# Da

#### Attacking Iran causes full-scale war with Russia

Conway 12 January 17, 2012 Alvin Conway Author, blogger he cites Russia’s former ambassador to NATO and the Arab Times “Iranian Crisis: escalating series of troubling events sliding world towards war” <http://theextinctionprotocol.wordpress.com/2012/01/17/iranian-crisis-escalating-series-of-troubling-events-sliding-world-towards-war/>

Russian response could lead to WWIII: Russia would regard any military intervention linked to Iran’s nuclear program as a threat to its own security, Moscow’s departing ambassador to NATO warned on Friday. “Iran is our neighbor,” Dmitry Rogozin told reporters in Brussels. “And if Iran is involved in any military action, it’s a direct threat to our security.” –Arab Times

#### US-Russia war is the only scenario for nuclear extinction

Bostrom 2 Nick Bostrom Professor, Faculty of Philosophy, Oxford University“Existential Risks” Journal of Evolution and Technology, Vol. 9, No. 1 (2002). <http://www.nickbostrom.com/existential/risks.html>

A much greater existential risk emerged with the build-up of nuclear arsenals in the US and the USSR. An all-out nuclear war was a possibility with both a substantial probability and with consequences that might have been persistent enough to qualify as global and terminal. There was a real worry among those best acquainted with the information available at the time that a nuclear Armageddon would occur and that it might annihilate our species or permanently destroy human civilization.[4] Russia and the US retain large nuclear arsenals that could be used in a future confrontation, either accidentally or deliberately. There is also a risk that other states may one day build up large nuclear arsenals. Note however that a smaller nuclear exchange, between India and Pakistan for instance, is not an existential risk, since it would not destroy or thwart humankind’s potential permanently. Such a war might however be a local terminal risk for the cities most likely to be targeted. Unfortunately, we shall see that nuclear Armageddon and comet or asteroid strikes are mere preludes to the existential risks that we will encounter in the 21st century.

### Uq

#### Wins now but it’s tight

West 10-5

(Paul, Washington Bureau writer special to LA times, 2012, “Race tightening, but Obama’s still in the lead”, LA Times, <http://www.latimes.com/news/nationworld/nation/la-na-campaign-analysis-20121006,0,7819532.story>) PY

A large drop in the nation's jobless rate gave President Obama an unexpected boost Friday in his increasingly competitive contest with Republican challenger Mitt Romney.¶ The decline to 7.8% brought the unemployment rate below 8% for the first time since the first full month of Obama's presidency and cheered the president's partisans. Based on the reactions to past reports, it's unlikely to change voters' overall sense of how the country is doing economically.¶ Still, the announcement did have one big benefit for Obama: shifting attention away from his lackluster performance in the first presidential debate less than 36 hours earlier. The debate shook up the campaign, giving Romney new hope just when the race seemed to be quickly slipping away from him.¶ Combining both events — the debate and the jobs report — strategists in both parties expect to see the race tighten but also say the Democratic incumbent remains the front-runner. Obama has more options to reach the required 270 electoral votes, and Romney still faces a more difficult path.

### A2: Voter ID laws thumper

#### Fear of Voter ID Laws spurs democratic turn out – outweighs any negative impact

Ballentine 9/4 [Summer, Washington Bureau, "Democrats say Voter ID laws will backfire on Republicans in November" Houston Chronicle -- blog.chron.com/txpotomac/2012/09/democrats-say-voter-id-laws-will-backfire-on-republicans-in-november/]

Democrats are quick to condemn the Voter ID laws approved by Republican legislatures from Pennsylvania to Texas.¶ They’re also saying “thank you.”¶ At a panel today hosted by the National Journal and CBS News, a group of Democratic pollsters predicted that minority voters and young Americans would turn out in even higher-than-normal numbers this fall as an act of protest against the laws requiring voters to present certain forms of photo identification before they can cast a ballot.¶ “This has the ability to piss off a lot of people,” said Democratic pollster John Anzalone. “When you mess with people’s access (to vote), it makes people mad. I think it’s going to backfire.”¶ Anzalone predicted that reports of minority voters being turned away from the polls early on election morning, Nov. 6, will cause shock waves across the nation and will “motivate more people to turn out.”¶ Even before voting day, the ID laws will resonate with Democratic voters.¶ “You’re going to see messaging to African American voters: We have people who died for this right (to vote). They are not going to be denied.”¶ Pollster Celinda Lake said the Voter ID laws have “triggered unprecedented organizing on our side,” including an Obama campaign effort called, “We’ve got your back.”¶ In Pennsylvania, the law’s sponsor said it could help Mitt Romney carry the Democratic-leaning state by eliminating voting fraud. But Democrats say the laws will instead spur enthusiasm among core Democrats.¶ “I don’t think it’s going to depress turnout,” pollster Margie Omero said.

