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#### A. Interpretation—Restrictions are strict legal rules that functionally forbid production, and are distinct from regulations

Anell et al. 89 [Lars, Chair of WTO decision panel, Mr. Lars E.R. Anell : Mr. Hugh W. Bartlett Mrs. Carmen Luz Guarda, other members. “CANADA - IMPORT RESTRICTIONS ON ICE CREAM AND YOGHURT” Report of the Panel adopted at the Forty-fifth Session of the CONTRACTING PARTIES on 5 December 1989 (L/6568 - 36S/68) http://www.wto.org/english/tratop\_e/dispu\_e/88icecrm.pdf]

Governmental Measures to Restrict Domestic Production

25. Canada maintained that it effectively managed the supply of all domestically produced milk, through the provincial controls on fluid milk and the joint federal provincial market share quota system for industrial milk. It was an agreed interpretation of the General Agreement that "in interpreting the term "restrict" for the purposes of paragraph 2(c), the essential point was that the measures of domestic restrictions effectively keep output below the level which it would have attained in the absence of restrictions" (Havana reports, page 89). The Canadian programmes restricted production to a level less than would be the case without the governmental controls. Farmers' participation in the supply management programmes was mandatory. Production quotas were ultimately established at the individual farm level, and the imposition of severe financial disincentives for overproduction assured the effectiveness of the system. The level of return received by producers for over-quota industrial milk was lower than the cash cost of production. The over-quota levy thus effectively restricted production above the quantitative level established by the quotas. Over the last decade there had been under-production of milk in some years, and over production in others. In the most recent six years, over-quota production of milk averaged only one per cent of total milk production. While it could not be directly demonstrated that production would be higher in the absence of the programmes, there was considerable indirect evidence that it would be. Each province fully utilized its Market Share Quota (MSQ) and applications for increased MSQs indicated that farmers had the capacity and willingness to produce more milk at the current prices if not restricted by the over-quota levy. Canada further cited recent econometric analyses which indicated that milk production would be 31 to 39 per cent higher in the absence of restrictions.

26. The United States argued that Canada had failed to demonstrate that it effectively restricted domestic production of milk. The differentiation between "fluid" and "industrial" milk was an artificial one for administrative purposes; with regard to GATT obligations, the product at issue was raw milk from the cow, regardless of what further use was made of it. The use of the word "permitted" in Article XI:2(c)(i) required that there be a limitation on the total quantity of milk that domestic producers were authorized or allowed to produce or sell. The provincial controls on fluid milk did not restrict the quantities permitted to be produced; rather dairy farmers could produce and market as much milk as could be sold as beverage milk or table cream. There were no penalties for delivering more than a farmer's fluid milk quota, it was only if deliveries exceeded actual fluid milk usage or sales that it counted against his industrial milk quota. At least one province did not participate in this voluntary system, and another province had considered leaving it. Furthermore, Canada did not even prohibit the production or sale of milk that exceeded the Market Share Quota. The method used to calculate direct support payments on within-quota deliveries assured that most dairy farmers would completely recover all of their fixed and variable costs on their within-quota deliveries. The farmer was permitted to produce and market milk in excess of the quota, and perhaps had an economic incentive to do so.

27. The United States noted that in the past six years total industrial milk production had consistently exceeded the established Market Sharing Quota, and concluded that the Canadian system was a regulation of production but not a restriction of production. Proposals to amend Article XI:2(c)(i) to replace the word "restrict" with "regulate" had been defeated; what was required was the reduction of production. The results of the econometric analyses cited by Canada provided no indication of what would happen to milk production in the absence not only of the production quotas, but also of the accompanying high price guarantees which operated as incentives to produce. According to the official publication of the Canadian Dairy Commission, a key element of Canada's national dairy policy was to promote self-sufficiency in milk production. The effectiveness of the government supply controls had to be compared to what the situation would be in the absence of all government measures.

#### B. Violation—all the plan text does is eliminate some of the standards for tribes entering into a TERA—here’s the preamble to the “restrictions” section of the law they refer to:

US Code, 2005 [http://www.gpo.gov/fdsys/pkg/PLAW-109publ58/pdf/PLAW-109publ58.pdf]

The Secretary shall approve a tribal energy resource agreement submitted under paragraph (1) if”

#### Here’s the problem—Whether or not these “restrictions” exist, tribes can still develop energy—TERA’s are just an OPTIONAL REGULATORY PATHWAY that gives PREFERENTIAL treatment—they have nothing to do with RESTRICTING the tribe.

Shipps 7 [Thomas SHIPPS is a partner with Maynes, Bradford, Shipps & Sheftel, LLP, general counsel to the Southern Ute Indian Tribe ‘7 TRIBAL ENERGY RESOURCE AGREEMENTS: COMMENTARY ON THE PROPOSED REGULATIONS, http://apps.americanbar.org/environ/committees/nativeamerican/newsletter/may2007/NativeAmerResMay07.pdf]

Second, the draft regulations expand the intended scope of NEPA review of proposed TERAs beyond that contemplated in the TERA statute. The draft regulations require NEPA review of “the energy resource developments the Tribe is proposing to undertake as specified by the provisions of the [TERA].” Id. at 48637, proposed § 224.70. Because TERAs are intended to authorize tribes to enter into multiple energy development agreements, NEPA review of all future projects at the TERA-establishment stage—rather than by the TERA tribe under its own procedures as specific projects arise—would be impractical, at best, and, at worst, would completely frustrate the intent of Section 2604. TERAs are not intended to present substantive development proposals, but rather are intended to be procedural vehicles under which tribes may evaluate and approve development proposals.

#### This should be a voter—it explodes limits—allowing regulation ANNHILATES limits—over 40 agencies independently regulating hundreds of issues makes predictable debate impossible

Doub 76—member of the U.S. Atomic Energy Commission in 1971-1974, served as a member of the Executive Advisory Committee to the Federal Power Commission in 1968-1971 and was appointed by the President of the United States to the President's Air Quality Advisory Board in 1970. He is immediate past Chairman of the U.S. National Committee of the World Energy Conference and a member of the Atomic Industrial Forum. He currently serves as a member of the nuclear export policy committees of both the Atomic Industrial Forum and the American Nuclear Energy Council [“Energy Regulation: A Quagmire for Energy Policy” Annual Review of Energy Vol. 1—-November, 1976]

FERS began with the recognition that federal energy policy must result from concerted efforts in all areas dealing with energy, not the least of which was the manner in which energy is regulated by the federal government. Energy selfsufficiency is improbable, if not impossible, without sensible regulatory processes, and effective regulation is necessary for public confidence. Thus, the President directed that "a comprehensive study be undertaken, in full consultation with Congress, to determine the best way to organize all energy-related regulatory activities of the government." An interagency task force was formed to study this question.

