourage democracies (although debated by some¶ experts) is the belief that democracies promote economic prosperity. From this¶ perspective, as the rule of law leads to a more stable society and as equal economic¶ opportunity for all helps to spur economic activity, economic growth, particularly of¶ per capita income, is likely to follow. In addition, a democracy under this scenario¶ may be more likely to be viewed by other countries as a good trading partner and by¶ outside investors as a more stable environment for investment, according to some¶ experts. Moreover, countries that have developed as stable democracies are viewed¶ as being more likely to honor treaties, according to some experts.25

#### And, Executive reform and review fails—not a neutral decision maker, secrecy and speed undermine effective decision making—counterplan undermines separation of powers

Chebab, 2012

[Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review, 3-30-12, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2031572] /Wyo-MB

U.S. citizens, there must be a degree of inter-branch process when such individuals are targeted by the government to ensure that (1) these individuals truly pose a direct and imminent threat to the United States and (2) targeting is truly the last resort.¶ The preceding case law suggests that domestic legal protections for U.S. citizens necessitate a higher procedural threshold.102 Justice O’Connor acknowledged the danger inherent in exclusively intra-branch process in Hamdi when she asserted that the Executive is not a neutral decision-maker as the “even purportedly fair adjudicators are disqualified by their interest in the controversy.”103 In rejecting the government’s argument that a “separation of powers” analysis mandates a heavily circumscribed role for the courts in these circumstances, Justice O’Connor concluded that in times of conflict, the Constitution “most assuredly envisions a role¶ for all three branches when individual liberties are at stake.”104 Applying this reasoning to the entirely intra-executive process currently being afforded to American citizens like al-Awlaki would suggest that in the realm of targeted killing, where the deprivation is one’s life, the absence of any “neutral decision-maker” outside the executive branch is a clear violation of due process guaranteed by the Constitution. On a policy level, the danger of intra-executive process is similarly alarming. As Judge James Baker, in describing the nature of covert actions put it:¶ Because this process is internal to the executive branch, it is subject to executive-branch exception or amendment, with general or case-specific approval by the president. This is risky because in this area, as in other areas of national security practice, the twin necessities of secrecy and speed may pull as they do against the competing interests of deliberate review, dissent, and accountable decision-making.105

#### 3rd, counterplan links to politics

Schier 9

[Steven, Professor of Poliitcal Science at Carleton,"Understanding the Obama Presidency," The Forum: Vol. 7: Iss. 1, Berkely Electronic Press, http://www.bepress.com/forum/vol7/iss1/art10]

 In additional to formal powers, a president’s informal power is situationally derived and highly variable. Informal power is a function of the “political capital” presidents amass and deplete as they operate in office. Paul Light defines several components of political capital: party support of the president in Congress, public approval of the presidential conduct of his job, the President’s electoral margin and patronage appointments (Light 1983, 15). Richard Neustadt’s concept of a president’s “professional reputation” likewise figures into his political capital. Neustadt defines this as the “impressions in the Washington community about the skill and will with which he puts [his formal powers] to use” (Neustadt 1990, 185). In the wake of 9/11, George W. Bush’s political capital surged, and both the public and Washington elites granted him a broad ability to prosecute the war on terror. By the later stages of Bush’s troubled second term, beset by a lengthy and unpopular occupation of Iraq and an aggressive Democratic Congress, he found that his political capital had shrunk. Obama’s informal powers will prove variable, not stable, as is always the case for presidents. Nevertheless, he entered office with a formidable store of political capital. His solid electoral victory means he initially will receive high public support and strong backing from fellow Congressional partisans, a combination that will allow him much leeway in his presidential appointments and with his policy agenda. Obama probably enjoys the prospect of a happier honeymoon during his first year than did George W. Bush, who entered office amidst continuing controversy over the 2000 election outcome. Presidents usually employ power to disrupt the political order they inherit in order to reshape it according to their own agendas. Stephen Skowronek argues that “presidents disrupt systems, reshape political landscapes, and pass to successors leadership challenges that are different from the ones just faced” (Skowronek 1997, 6). Given their limited time in office and the hostile political alignments often present in Washington policymaking networks and among the electorate, presidents must force political change if they are to enact their agendas. In recent decades, Washington power structures have become more entrenched and elaborate (Drucker 1995) while presidential powers – through increased use of executive orders and legislative delegation (Howell 2003) –have also grown. The presidency has more powers in the early 21st century but also faces more entrenched coalitions of interests, lawmakers, and bureaucrats whose agendas often differ from that of the president. This is an invitation for an energetic president – and that seems to describe Barack Obama – to engage in major ongoing battles to impose his preferences.

#### 5th, Cant solve drone prolif—Courts play a highly influential role on executive’s behavior and are key to solve transparency in strikes

Wexler 13

(Lesley, Professor of Law, University of Illinois College of Law, “The Role of the Judicial Branch during the Long War: Drone Courts, Damage Suits, and FOIA Requests,” 2013, Social Science Research Network/) /wyo-mm

This chapter suggests the judiciary may play an important role in the debate over the executive branch’s decisions regarding IHL even if it declines to speak to the substance of such cases. First, advocates may use courts as a visible platform in which to make their arguments and spur conversations about alternative, non-judicially mandated transparency and accountability measures. As they did with the trio of detention cases, advocates can leverage underlying constitutional concerns about the treatment of citizens to stimulate interest in the larger IHL issues. Second, litigants may use courts to publicize and pursue Freedom of Information (FOIA) requests and thus enhance transparency. Even if courts decline to grant FOIA requests, the lawsuits can generate media attention about what remains undisclosed. Third, and most robustly, Congress may pass legislation that would facilitate either prospective review of kill lists through a so-called drone court or remove procedural barriers to retrospective damage suits for those unlawfully killed by a drone strike. Even the threat of such judicial role may influence executive branch behavior.