### A2: thumper

#### Econ is already built in to election’s calculation

Cillizza 9/13 (Chris, Washington Post, "Why QE3 will matter less than you think in the 2012 election", 2012, www.washingtonpost.com/blogs/the-fix/wp/2012/09/13/why-qe3-will-matter-less-than-you-think/)

The news out today that the Federal Reserve will take further action to stimulate the economy — known in technical terms as “quantitative easing” — immediately sent stock price soaring and political strategists scrambling to figure out what it all means for the presidential election.¶ The answer? Not as much as you think — at least according to several smart economic-minded strategists on both sides of the aisle we talked to this afternoon.¶ “I think the economy’s impact on the election is baked in,” said Tom Gallagher, a Democratic strategist who specializes in analyzing the economy. “Some Fed critics say the Fed appears to be trying to help Obama with this move, but I think the Fed’s action fits in with the GOP critique — if the economy were fine, the Fed would not have had to act.”¶ (Lanhee Chen, policy director for Mitt Romney’s presidential campaign, said the Fed’s action offered “further confirmation that President Obama’s policies have not worked.”)¶ A look at the trend lines on the economy would suggest Gallagher is right. A majority of voters haven’t approved of the way Obama is handling the economy since June 2010 in Washington Post-ABC polling and large majorities of the country have felt that the U.S. is heading in the wrong direction for years.¶ What the consistency of those numbers suggest is that peoples’ feelings about the state of the economy are a) negative and b) already built in to their calculations about who to vote for. It’s the same argument we’ve long made that regarding the unemployment rate; if it hadn’t started to drop by early summer it wouldn’t wind up helping Obama even if it started to head downward in the fall. Minds are made up on the economy.¶ That goes double when it comes to something as complex as quantitive easing, of which the Fed has now engaged in three rounds — hence QE3. Simply put: Most people have no idea what the Fed does and they certainly don’t get the intricacies of buying back clumps of mortgage bonds and what it can do for the economy.¶ “Average people have no idea what this means, and it won’t have a short term impact (next two months) beyond a short pop in stocks that I think will be ephemeral,”predicted one Republican operative.¶ The GOP source added that the most important thing — politically speaking — that the Fed announced today was its expectation that unemployment would remain over 7 percent for (at least) the next two years. The implications of that extended period of high unemployment, according to the source, could impact both Romney and Obama going forward.¶ If Romney is president “he is really going to have to fix the economy, he’s not going to walk into any kind of booming recovery, the way team Obama seems to think,” said the source. “If it’s Obama and the economy continues in the [toilet] for most of his second term, it has the potential to do lasting damage to his party in the 2014 midterm and the 2016 presidential with a comparatively weak Democratic bench.”¶ The real political impact of QE3 might then not be felt between now and November but rather in January and beyond. Keep that in mind amid the din of “what it all means” analysis sure to fill the airwaves (and blog….waves?) over the next 24-48 hours.

#### Foreign policy is irrelevant – voters don’t care, its already priced in and Romney can’t exploit

Cook 12 (Charlie, cook political report, National journal, 5/7, http://cookpolitical.com/node/12467)

A second piece of advice for Romney: Shut up about foreign policy. It’s clearly not your forte. You sound shrill at best and, at worst, uninformed. Romney isn’t going to beat Obama on foreign policy. It will be on the economy. Polls show that Obama gets considerably better job-approval ratings on handling foreign policy than on anything else. For Romney, the bad news is that Obama is rated reasonably well on foreign policy. The good news is that voters don’t seem to be voting on foreign policy.

### 2NC Gas Link Wall

#### Public opposes gas – everything is assocated with fracking

Everley 12 (Steve, Energy In Depth Spokesperson, July 13, “Misinformation Campaign Targets Hydraulic Fracturing,” Lexis, d/a 7-20-12, ads)

And recent polling backs them up: A survey by Louisiana State University found that only 34.5 percent of respondents who heard the word fracking thought the process was safe, and only 38.6 percent of those who heard the word said there should be more drilling. When the respondents were given a description of the process instead of the word fracking, however, the percentage who said the process is safe jumped by nearly ten points, and support for more drilling climbed by more than 12 points into a clear majority. Imagine that: a fact- based discussion leads to different results than one based on semantics and talking points.**¶** That gap in public support is also why opponents describe everything happening in oil and gas development -- from initial geological surveying to well pad preparation to pipeline construction -- as fracking. Never mind that the impacts they cite are not due to hydraulic fracturing. Since hydraulic fracturing is one part of the process, they claim, all of the impacts can be attributed to fracking. Its a politically convenient (and intellectually lazy) effort to scapegoat a process that opponents do not really understand, but that they know sounds destructive.