With 19 different federal departments and agencies contributing, the task force spent seven months deciphering the present organizational makeup of the federal energy regulatory system, studying the need for organizational improvement, and evaluating alternatives.

More than 40 agencies were found to be involved with making regulatory decisions on energy. Although only a few deal exclusively with energy, most of the 40 could significantly affect the availability and/or cost of energy. For example, in the field of gas transmission, there are five federal agencies that must act on siting and land-use issues, seven on emission and effluent issues, five on public safety issues, and one on worker health and safety issues-all before an onshore gas pipeline can be built. The complexity of energy regulation is also illustrated by the case of Standard Oil Company (Indiana), which reportedly must file about 1000 reports a year with 35 different federal agencies. Unfortunately, this example is the rule rather than the exception.

Despite the involvement of a multitude of agencies, there is no central organizational mechanism to coordinate these scattered operations. Until a few years ago, this was not an unworkable situation because, traditionally, regulatory agencies were primarily concerned with economic questions, like rates and competition. Today, however, a different situation prevails. At almost every stage of the energy cycle new technologies and aroused public concern bring forth complex issues—land use, air quality, water pollution, recreational and aesthetic needs, and public health and safety, together with equally valid requirements for economic growth, new sources of energy that may cost more and confront us with higher levels of environmental risk, and more efficient methods of obtaining and using vital fuel resources.

#### And, independently, it means they don’t meet “On energy production” in the res—these restrictions are ON TERA eligibility. On has to be direct

Oxford Dictionary online, 2012 [The World’s most trusted Dictionary, <http://oxforddictionaries.com/definition/american_english/on>]

5. having (the thing mentioned) as a target, aim, or focus: *five* air raids on the city*,* thousands marching on Washington ,*her* eyes were fixed on his dark profile

#### This means restrictions must be directly in contact with and is exclusive—restrictions in the resolution must be ONLY on production, not tangentially related or broadly inclusive elements

Graham 16 (Arthur Butler, “Brief for Appellants – Wilson v. Dorflinger & Sons”, Court of Appeals – State of New York, Reg. 108, Fol. 387, 1916, p. 11-12)

The Standard Dictionary *defines* the word “*on*” as follows: “In or into such a position with reference to something, as a vehicle, a table, or a stage, as to be in contact with and supported by it; in a position, state, or condition of adherence; as, he go on before the wagon had fully stopped.” In Webster’s International Dictionary, we find as follows: “on—The General signification of “on” is situation, motivation, motion, or condition with respect to contact or support beneath as (1) at or in contact with, the surface or upper part of a thing, and supported by it; placed or lying in contact with the surface; as, the book lies on the table, which stands on the floor of a house on an island.” It is submitted that an elevator is not operated on streets or on highways, as a car, truck or wagon is operated, and thatby *the use of the word “on”* the Legislature intended to include only those appliances therein enumerated, namely, cars, trucks, and wagons. An elevator is not operated on anything, but is operated in or inside a shaft, and is controlled by guides, which deprive the operator of the power to change the course of the lift from right to left. Clearly the Legislature intended to include in Group 41, only those cars, trucks and wagons whose direction and guidance are controlled by the operator, in whatever direction he may deem advisable.

### 1NC DA—EPA

#### Reversing Obama’s energy policy undermines EPA—His current stance encourages aggressive enforcement

Owens 11—Professor of National Security Affairs @ U.S. Naval War College [Mackubin Thomas Owens, “Obama’s EPA not a ‘rogue’ agency at all,” Boston Herald, Wednesday, September 14, 2011, pg. http://bostonherald.com/news/opinion/op\_ed/view/2011\_0914obamas\_epa\_not\_a\_rogue\_agency\_at\_all]

President Barack Obama recently enraged some of his supporters by issuing an executive order postponing a plan by the Environmental Protection Agency to tighten ozone standards, a step that by the EPA’s own reckoning would incur an annual compliance cost of anywhere from $19 billion to $90 billion and that private sector analysts estimate would result in the loss of 7.3 million U.S. jobs.   
Some optimists saw this as a belated attempt to rein in a rogue agency that seems bent on achieving environmental goals at the expense of a healthy economy. But others note that the president did not reverse the EPA edict; he merely postponed it until after the 2012 election. And they further contend that there is little evidence that he [Obama] has repudiated the agency’s heavy-handed approach to environmental “protection.”   
Many analysts — including yours truly — have made the mistake of arguing that the Obama administration has no energy policy. But the evidence increasingly reveals that the administration does indeed have an energy policy, one that is designed to reduce access to fossil fuels by raising their price, thereby making “alternate” or “green” energy sources more attractive.   
The administration’s approach is constantly on display: Use government policy to raise oil and gas prices, subsidize alternative energy sources, then mandate the use of the latter. The EPA, far from being a rogue agency, remains an important tool for implementing this policy.

#### EPA staffers are highly sensitive

Andreen 7—Professor of Law @ University of Alabama (Roll Tide) [William L. Andreen, “Motivating Enforcement: Institutional Culture and the Clean Water Act,” 24 Pace Envtl. L. Rev. 67 (2007) pg: http://digitalcommons.pace.edu/pelr/vol24/iss1/4]

In a recent article, Professor Joel Mintz perceptively observed that one generally unrecognized characteristic of EPA enforcement is "its high sensitivity to staff-level perceptions and concerns." 128

He quotes a former EPA regional official as saying: The people [at the EPA] who work on enforcement are very sensitive to signals about what they are doing. Because enforcement has always been.., controversial and contentious, it is... critical that the people working on it have entirely clear signals that enforcement is important, . . . and that the people who do the work will be supported. Those signals have to come from the top. 129