#### Plan forces Obama to take a strong stand – guarantees loss of the base

Schnur 11 (Dan, director of the Jesse M. Unruh Institute of Politics at the University of Southern California, The President, Gas Prices and the Pipeline, 4/9, http://campaignstops.blogs.nytimes.com/2012/04/09/the-president-gas-prices-and-the-keystone-pipeline/)

Like every president seeking re-election, Barack Obama walks the fine line every day between the discordant goals of motivating his party’s strongest loyalists and reaching out to swing voters for their support. A few weeks ago, that pathway took him to a tiny town in Oklahoma, where, caught between the anti-drilling demands of the environmental community and the thirst for more affordable gasoline from unions, business owners and drivers, the president announced his support for building half of an oil pipeline.¶ The economic impact of rising energy prices in itself is considerable, but the psychological toll on voters is just as significant, as tens of millions of motorists are reminded by large signs on almost every street corner of the financial pain of filling their gas tanks. Obama and his political lieutenants are acutely aware that this growing frustration has the potential to complicate an election year that otherwise seems to be shifting in the incumbent’s favor¶ As a result, Obama has been hitting the energy issue hard in recent weeks, at least as hard as a candidate can hit when forced to navigate between two almost mutually exclusive political priorities. The result is a president who talks forcefully of the benefits of wind and solar power while also boasting about the amount of oil the nation produces under his leadership.¶ There are times when this gets slightly uncomfortable. Obama recently called for increased exploration along the Atlantic Coast but stopped short of calling for expanded drilling in that region. This is the energy policy equivalent of admitting to an experiment with marijuana but not inhaling.¶ Where the issue becomes more tangible and therefore trickier for Obama is when the multiple choices become binary. The debate over the proposed XL Keystone Pipeline that would transport Canadian oil through the nation’s heartland to the Gulf of Mexico crystallizes the choices involved and forces a shades-of-gray conversation into starker hues of black and white.¶ Obama recognizes that the devoted environmentalists who represent a critical portion of the Democratic party base need some motivation to turn out for him in the fall. But he also understands that centrist voters who support him on a range of other domestic and foreign policy matters could be lured away by a Republican opponent who either promises relief at the gas pump or who can lay blame at the White House doorstep for those higher prices. Even more complicated is the role of organized labor, which has poured immense amounts of support into Obama’s re-election but also prioritizes the job-creation potential of the pipeline.¶ The result of these competing political and policy pressures brought Obama to Ripley, Okla., where he tried to satisfy the needs of these various audiences without alienating any of them. First, the president endorsed the southern portion of the Keystone project in order to relieve the glut of domestically drilled oil that is now unable to make it to refineries near the Gulf of Mexico in a timely manner. This had the effect of irritating his environmental allies but failed to mollify the project’s advocates, who pointed out that the review process that the president called for was already underway.¶ He then reiterated the administration’s antipathy toward the northern section of the pipeline, which would allow Canadian-drilled oil to be transported into this country. This provided some comfort to drilling opponents, but infuriated both the pro-oil forces and the Canadian government. The most likely outcome is that Canada will still build a pipeline, but rather one that goes westward to the Pacific Ocean north of the United States border and then ships Canadian oil to China instead of into this country.¶ Even in deep-blue California, where Obama wins hypothetical general election match ups against the Republican candidates by margins approaching voice vote, this is an issue that points to potential difficulties for the president’s re-election campaign. Californians who swooned for Obama in 2008, and who seem poised for a re-swoon this fall, told a recent USC Dornsife/LA Times statewide poll that they were dissatisfied with the president’s handling of the issue of the cost of gasoline by a 29-62 margin. California’s unemployment rate remains around 11 percent, but the state’s residents still give Obama positive marks on his work on job creation, the economy and taxes. They approve of his work on health care and by even larger margins on women’s health issues. But highway-dependent West Coasters, even while they advocate for broader use of solar, wind and other alternative energies, don’t like $4 per gallon gasoline and they will like paying $5 per gallon even less.¶ Obama won’t actually lose California in November, of course. Gas prices would have to hit $10 a gallon for Mitt Romney to win the state this fall. And the same poll shows that voters blame oil companies, rather than either the president or Congress, for those high prices. However, the dissatisfaction that emanates from even a heavily Democratic patch of electoral turf such as California carries much more significant consequences in Ohio, Florida and other swing states. For the time being, Obama is gambling that directing popular anger toward the oil companies — a convenient villain if there ever was one — will allow him to keep the price of gasoline from becoming a roadblock for his campaign.¶ But if gas prices keep rising and voter unhappiness continues to build, look for the administration to find a way to accelerate the review process that would allow the northern leg of Keystone to move forward more quickly. Obama has been careful not to come out in absolute opposition to the pipeline, but only to call for a more meticulous examination of its possible environmental impact. A more closely competitive election than what is now expected, though, could easily lead the president to decide that his administration’s review has been quite thorough enough and that the time for additional drilling has arrived.¶ An energy strategy that Obama now refers to as an “all of the above” approach is unlikely to turn into a “drill, baby drill” refrain between now and November. But maintaining a balance between dissatisfied but docile environmentalists on one hand and drivers whose unhappiness stops just short of violence on the other will be a key to his re-election. If his poll margins begin to narrow, a somewhat longer pipeline than the one he has already endorsed could become a very tempting insurance policy.

#### Base turnout key

Cillizza 12 (Chris, American political reporter for the Washington Post. He writes The Fix, a daily political weblog for the Post website. He is a regular contributor to the Post on political issues, “Is the 2012 election more about base than undecideds?”, http://www.washingtonpost.com/politics/2012-election-more-about-base-than-undecideds/2012/08/19/2cd2f98c-ea02-11e1-9ddc-340d5efb1e9c\_story.html)

Conventional wisdom dictates that President Obama and former Massachusetts governor Mitt Romney will spend the next 78 days assiduously courting the sliver of voters — somewhere between 5 percent and 10 percent of the electorate — who call themselves political independents and insist they remain genuinely undecided about which candidate to support.¶ Elections are, after all, decided by the ideological middle; the two parties’ bases are already aligned behind their candidates, and the trick is to persuade enough of those centrist independents to side with your, well, side, to win. Except, of course, when it’s not.¶ “The only thing undecided in this election are the TV anchors’ ties on election night,” said Dan Hazelwood, a Republican direct-mail consultant. “Both sides believe there is little chance for a dramatic shift in opinion, so that leaves trench political warfare as the default strategy. That means identifying and turning out your own supporters.”¶ Heaps of national polling would seem to affirm Hazelwood’s contention. Political polarization is at an all-time high, with even soft partisans already aligned behind either Obama or Romney. That has shrunk the middle of the electorate to single digits nationally. Simply put: There just aren’t that many people left for the campaigns to convince — no matter how much money (and it will be lots of money) the two sides spend between now and Nov. 6.¶ Given that political reality, there is a strong case to be made that the two campaigns should spend most of their time/energy/¶ money not trying to find and persuade independents and undecideds but rather trying to identify and rally their (already united) bases.

#### Offshore drilling angers Florida voters

AP 10 (December 3rd, “Obama restores ban on drilling”)

BP's oil well in the Gulf of Mexico is dead, but the political fallout is very much alive. The Obama Administration says it will not open new areas of the Atlantic seaboard and eastern Gulf of Mexico to drilling, reversing a decision to hunt for oil and gas that the President himself announced three weeks before the largest offshore oil spill in US history on April 20. "We are adjusting our strategy," Interior Secretary Ken Salazar said yesterday. Salazar said the BP spill taught officials a number of lessons, "most importantly that we need to proceed with caution". The politics of the decision were clear. The ban satisfies environmental interests and Democratic lawmakers along both coasts, particularly in Florida, a crucial swing state in 2012 where the drilling proposal was unpopular.

#### Offshore drilling swings Florida

Straub 8/27 (Noelle Straub, E%26E reporter Greenwire: 8/27/12, <http://www.eenews.net/public/Greenwire/2012/08/27/1>)

This week, the GOP hosts its convention in Florida, a state that has long battled to keep drilling away from its tourist-beloved shores. And although the issue is no longer the state's untouchable third rail, don't expect Republicans meeting here to spotlight offshore drilling the way they did in 2008.¶ "I think it's going to play very little of a role at the convention," said Gainesville-based GOP consultant Alex Patton. "I think energy may play a little higher of a role in a broader context."¶ To be sure, presumptive Republican presidential nominee Mitt Romney still supports expanded drilling. One of the six points in his energy plan unveiled last week calls for opening new areas for offshore development, starting with Virginia, South Carolina and North Carolina -- site of next week's Democratic convention.¶ Speaking recently with reporters, Romney domestic adviser Oren Cass called the former Massachusetts governor's energy blueprint the "most aggressive leasing plan ever put forward." He added, "We will have to make a determination of how quickly it is practical to expand leasing into broader areas offshore, but certainly up and down the East Coast there is potential."¶ But Romney and other speakers at the convention are expected to soften their rhetoric in Tampa, and other issues are expected to get top billing. Energy issues pale in comparison to the economy in Florida, Patton said, "almost like it's an afterthought right now."¶ "Between pocketbook issues and trying to redefine the race as saving Medicare, I don't see energy or drilling playing any significant role," Patton said. "Other [energy] options, that's what I think you will see, not just a drill, drill, drill like it was four years ago."¶ Several other Florida political observers from all shades of the political spectrum concur, including Mark Ferrulo, who tracks the drilling debate as executive director of the liberal group Progress Florida.¶ "I don't think we'll be hearing as many clarion calls for 'drill, baby, drill,'" he said. "For a number of reasons, not the least of which is this is in the backyard of where this issue ... is not necessarily a winning political issue."¶ Convention delegates will be staying at hotels whose business was hurt by the loss of tourism from the Gulf spill, Ferrulo said.¶ "Those are the same small business owners they need to win over to win the election," he said. "There's no path to the White House for Republicans if it doesn't include a Florida victory. If they're smart, they're not going to be clamoring for oil rights off our world-famous beaches."¶ Pocketbook concerns¶ Floridians are split on the issue of offshore drilling, less on party lines than on where they live, Ferrulo said. Coastal residents are more likely to oppose it. About 60 percent of Floridians oppose offshore drilling, while 40 percent support it, he said.