Ambiguous signals from the top can easily be read by the staff as a kind of coded message expressing reluctance about, perhaps even hostility towards, enforcement. Hence, as a senior EPA enforcement official recently recounted: The current [Bush] administration would typically say[:] "Oh, I want you to enforce, but can you please check in with us before you do any major new cases, e.g., concentrated animal feeding operations (CAFOs)." That was taken by the staff as a directive not to enforce .... [Former EPA Administrator Christine Todd] Whitman also sent her political staffers out to check on particular cases. That also chilled enforcement. 130

The consequence, of course, was a severe downturn in EPA enforcement from 2002 to 2003.131 While one would expect enforcement personnel to scrutinize the language and action of the agency's political appointees, it is a little surprising that it appears so easy at times for the agency's top brass to intentionally or even unintentionally slow down EPA enforcement. Pg. 86

#### EPA regs prevents warming acceleration that overwhelms our adaptation strategies

Pooley 8/10/12—Senior vice president for strategy and communications @ Environmental Defense Fund. [Eric Pooley, “Natural Gas—A Briefing Paper for Candidates,” Environmental Defense Fund, Published: August 10, 2012, pg. http://tinyurl.com/buveju2]

Reducing Methane Leakage

In the absence of responsible natural gas oversight, increased reliance on the resource could result in a future in which the U.S. emits as much or more climate disrupting pollution as it does with our current energy mix.

This outcome is possible if enough uncombusted natural gas is allowed to leak into the atmosphere from well sites, gas processing plants, pipelines and distribution systems. Though it burns cleaner than coal, uncombusted natural gas is extremely damaging to the climate: It is mostly made up of methane, a greenhouse gas far more potent than carbon dioxide. (For the first 20 years after it is emitted, a pound of methane is 72 times more potent as a heat-trapping emission than a pound of carbon dioxide. Over 100 years, a pound of methane is 25 times more potent as a greenhouse gas than a pound of carbon dioxide.) Small amounts of natural gas are lost into the air as it makes its way from the wells and through the processing and pipeline system that brings it to consumers; the cumulative impact of those leaks is highly significant.

The potential for damaging methane leakage will only grow if, as expected, the use of natural gas expands in the coming years. Now and in the future, the United States cannot afford to be wasting a valuable American energy resource by allowing unchecked leakage to occur. As Americans, none of us should be content to stand idly by and let this important resource be squandered through fugitive emissions and unnecessary venting. Nor can we ignore the national security consequences of allowing our climate to deteriorate through easily avoidable greenhouse gas pollution. Reducing methane emissions isn’t just an environmental issue, it’s an important part of any candidate's plan for domestic energy security.

Uncertainty remains about just how much methane is currently being emitted along the supply chain, from the well site to the end-user. Estimates vary widely — from less than 2% to more than 7% of total production. The Environmental Protection Agency (EPA) has estimated the methane leak rate at about 2.3%, while a study by the National Oceanic and Atmospheric Administration (NOAA) suggested that in northern Colorado it might be roughly twice as high. If the higher estimates turn out to be correct, the leaks could eat up the short-term climate benefit equivalent to closing one-third of the nation’s coal plants. If the lower EPA estimate is correct, leak rates of two to three percent still leave significant and cost-effective greenhouse gas reductions on the table. Accurate measurement of actual leakage rates is a crucial next step.

A recent paper by Alvarez et al. published in the Proceedings of the National Academy of Sciences identified the critical leak rates at which use of natural gas would produce climate benefits at all points in time. The study found that natural gas can always produce a greenhouse gas advantage over other fossil fuels for electric power and transportation, including the conversion of much of the nation’s 3.2 million big rig trucks, if methane leakage rates are capped at 1%.\*

Though methane is a far more potent climate disruptor than carbon dioxide, it is also more short-lived; it breaks down in the atmosphere over time. The permanent, long-term solution to climate change involves stabilizing CO2 emissions. However, the shorter time frames affected by methane emissions are also crucially important because they increase the risk of undesirable climate outcomes in the near future. Accelerated rates of warming mean ecosystems and humans have less time to adapt to climate change. Given the dire need for concerted global action on climate change, current energy policy should, at a minimum, abide by a "Do No Harm" policy: no policy should contribute to increased climate forcing on any time frame.

There is no technological barrier to reducing leakage. We just have to do it. That's enormously encouraging. As mentioned above, many practices and technologies are already being used in states such as Colorado and Wyoming to reduce gas losses, which result in greater recovery and sale of natural gas, and thus increased economic gains. The return on the initial investment for many of these practices *is* sometimes as short as a few months and almost always less than two years. In these tough economic times, it would seem wise to eliminate waste, save money and reduce environmental impact.

Candidates should come out in favor of rules to measure and limit methane leakage at a level that avoids short term climate damage. In the coming days, Environmental Defense Fund would be pleased to present the elements of a possible approach. As crucial voices in the public debate, candidates have the opportunity to take a leadership position on the methane leakage issue; if influential office-seekers choose to do so, others will likely follow. This would mark a major step on the road to safe and sustainable development of America's shale gas resource.

The first order of business is getting the data necessary to better understand where the leaks are occurring and under what conditions, then using that data to reduce leaks and ensure that natural gas will help mitigate climate change. Such as strategy could yield enormous environmental and health benefits on a global basis.

No candidate in 2012 can afford to stand against transparency and public access to data. Such a candidate would be out of step with the public mood and the public interest. We need to get information on methane leakage out there. It needs to be presented in useful, user-friendly formats so the public can look at it and start to understand what’s going on. We need our regulators to be able to slice and dice this data, so they can identify challenges and opportunities.

As mentioned, the good news is that leaks can be detected, measured—and reduced. EDF is currently collaborating with industry and academic partners on a series of five major scientific studies designed to quantify the methane leakage rate across the natural gas supply chain. The five studies are on: the production of natural gas, natural gas processing, long-distance pipelines and storage, local distribution systems and natural gas vehicles. For the production study, we are working with the University of Texas and nine major natural gas companies to determine the leak rates from their wells. For the local distribution module we are working with Duke University, Harvard University and Boston University. EDF aims to complete the entire study by December 2013 and to submit the results of each module for publication.

Conclusion: Improving Corporate Performance

The natural gas industry has a credibility problem. This diverse industry, made up of hundreds of drilling companies ranging from tiny operations to huge multinationals, cannot afford to regard strong environmental performance as a luxury or a marketing strategy. It is a public right, and a requirement for continued corporate operation.

Improved performance is clearly in industry’s bottom-line interest, whether by reducing wasted product lost to leaks, reducing regulatory and financial risk, or earning back the public trust.

Companies will benefit from this too. First, because good data and good science lays the foundation for having fact-based conversations about risks and how to mitigate them. And second, because transparency is an end in itself.

Candidates should encourage natural gas executives not to wait for slow-moving producer associations to reach agreement. By speaking in favor of common-sense environmental strategies, such as disclosure and green completions, some leaders in the natural gas industry are already charting the path forward. They are proving that industry can meet new standards, such as the EPA’s air quality rules for oil and gas drilling, and thrive. Pg. 5-8

#### Acceleration risks Russia-NATO war.

Rogate & Ferrara 12—Master of Arts candidate @ The Johns Hopkins University’s SAIS Bologna Center & [Master of Arts in International Affairs](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CEcQFjAA&url=http%3A%2F%2Fwww.jhubc.it%2Facademics%2Fdegree-programs%2Fmaia.cfm&ei=7-suUOqRHcfaywH32YCICg&usg=AFQjCNHQnnfJPboKwpf-dpSFVJdXLLZh5Q&sig2=sTotgLAwl7uVljkQwFe6OQ) candidate @ The Johns Hopkins University’s SAIS Bologna Center [Chiara Rogate & Marco Ferrara, “[Climate Change and Power Shifts in the Arctic Region](http://bcjournal.org/volume-15/climate-change-and-power-shifts-in-the-arctic-region.html),” Bologna Center Journal of International Affairs, Volume 15—Spring 2012, pg. http://bcjournal.org/volume-15/climate-change-and-power-shifts-in-the-arctic-region.html

Conflict vs. Cooperation

The political situation in the Arctic is at once nebulous and complex, with international law appearing to be little more than an instrument that nations use to justify their claims rather than a tool to resolve new and longstanding disagreements. Even though all parties agreed in 2008 to abide by and use international law as a regulatory framework through which to resolve their disputes in the Arctic, 43 they simultaneously appear to be hedging against possible adverse scenarios by strengthening their military presence in the area. For example, Canada is building a fleet of armed icebreakers, while Russia has recently resumed strategic bomber patrols over the region. 44 At the moment it is unclear whether issues pending in the Arctic can be settled via international arbitration, or by improving existing legal instruments with a dimension of political cooperation. 45 Such an outcome appears plausible as long as Canadian and Russian claims do not overlap, so that a settlement could be reached through the UN Commission on the Limits of the Continental Shelf.

Conversely, issues in the Arctic may evolve into a reflection of the developing political and military balance in the region, evading mediated resolution and resulting in conflict and unilateral actions. In such a case, the commission would be powerless to intervene as it does not have the authority to adjudicate disputes. Ultimately, one can observe that the situation is fast approaching a critical juncture. Without regard to the conclusions of the UN’s technical commission, the Arctic powers soon must decide whether to cooperate in joint administration of the region, or to engage in a struggle for supremacy. Given the approaching submission deadline for Canada, the window for a mediated solution may not remain open past 2013.

Conclusions

The Arctic has experienced rapid and drastic change as a consequence of rising temperatures. Therefore, international cooperation would be advantageous to achieving a lasting solution to the climatic, social and political issues facing this delicate region. Unfortunately, the potential for reaching multilateral arrangements is fragile, and the political will for achieving them could easily fall second to the prospect of obtaining access to valuable resource deposits. Climate change in this region has engendered a series of unpredicted spillover effects in the political realm by acting as a conflict catalyst. Specifically, climate change has aided the creation of physical conditions that facilitate international conflict, while simultaneously reducing the incentives for cooperation, thus exacerbating disputes that will determine future power balances, especially those concerning energy markets, which are already enveloped in a tumultuous political situation presently affecting both countries that produce and those that consume natural resources.

The Arctic provides an example of how climate change can shift geopolitical attention as well as amplify the strategic importance of geographic areas, perhaps causing old rivalries to resurface as in the case of Russia and NATO member countries. A non-traditional phenomenon is indeed leading to the emergence of traditional security dilemmas in the form of competition for resources and territory, resulting in the development of tensions among states. Climate change in the Arctic is literally defrosting regional security conundrums that risk extending well beyond the region. Moreover, not only is the physical environment being modified, but legal and institutional environments are changing as well, posing new challenges to inter-state relations and the ability to manage the unclaimed parts of the Arctic, referred to as the commons.46

Climate change can only be tackled with long-term emissions mitigation policies, while the emergence of the security dilemma in the region requires short-term solutions to avoid further militarization of the Arctic. The need to act rapidly is particularly urgent since the situation is developing within a precarious institutional, legal, and political framework. Though skepticism concerning the veracity of climate change continues to abound in public opinion and political arenas, recent developments in the Arctic demonstrate how such changes already are adversely affecting international politics. Future developments are no longer limited to scientific discourse, but now extend to conflict prevention. As noted by Machiavelli, once foreseen, such issues must be addressed before they develop to the point that no satisfactory remedy can be found.

#### It goes nuclear

Krieger & Starr 12—President of the Nuclear Age Peace Foundation & Senior Scientist for Physicians for Social Responsibility [David Krieger & Steven Starr, “A Nuclear Nightmare in the Making: NATO, Missile Defense and Russian Insecurity,” Nuclear Age Peace Foundation, January 03, 2012, http://www.wagingpeace.org/articles/db\_article.php?article\_id=321]

This is a dangerous scenario, no matter which NATO we are talking about, the real one or the hypothetical one.  Continued US indifference to Russian security concerns could have dire consequences: a breakdown in US-Russian relations; regression to a new nuclear-armed standoff in Europe; Russian withdrawal from New START; a new nuclear arms race between the two countries; a breakdown of the Nuclear Non-Proliferation Treaty leading to new nuclear weapon states; and a higher probability of nuclear weapons use by accident or design.  This is a scenario for nuclear disaster, and it is being provoked by US hubris in pursuing missile defenses, a technology that is unlikely ever to be effective, but which Russian leaders must view in terms of a worst-case scenario.