#### Florida is key – political scientist

Funaro 12 (Kaitlin, breaking news writer for the Global Post, Peabody award winning online news site, August 26th, “Florida is a must-win for both Obama, Romney: Florida's 29 electoral votes are crucial to the election strategy of both candidates” http://www.globalpost.com/dispatch/news/politics/120826/florida-must-win-both-obama-romney)

ORLANDO, Fla -- Once again, Florida is turning out to be a make or break state in the 2012 election season. Both President Obama and Republican Mitt Romney are focusing their campaigns on winning over the Sunshine State's diverse group of voters. ¶ As Republicans and the media flood into Tampa before the start of the Republican National Convention, which was delayed until Tuesday because of Tropical Storm Isaac, all eyes will be on how well the Romney campaign's message resonates with Florida voters. ¶ The country's biggest swing state has grown in size and importance since President Obama won its 27 electoral votes in 2008. The state's increased population bumped its electoral prize up to 29 votes this November, reports the Orlando Sentinel. That's more than one tenth of the total number needed to win the White House. ¶ "The Republican nominee has not won the White House without carrying Florida since Calvin Coolidge," Daniel Smith, a political scientist at the University of Florida, told the Orlando Sentinel. "So I would say Florida is pretty important for Republicans in November."¶ Two of the state's biggest demographics, hispanics and seniors, could hold the key to the White House. Florida's seniors represent about 17 percent of the state's 18.8 million residents, reports the San Francisco Gate.

### Both

#### Extend 1NC evidence – Romney would uniquely strike Iran because his advisors have pushed for it and his election campaign has promised it.

#### Their card says Obama would strike Iran only if negotiatons and non-proliferation efforts failed whereas Romney would strike regardless. If Iranian prolif doesn’t happen, no risk of an Obama strike.

#### Romney will strike Iran – he’s more trigger happy on the threat of nukes

Diehl 12 (Jackson, Deputy Editorial Page Editor of The Washington Post, “Sharp foreign-policy differences between candidates”, http://www.startribune.com/opinion/commentaries/ 168689676.html?refer=y)

In Syria, Obama has repeatedly rejected proposals that the United States help establish safe zones for civilians or supply weapons to the rebels. But Romney has come out for arming the opposition. And what of Iran? Both men have indicated they would use force as a last resort to stop Tehran's nuclear program.¶ But there is a significant difference: While Obama has said he has "a policy to prevent Iran from obtaining a nuclear weapon," Romney said in Israel this summer that he would not tolerate an Iranian nuclear "capability."¶ In other words, Obama probably would use force only if Iran actually tried to build a bomb, while a Romney attack could be triggered if Iran were merely close to acquiring all the means for a weapon -- which it is.

# Cp

### A2: Theory

#### The CP is a logical opportunity cost- the decision to do the plan as a rule forgoes the option of doing it as a guidance document

#### Guidance documents are key debates in the lit

Raso 10 [Connor N. J.D., Yale Law School expected 2010; Ph.D., Stanford University Department of Political Science expected 2010 “Note: Strategic or Sincere? Analyzing Agency Use of Guidance Documents” The Yale Law Journal January, 119 Yale L.J. 782]

Scholars and policymakers alike have devoted increasing attention to a seemingly obscure question: do federal agencies improperly issue "guidance documents" 1 in place of legally binding "legislative rules" on a widespread basis? 2 This attention has been motivated by concern that agencies frequently use guidance documents to avoid procedures 3 intended both to facilitate public participation in the regulatory process and to enable the elected branches of government to monitor agencies more easily. 4 The scope of this loophole is potentially vast. Guidance documents greatly outnumber legislative rules, 5 [\*786] which in turn are approximately ten times more common than enacted legislation. 6 As a result, agency use of guidance documents is an important issue in administrative law. This Note provides the first large-scale empirical analysis of this issue, probing newly available data to determine whether agencies commonly issue guidance to avoid the notice and comment process.