In the event of increased US-Russian tensions, the worst-case scenario from the Russian perspective would be a US first-strike nuclear attack on Russia, taking out most of the Russian nuclear retaliatory capability.  The Russians believe the US would be emboldened to make a first-strike attack by having the US-NATO missile defense installations located near the Russian border, which the US could believe capable of shooting down any Russian missiles that survived its first-strike attack.

The path to a US-Russian nuclear war could also begin with a conventional military confrontation via NATO. The expansion of NATO to the borders of Russia has created the potential for a local military conflict with Russia to quickly escalate into a nuclear war.  It is now Russian policy to respond with tactical nuclear weapons if faced with overwhelmingly superior conventional forces, such as those of NATO.   In the event of war, the “nuclear umbrella” of NATO guarantees that NATO members will be protected by US nuclear weapons that are already forward-based in Europe.

### 1NC K

#### The Affirmative repeatedly invokes the concept of “sovereignty”. To quote the 1AC, regulations are bad because they “exploit native sovereignty” the solution the aff offers is framed as essential because it’s key to “reimagine a sovereign space,” and that it would enable sovereign development of energy.

#### The use of this term cannot be treated as coincidental, and it is more than just a word. Sovereignty is an intellectual touchstone, a lens through which they evaluate the success or failure of movements, a concept to be valorized.

#### This thinking and this framing of indigenous struggles is incredibly problematic. Sovereignty discourse presumes the legitimacy of Euro-American control over indigenous peoples—working within its frame is a tacit approval of the intellectual basis that colonialism is based on, making authentic progress impossible.

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 46-48]

Under colonization, hundreds of indigenous nations that were previously autonomous and self-governing suffered a loss of freedom. Even today, the lives of their people are controlled by others. The problems faced by social workers, political scientists, physicians, and teachers can all be traced to this power relationship, to the control of Native lives by a foreign power. In the midst of Western societies that pride themselves on their respect for freedom, the freedom of indigenous people to realize their own goals has been extinguished by the state in law and to a great degree in practice. Above all, indigenous nationhood is about reconstructing a power base for the assertion of control over Native land and life. This should be the primary objective of Native politics. The problem is that at present Native politics is still understood and practised in the context of the law as structured by the state. Within this context, the state has nothing to fear from Native leaders, for even if they succeed in achieving the goal of self-government, the basic power structure remains intact. From the perspective of the state, marginal losses of control are the trade-off for the ultimate preservation of the framework of dominance. What we need is a nationalist perspective that directly challenges that framework. A first step in developing that perspective is to understand the intellectual basis of the state's control over Native people. We must deconstruct the notion of state power to allow people to see that the settler state has no right to determine indigenous futures. • • • In the conventional Western understanding, a leader's power is based on control of certain strategic resources: for example, service provision, connections to the outside, and specific symbols with special meaning within the culture. It is exercised by manipulating various resources to secure changes in a target. Thus power in the Western sense involves the imposition of an individual's will upon others. Even the most progressive non-indigenous notions of power, such as the one developed by Burns, still involve satisfying the personal motives of the leader. While Burns distinguishes between 'naked power', in which there is no engagement of leader to follower, and real leadership, in which the goals of leader and follower are merged, power is still defined in terms of 'securing changes in the behaviour of the respondent, human or animal, and in the environment'. Especially for indigenous peoples-all too familiar with state power founded on coercion-Burns's 'naked power' seems the norm. Michel Foucault identified two ways of understanding state power. The first sees state sovereignty as being created through the contractual surrender of individual rights. In this view, it is the abuse of state power-its extension beyond the accepted legal framework-that results in 'oppression' of individuals. Most of Western political theory concerns the tensions that arise within a constitutionally regulated matrix of political power. The other, deeper, understanding of power proposed by Foucault sees the over-extension of state power within a constitutional framework not as abuse but as the 'mere effect and continuation of a relation of domination' that is fundamental-'a perpetual relation of force'. Instead of defining oppression as an over-extension of state power within a legal framework, Foucault points to the continual domination by force necessary to maintain that framework itself. This approach is particularly useful for analyzing the relationship between the state and indigenous peoples-one in which not only the expression and extension of state power, but the entire framework on which the sovereignty of the state depends, is in question. A critique of state power that sees oppression as an inevitable function of the state, even when it is constrained by a constitutionally defined social-political contract, should have special resonance for indigenous people, since their nations were never party to any contract and yet have been forced to operate within a framework that presupposes the legitimacy of state sovereignty over them. Arguing for rights within that framework only reinforces the state's anti-historic claim to sovereignty by contract. By accepting that claim we empower the state to dominate indigenous peoples. In this way 'perpetual relations of force' have become the norm. Indigenous people of course recognize the difference between the coercive state and their traditional systems. But in seeking to empower themselves, do they run the risk of reproducing the power relations based on domination that Foucault recognized in the state? Is it possible to resist state domination in this regard? The state attempts to rewrite history in order to legitimize its exercise of power (sovereignty) over indigenous peoples. Native people struggle to resist the co-optation of their historical sense. But the fact remains that in order to negotiate a withdrawal from the colonial relationship they must still interact with the state, which uses all kinds of incentives to prevent Native leaders from representing traditional understandings.

#### True indigenous politics are ANTITHENTICAL to the concept of sovereignty. In traditional indigenous politics, Individual autonomy and collective decision-making are the basis for all political action. Authority is earned through persuasion and consensus, not presumed based on a position held. The Aff’s model of Sovereignty presumes a top down, authority based model of decision-making that makes traditional indigenousness politics impossible and mentally colonizes attempts at autonomy

Alfred, 1999 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 24-28 ]

Returning to indigenous traditions of leadership will require an intensive effort to understand indigenous political life within the moral and ethical framework established by traditional values. Without obscuring the distinctiveness of individual societies, it is possible to see fundamental similarities in the concept of 'Native leadership' among indigenous cultures. Most agree that the institutions operating in Native communities today have little to do with indigenous belief systems, and that striking commonalities exist among the traditional philosophies that set the parameters for governance. The values that underpin these traditional philosophies constitute a core statement of what indigenous governance is as a style, a structure, and a set of norms.

In their most basic values, and even to a certain extent their style, traditional forms of government are not unique: similar characteristics can be found in other systems. The special nature of Native American government consists in the prioritization of those values, the rigorous consistency of its principles with those values, and the patterns and procedures of government, as well as the common set of goals (respect, balance, and harmony) that are recognizable across Native American societies. Adherence to those core values made the achievement of the goals possible; it was because of the symbiotic relationship between the traditional value system and the institutions that evolved within the culture that balance and harmony were its hallmarks. Indigenous governance demands respect for the totality of the belief system. It must be rooted in a traditional value system, operate according to principles derived from that system, and seek to achieve goals that can be justified within that system. This is the founding premise of pre-/ decolonized Native politics-and we are in danger of losing it permanently if the practices and institutions currently in place become any further entrenched (and hence validated).

On the west coast of Vancouver Island, I spoke with a Nuu-chah-nulth elder who recognized the danger of continuing to think of governance in the terms of the value system and the institutional structures that have been imposed on Native communities by the state. Hereditary chief Moses Smith used to be a band councillor under the Canadian government's Indian Act system, but now he recognizes the harm that system has done to his community. As a leader, he is now committed to teaching his people's traditional philosophy so that an indigenous form of government can be restored. Lamenting the loss both of traditional values and of the structures that promoted good leadership, Moses said that 'in the old days leaders were taught and values were ingrained in hereditary chiefs. The fundamental value was respect.' In his view, contemporary band councils are not operating according to traditional values, and Native leadership premised on traditional power and knowledge will vanish forever unless 'the traditional perspective is taken up by the new generation'.

In choosing between revitalizing indigenous forms of government and maintaining the European forms imposed on them, Native communities have a choice between two radically different kinds of social organization: one based on conscience and the authority of the good, the other on coercion and authoritarianism. The Native concept of governance is based on what a great student of indigenous societies, Russell Barsh, has called the 'primacy of conscience'. There is no central or coercive authority, and decision-making is collective. Leaders rely on their persuasive abilities to achieve a consensus that respects the autonomy of individuals, each of whom is free to dissent from and remain unaffected by the collective decision. The clan or family is the basic unit of social organization, and larger forms of organization, from tribe through nation to confederacy, are all predicated on the political autonomy and economic independence of clan units through family-based control of lands and resources.

A crucial feature of the indigenous concept of governance is its respect for individual autonomy. This respect precludes the notion of 'sovereignty'-the idea that there can be a permanent transference of power or authority from the individual to an abstraction of the collective called 'government'. The indigenous tradition sees government as the collective power of the individual members of the nation; there is no separation between society and state. Leadership is exercised by persuading individuals to pool their self-power in the interest of the collective good. By contrast, in the European tradition power is surrendered to the representatives of the majority, whose decisions on what they think is the collective good are then imposed on all citizens. In the indigenous tradition, the idea of self-determination truly starts with the self; political identity-with its inherent freedoms, powers, and responsibilities-is not surrendered to any external entity. Individuals alone determine their interests and destinies. There is no coercion: only the compelling force of conscience based on those inherited and collectively refined principles that structure the society. With the collective inheritance of a cohesive spiritual universe and traditional culture, profound dissent is rare, and is resolved by exemption of the individual from the implementation and implications of the particular decision. When the difference between individual and collective becomes irreconcilable, the individual leaves the group.

Collective self-determination depends on the conscious coordination of individual powers of self-determination. The governance process consists in the structured interplay of three kinds of power: individual power, persuasive power, and the power of tradition. These power relations are channelled into forms of decision-making and dispute resolution grounded in the recognition that beyond the individual there exists a natural community of interest: the extended family. Thus in almost all indigenous cultures, the foundational order of government is the clan. And almost all indigenous systems are predicated on a collective decision-making process organized around the clan.

It is erosion of this traditional power relationship and the forced dependence on a central government for provision of sustenance that lie at the root of injustice in the indigenous mind. Barsh recognizes a truth that applies to institutions at both the broad and the local level: The evil of modern states is their power to decide who eats.' Along with armed force, they use dependency-which they have created-to induce people's compliance with the will of an abstract authority structure serving the interests of an economic and political elite. It is an affront to justice that individuals are stripped of their power of self-determination and forced to comply with the decisions of a system based on the consciousness and interests of others.

The principles underlying European-style representative government through coercive force stand in fundamental opposition to the values from which indigenous leadership and power derive. In indigenous cultures the core values of equality and respect are reflected in the practices of consensus decision-making and dispute resolution through balanced consideration of all interests and views. In indigenous societies governance results from the interaction of leadership and the autonomous power of the individuals who make up the society. Governance in an indigenist sense can be practised only in a decentralized, small-scale environment among people who share a culture. It centres on the achievement of consensus and the creation of collective power, bounded by six principles: • • • it depends on the active participation of individuals; it balances many layers of equal power; it is dispersed; • • • it is situational; it is non-coercive; and it respects diversity.

Contemporary politics in Native communities is shaped by the interplay of people who, socially and culturally, are still basically oriented towards this understanding of government,with a set of structures and political relationships that reflect a very different, almost oppositional, understanding. The imposition of colonial political structures is the source of most factionalism within Native communities. Such institutions operate on principles that can never be truly acceptable to people whose orientations and attitudes are derived from a traditional value system. But they are tolerated by cynical community members as a fact of their colonized political lives. As a result, those structures have solidified into major obstacles to the achievement of peace and harmony in Native communities, spawning a non-traditional or anti-traditionalist political subculture among those individuals who draw their status and income from them. The effort needed to bring contemporary political institutions, and the people who inhabit them, into harmony with traditional values is very different from the superficial and purely symbolic efforts at reform that have taken place in many communities. Symbols are crucially important, but they must not be confused with substance: when terminology, costume, and protocol are all that change, while unjust power relationships and colonized attitudes remain untouched, such 'reform' becomes nothing more than a politically correct smokescreen obscuring the fact that no real progress is being made towards realizing traditionalist goals. Cloaking oneself in the mantle of tradition is no substitute for altering one's behaviour, especially where power is concerned. In too many Native communities, adherence to tradition is a shallow fa<;ade masking a greed for power and success as defined by mainstream society. Recognizable by its lack of community values, this selfish hunger for power holds many Native leaders in its grip and keeps them from working to overturn the colonial system.

#### This impact of this sort of language is MOST important and a PREREQUISITE to Indian culture, autonomy, and self-determination existing—concepts like sovereignty are western poison that upholds mental colonization and continues genocide by another name. This evidence is comparative—even if they help Indians superficially, mental colonization is a prerequisite.