#### Education and literature should define what are acceptably fair CP’s- we should accurately attempt to simulate the debates to make decisions on policy issues- decisionmaking is the most portable skill of debate- helps in all walks of life

#### The CP is not unfair- solid literature exists to say that the CP would not be enforced- The Aff should be prepared to defend actual implantation of a rule rather than tacit agreements

#### We only have to defend the CP that we read- forcing us to defend all process CP’s obscures the question of whether THIS CP is acceptable

#### The CP is necessary to counteract Aff bias- they get away with myriad UQ tricks and try or die framing- having a CP to counteract that is essential to ensure negative debating success

### A2: Perm do the CP

#### If we prove the CP is theoretically acceptable that should frame the issue of competition

#### Guidance documents are meaningfully distinct from rulemaking

Raso 10 [Connor N. J.D., Yale Law School expected 2010; Ph.D., Stanford University Department of Political Science expected 2010 “Note: Strategic or Sincere? Analyzing Agency Use of Guidance Documents” The Yale Law Journal January, 119 Yale L.J. 782]

The term "guidance document" suggests a wide variety of regulatory materials. Examples of such materials include general agency interpretations of existing legislative rules, statements outlining how an agency intends to regulate an evolving policy area, training manuals written for internal agency staff, compliance guides directed to the general public, advisory opinions tailored to individual case facts, and memoranda from agency leaders providing direction to agency staff members. As these examples suggest, agencies use guidance documents both to manage internal operations and to communicate with outside parties. "Legislative rules" 13 are the administrative equivalent of public laws passed by Congress. Like public laws, legislative rules are legally binding, generally applicable, and nonretroactive. 14 Before issuing a legislative rule under the Administrative Procedures Act's (APA) informal rulemaking process, agencies are required to provide notice of the proposed text and to accept public comments. 15 Agencies must also complete a number of lesser-known procedural requirements before issuing a legislative rule. 16 Guidance documents are not subject to any of these requirements, however. 17

#### This is specifically true in the context of the environment

Gehan 12 [Shaun M. Kelley Drye & Warren LLP May 15 “EPA issues new guidance on fracking with diesel fuels” http://www.lexology.com/library/detail.aspx?g=d67a341e-7c29-4b8b-aa3f-a1d3495d039f]

There are other similar examples. The point is that EPA, and other agencies, tend to prefer guidance documents because they can be issued quickly and without the procedural give-and-take and analysis accompanying rulemaking. Also, guidance documents cannot be challenged under the Administrative Procedure Act or otherwise, because, by definition, they impose no legally binding requirements. That is not to say that courts will simply take an agency’s word that a particular set of guidance is not a stealth rule. But the barriers to challenging something like this – particularly when issued in “draft” form – are extremely high.

#### There is no way the plan could be interpreted as the CP - Guidance documents are not a law- practical effect is irrelevant- the perm severs the certainty of administrative law

Hunnicutt 99 [James JD – Boston College Law School “NOTE: Another Reason to Reform the Federal Regulatory System: Agencies' Treating Nonlegislative Rules as Binding Law” Boston College Law Review December, 41 B.C. L. Rev 153]

To distinguish whether a rule is nonlegislative or legislative, courts consider whether the rule is "substantive" in nature. 77 If a rule has substantive effects, it should have been promulgated as a legislative rule, and therefore, the agency should have performed notice-and-comment to create it. 78 The courts have examined the following factors: \* Nonlegislative rules do not create law, while legislative rules may impose or remove legal rights and obligations or produce other significant effects on private parties. 79 \* If evidence shows an agency intended for a rule to have substantive effects or to legally bind the public, then it is probably a legislative rule. 80 [\*166] \* Nonlegislative rules leave agency decisionmakers free to exercise discretion, while legislative rules constrain agency discretion. 81 \* Nonlegislative rules employ tentative language, such as "may," while legislative rules use mandatory language, such as "will." 82 \* Agencies should publish legislative rules in the Federal Register, whereas agencies need not publish nonlegislative rules. 83 \* An agency's contention that a rule is nonlegislative shall carry some weight, but will not be dispositive in a court's determination whether or not the rule should have been subjected to notice-and-comment rulemaking. 84 [\*167] \* Interpretative rules interpret law while legislative rules create law. 85 \* General statements of policy operate prospectively and speak to future contingencies, but legislative rules have immediate impacts. 86 \* Rules of agency organization apply only to internal agency machinations. 87 The United States Court of Appeals for the District of Columbia Circuit considered several of these factors in 1987, in Community Nutrition Institute v. Young, where the court held that certain rules which the FDA had labeled as nonlegislative were actually substantive, and thus should have been adopted as legislative rules. 88 The court found the rules to be substantive because they imposed immediate legal obligations on food producers, they constrained agency discretion and the FDA had referred to them as having the force of law. 89 The Community Nutrition Institute ("CNI"), a public interest group, and other public interest organizations, brought action against the Commissioner of the FDA for granting "action levels" the force and effect of law, even though the FDA produced them without conducting notice-and-comment process. 90 The FDA had been initiating enforcement proceedings against food producers if their goods exhibited levels of aflatoxins--unavoidable contaminants found in foods such as corn--greater [\*168] than the action levels. 91 Concerned that the action levels were too low and failed to adequately protect public health, the CNI contended that the action levels should have been adopted only after following notice-and-comment procedures. 92 The FDA argued the action levels fell within the nonlegislative rule exception of § 553(b)(A). 93 The court reasoned that the rule establishing the action levels used mandatory language and created immediate and binding effects. 94 Specifically, the rules declared that if a food product met an action level, the food "will be deemed" to be contaminated. 95 Also, the court found it compelling that the FDA had occasionally intimated that action levels established binding norms. 96 The FDA would not initiate enforcement proceedings against food producers that had amounts of contamination less than the action levels. 97 Thus, the court held that the action levels constrained agency discretion. 98 Also, the court found that the rules were substantive because the FDA required food producers to seek exemptions to the action levels. 99 The court found that if private parties must obtain exemptions to circumvent an agency's rules, then the agency intends for those rules to be substantive. 100 Therefore, the court held that the action levels were substantive and should have been produced only after notice-and-comment, and thus were invalid. 101 [\*169] 2. Some Courts Still Use "Substantial Impact" as a Factor Some courts--including the Fourth and Fifth Circuits--use "substantial impact" as a factor to determine whether a rule should have been promulgated following notice-and-comment procedure. 102 If a rule has a substantial impact on private parties, then it is a legislative rule. 103 The courts do not provide extensive explanation as to what qualifies as "substantial impact," but the case law suggests that if a rule imposes upon private parties dramatic economic changes, the rule has a substantial impact. 104 Since the Supreme Court's decision in Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council in 1978, however, the test has fallen into disfavor and most courts ignore it. 105 3. The "Public Good" Should Not Be a Factor Litigants have argued that public policy should enter into courts' decision-making, but courts generally rule only on process and do not [\*170] incorporate the "public good" into their analyses. 106 Most courts rule that they have only the authority to review whether agencies followed prescribed procedures and whether agencies violated the law, but not whether agencies have formulated flawed opinions. 107 An agency is, ideally, composed of experts in the particular field over which it regulates, and a judge is, ideally, an expert in the field of law. 108 In principle, judges do not substitute agency thinking with their own opinions. 109 Instead, courts generally review agency process, not agency judgment. 110 Hence, courts tend to analyze the agency's procedure rather than the real world policy effects of agency judgment. 111 As a result, the duty to provide for the public good remains with Congress and the agencies. 112 II. THE LEGAL EFFECTS OF RULES Depending on whether a rule is adopted with or without notice-and-comment process, the rule will have different legal effects. 113 Legislative rules produced after notice-and-comment procedures constitute substantive law and legally bind both agencies and private parties in future legal and administrative proceedings. 114 Conversely, nonlegislative rules generally may not have binding legal effects. 115 Nonlegislative rules, however, sometimes have practical legal effects. 116

#### The aff should have to defend the functional mandates of the plan-

#### Teaches decisionmaking which is the most portable skill that debate teaches- purely textual competition encourages semantic debates and scramble perms

#### Most real world- if one policy is functionally distinct from another and there is a net benefit to that change then real world decisionmakers would consider them separately

#### Most fair- the alternative is textually competitive CP’s that really actually do the plan- the aff always has a fallback functional difference from which they can garner offense

### Doesn’t link

#### The CP changes the way that energy regulations are enforced but doesn’t link to politics

Schillaci 7 [William C. author of the book Most Misunderstood Regs March 27, “Reining in Guidance Documents” http://enviro.blr.com/whitepapers/ehs-management/epa-environmental-protection-agency/reining-in-guidance-documents/]

"The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The Agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the Agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the Agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the Federal Register or the Code of Federal Regulations."