Alfred, 1999 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. XI-XIV ]

If we are to emerge from this crisis with our nations intact, we must turn away from the values of the mainstream of North American society and begin to act as self-determining peoples. We cannot preserve our nations unless we take action to restore pride in our traditions, achieve economic self-sufficiency, develop independence of mind, and display courage in defence of our lands and rights. Only by committing ourselves to these goals can we hope to look into the future and see ourselves reemerging as peoples ready to take our rightful places in the world. The path to self-determination is uphill and strewn with obstacles, but we must take it; the threat to our existence as indigenous people is so immediate that we cannot afford not to. The only way we can survive is to recover our strength, our wisdom, and our solidarity by honouring and revitalizing the core of our traditional teachings. Only by heeding the voices of our ancestors can we restore our nations and put peace, power, and righteousness back into the hearts and minds of our people. The Condolence ritual pacifies the minds and emboldens the hearts of mourners by transforming loss into strength. In Rotinohshonni culture, it is the essential means of recovering the wisdom seemingly lost with the passing of a respected leader. Condolence is the mourning of a family's loss by those who remain strong and clear-minded. It is a gift promising comfort, recovery of balance, and revival of spirit to those who are suffering.

By strengthening family ties, sharing knowledge, and celebrating the power of traditional teachings, the Condolence ritual heals. It fends off destruction of the soul and restores hearts and minds. It revives the spirit of the people and brings forward new leaders embodying ancient wisdom and new hope. This book embodies the same hope.

• • •

In the past two generations, indigenous people around the world have broken the rusty cage of colonial oppression and exposed the injustices imposed on them. Brave and powerful leaders have challenged the European's self-proclaimed right to rule and ruin our nations. Our people have achieved a victory of the mind: the attitudes that sustained our subjugation can no longer be defended. Confronted with the moral and intellectual defeat of its empire in Indian Country, the former oppressor has presented a more compassionate face.

Newcomer governments claim to be forging historic new relationships with indigenous nations, relationships based on mutual respect, sharing, sovereignty, and our inherent rights. Economic development, modern treaties, self-government, compacts, revenue-sharing, and comanagement have become the watchwords of the 'post-colonial' age. But beyond the words, is the promise holding?

There have been some improvements. But our reserves are still poor, our governments are still divided and powerless, and our people still suffer. The post-colonial promises cannot ease this pain. The state has shown great skill in shedding the most onerous responsibilities of its rule while holding fast to the lands and authorities that are the foundations of its power. Redefining without reforming, it is letting go of the costly and cumbersome minor features of the colonial relationship and further entrenching in law and practice the real bases of its control. It is ensuring continued access to indigenous lands and resources by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream. Real control remains in the hands of white society because it is still that society's rules that define our life-not through obviously racist laws, but through endless references to the 'market', 'fiscal reality', 'Aboriginal rights', and 'public will'. And it is still the white society's needs that are met. In this supposedly post-colonial world, what does it matter if the reserve is run by Indians, so long as they behave like bureaucrats and carry out the same old policies? Redefined and reworded, the 'new' relationship still abuses indigenous people, albeit more subtly. In this 'new' relationship, indigenous people are still bound to another power's order. The rusty cage may be broken, but a new chain has been strung around the indigenous neck; it offers more room to move, but it still ties our people to white men pulling on the strong end.

This book is about recovering what will make self-determination real. It is concerned not with the process through which self-government is negotiated, but with the end goals and the nature of indigenous governments, once decolonization has been achieved. The machinery of indigenous governments may simply replicate European systems. But even if such governments resemble traditional Native American systems on the surface, without strong and healthy leaders committed to traditional values and the preservation of our nationhood they are going to fail. Our children will judge them to have failed because a government that is not based on the traditional principles of respect and harmonious coexistence will inevitably tend to reflect the cold, calculating, and coercive ways of the modern state. The whole of the decolonization process will have been for nothing if indigenous government has no meaningful indigenous character.

Worse, if the new governments do not embody a notion of power that is appropriate to indigenous cultures, the goals of the struggle will have been betrayed. Leaders who promote non-indigenous goals and embody non-indigenous values are simply tools used by the state to maintain its control. The spiritual connections and fundamental respect for each other and for the earth that were our ancestors' way and the foundations of our traditional systems must be restored. Resistance to foreign notions of power and control must become a primary commitment-not only as a posture in our relations with the state, but also in the way Native community governments treat our own people. The state's power, including such European concepts as 'taxation', 'citizenship', 'executive authority', and 'sovereignty', must be eradicated from politics in Native communities. In a very real sense, to remain Native-to reflect the essence of indigenous North Americans--our politics must shift to give primacy to concepts grounded in our own cultures.

In fact, traditional philosophy is crucially relevant to the contemporary indigenous situation. In the Rotinohshonni tradition, the natural order accepts and celebrates the coexistence of opposites; human purpose consists in the perpetual quest for balance and harmony; and peace is achieved by extending the respect, rights, and responsibilities of family relations to other peoples. Even stripped down to a skeleton, these teachings speak with power to the fundamental questions that a philosophy of governance must address. Among the original peoples of North America, the cultural ideal of respectful coexistence as a tolerant and harmonyseeking first principle of government is widespread. Diametrically opposed to the possessive individualism that is central to the systems imposed on our communities, this single principle expresses the hope that tradition offers for a future beyond division and conflict. With this heritage, why do we indigenous people so often look away from our own wisdom and let other people answer the basic questions for us? At the core of the crisis facing our nations is the fact that we are being led away from our traditional ideals by the people with the authority to control our lives. Some of these people-lawyers, advisers, consultants, managers, government agents-are not Native and therefore cannot be expected to share our ideals. Others, however, are the very people we count on to provide leadership and embody the values at the heart of our societies-to love and sacrifice for their people. Instead, these greedy, corrupt politicians are seduced by the mainstream. To be clear: not all Native leaders are bad, and not all those who do bad things are aware they are on the wrong path. More and more, however, we find our leaders looking, sounding, and behaving just like mainstream politicians. There is unquestionable pathos in the material and social reality of most reserves. Yet above all the crisis we face is a crisis of the mind: a lack of conscience and consciousness. Material poverty and social dysfunction are merely the visible surface of a deep pool of internal suffering. The underlying cause of that suffering is alienation-separation from our heritage and from ourselves. Indigenous nations are slowly dissolving with the continuing loss of language, land, and young people. Although the indigenous peoples of Turtle Island-the land now called Canada and the United States-have survived the most severe and extended genocide in human history, the war is not over yet. Our bodies may live without our languages, lands, or freedom, but they will be hollow shells////

. Even if we survive as individuals, we will no longer be what we Rotinohshonni call Onkwehonwe-the real and original people-because the communities that make us true indigenous people will have been lost. We will be nothing but echoes of proud nations floating across a landscape possessed by others.