#### Department of Interior makes their own decisions, independent of political leadership

NYT 12 (July 27th, Drillers in Utah Have a Friend in a U.S. Land Agency, http://www.nytimes.com/2012/07/28/us/politics/bureau-of-land-managements-divided-mission.html?pagewanted=all)

VERNAL, Utah — Bill Stringer leaned into the office of his top deputy here at the Bureau of Land Management one recent day to share his latest victory.¶ “We got upheld!” Mr. Stringer said, meaning his bosses in Salt Lake City had gone along with his staff’s recommendation to allow oil drilling near Desolation Canyon, a national historic site known for its pristine wilderness and white-water rafting. Despite objections from environmentalists, more oil wells would dot the huge stretch of federal land Mr. Stringer oversees.¶ Mr. Stringer, 55, who sports a goatee, rides a motorcycle and sometimes wears rock band T-shirts to work, is a little-known manager in an agency many Americans have never heard of, but he is arguably as powerful as many of Utah’s elected officials. As head of the bureau’s outpost in northeast Utah, he and his colleagues make decisions that have affected livelihoods and largely favored oil and natural gas companies eager to join in a national energy boom. The companies’ lobbying efforts extend beyond Washington to officials across the West, including Mr. Stringer here in Vernal, population 9,000.¶ The Bureau of Land Management, part of the Interior Department, is the nation’s biggest landlord, controlling 248 million acres, including nearly half the land in Utah. Charged with protecting public lands while exploiting their resources — for mining, drilling, timbering, ranching — Mr. Stringer’s agency has been at the center of a fierce battle in recent years as companies have sought to lease federal property and get drilling permits. The Bush administration encouraged the land rush, while Obama administration officials tried to stop what it called reckless drilling deals. After confronting fierce industry resistance and political realities, officials in Washington have eased back.¶ But in Vernal, a town that sits amid vast underground reserves of oil and gas as well as scenic treasures, critics say the bureau office under Mr. Stringer has taken a consistent stance all along: make way for drilling. “Oil and gas trumps all else,” said Dennis J. Willis, a retired agency employee.

### A2: Solvency

#### Through unilateral executive action, the Interior Secretary can and has determined policy over the use of Federal lands for energy production

NYT 12 (John. M Broder, NYT reporter, “Interior Names Solar ‘Hot Spots’ Out West”, July 24th, http://green.blogs.nytimes.com/2012/07/24/interior-names-solar-hot-spots-out-west/)

After more than two years of study and public comment, the Interior Department on Tuesday identified 17 sites on 285,000 acres of public land across six Southwestern states as prime spots for development of solar energy.¶ Agency officials said the government would fast-track applications for large-scale solar energy installations at those sites in the hope of speeding construction of thousands of megawatts of renewable, nonpolluting electricity generation.¶ The agency identified an additional 19 million acres of public lands in California, Nevada, Utah, Colorado, Arizona and New Mexico as potential locations for solar energy projects that could win rapid federal approval.¶ But officials said they were fencing off more than 78 million acres of public land from solar development because the areas had less solar energy potential, did not have immediate access to transmission lines or posed a threat to important archaeological or cultural sites, endangered species, scarce water resources or other environmental values if developed.¶ “This is a key milestone in building a sustainable foundation for utility-scale solar energy development and conservation on public lands over the next two decades,” the interior secretary, Ken Salazar, said.¶ Republican critics have accused the Obama administration of restricting energy projects on public lands and waters, and such charges are a staple of the current political campaign, particularly in Western states and along the Gulf of Mexico. Administration officials have bent over backward to show their commitment to resource development on lands and waters the federal government controls.¶ On Monday, the Interior Department announced a 20-million-acre oil and natural gas lease sale in the western Gulf of Mexico, and the agency has liberally granted permission over the last year for mining and drilling across the West, in the Gulf of Mexico and in Alaska. On the solar energy front, the Interior Department issued a document on Tuesday known as a final programmatic environmental impact statement covering more than 3,000 pages that detailed the considerations in narrowing the sites for solar development and described the process for permitting new projects.¶ The agency has already approved 17 large-scale solar energy projects on public lands that are expected to produce nearly 6,000 megawatts of electricity, enough to power about 1.8 million homes. The department estimated the resource potential of the newly identified development zones at 23,700 megawatts, enough to power seven million homes, by 2030.¶ Solar industry and environmental advocates reacted favorably to the announcement, saying it would mean jobs and renewable power for years to come.¶ “Renewable energy development on federal lands is essential to reaching our national clean energy goals,” said Arthur L. Haubenstock, vice president for regulatory affairs at Brightsource Energy, a solar technology company.¶ Helen O’Shea, director of the Natural Resources Defense Council’s western renewable energy project, said she hoped the new plan would help the nation address climate change while protecting wildlife and critical habitat.¶ Opponents will have 30 days to formally protest the solar plan, after which Mr. Salazar will consider adopting the document through executive action.