From the outside, the intensity of the crisis is obscured by the smokescreen of efforts to reduce the most obvious signs of social deprivation and increase the material wealth within Native communities. It is commonly thought that allowing indigenous people a reasonable standard of living will solve all their problems. But there is more to justice than equity. Of course indigenous people have a right to a standard of living equal to that of others. But to stop there and continue to deny their nationhood is to accept the European genocide of 500 years. Attempting to right historical wrongs by equalizing our material conditions is not enough: to accept the simple equality offered lately would mean forgetting what indigenous nations were before those wrongs began. Indigenous people cannot forget.

## \*\*\* 2NC

### Alt Card

#### The alternative is to reject the language of sovereignty and instead use the language of self determination and autonomy. This is a genuine epistemic break with oppressive systems of power.

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 53-54]

It is with indigenous notions of power such as these that contemporary Native nationalism seeks to replace the dividing, alienating, and exploitative notions, based on fear, that drive politics inside and outside Native communities today. This goal differs significantly from the revolutionary objectives of earlier phases of the Native movement. Not only is revolution in the classic sense unworkable, given the relatively small numbers of indigenous peoples in North America today, but it is contrary to the basic principles of traditional indigenous philosophies. Indigenous peoples do not seek to destroy the state, but to make it more just and to improve their relations with the mainstream society. The principles embedded in cultural ideals like the Kaswentha are in fact consistent with some Western principles that have been nearly forgotten in the construction of the modern hegemonic state-among them the original principle of federalism. Indigenous empowerment involves achieving a relationship between peoples founded on the principles of autonomy and interdependence. To accommodate indigenous notions of nationhood and cease its interference in indigenous communities, the state need only refer to the federal principle. In traditional systems, it was essential for communities to cultivate relationships with their neighbours that would allow for ongoing dialogue and dispute resolution; this principle was embodied in numerous confederal unions that promoted harmony and cooperation. Today, in many cases, such cooperation is hindered by political, racial, and legal differences between neighbouring communities. The time has come to recognize our mutual dependency; to realize that indigenous and non-indigenous communities are permanent features of our political and social landscape; to embrace the notion of respectful cooperation on equal terms; and to apply the peace-making principles on which were based both the many great pre-contact North American confederacies and the later alliances that allowed European societies to establish themselves and flourish on this continent. In addition we must recognize that we can never achieve the goal of peaceful coexistence as long as we continue to accept the classic notion of sovereignty as the framework for discussions of political relations between indigenous peoples and the state. The great Lakota scholar Vine Deloria, Jr, has distinguished between the indigenous concept of nationhood and the statist concept based on a sovereign political authority (sovereignty). Deloria sees nationhood as distinct from 'self-government' (or the 'domestic dependent nations' status accorded indigenous peoples by the United States). The right of 'self-determination', unbounded by state law, is a concept appropriate to nations. By contrast, delegated forms of authority, like 'self-government' within the context of state sovereignty, are appropriate to what we might call 'minority peoples', or other ethnically defined groups within the polity as a whole. Beyond the question of the source of authority and its implications for nationhood, however, there are practical drawbacks to implementing a form of government based on sovereignty in communities with completely different perspectives on the nature and appropriate use of power. According to Deloria, provisions for 'self-government' and other state-delegated forms of authority in indigenous communities are not wrong; they are simply inadequate because they do not take into account the spiritual needs of indigenous societies: Self-government is not an Indian idea. It originates in the minds of non-Indians who have reduced the traditional ways to dust, or believe they have, and now wish to give, as a gift, a limited measure of local control and responsibility. Self-government is an exceedingly useful concept for Indians to use when dealing with the larger government because it provides a context within which negotiations can take place. Since it will never supplant the intangible, spiritual, and emotional aspirations of American Indians, it cannot be regarded as the final solution to Indian problems. I would go even further than Deloria on this point. 'Sovereignty' as it is currently understood and applied in indigenous-state relations cannot be seen as an appropriate goal or framework, because it has no relevance to indigenous values. The challenge before us is to detach the notion of sovereignty from its current legal meaning and use in the context of the Western understanding of power and relationships. We need to create a meaning for 'sovereignty' that respects the understanding of power in indigenous cultures, one that reflects more of the sense embodied in such Western notions as 'personal sovereignty' and 'popular sovereignty'. Until then, 'sovereignty' can never be part of the language of liberation.

### AT: Perm

#### The permutation fails—it’s impossible to create change from within the tropes and culture of western politics.

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 32-33]

So why do people do it? Jack Forbes has described a spectrum of identities, from a very firmly rooted Native nationalism to an opportunistic minority-race identification. Forbes's spectrum points to the lines of cleavage that the state manipulates in its efforts to legitimize its own institutions among Native people. In the war against indigenous nations, the state first alienates individuals from their communities and cultures and then capitalizes on their alienation by turning them into agents who will work to further the state's interests within those communities.

Adapting Forbes's analysis to the present situation, we can mark four major points along the spectrum of identity: (1) the Traditional Nationalist represents the values, principles, and approaches of an indigenous cultural perspective that accepts no compromise with the colonial structure; (2) the Secular Nationalist represents an incomplete or unfulfilled indigenous perspective, stripped of its spiritual element and oriented almost solely towards confronting colonial structures; (3) the Tribal Pragmatist represents an interest-based calculation, a perspective that merges indigenous and mainstream values towards the integration of Native communities within colonial structures; and (4) the Racial Minority ('of Indian descent') represents Western values-a perspective completely separate from indigenous cultures and supportive of the colonial structures that are the sole source of Native identification.

It goes almost without saying that state agencies recruit their Native people among the latter two groups. For people with a traditionalist perspective and a little cultural confidence, co-optation by the state is difficult. Undeniably, many Native people who work in state institutions, or in state-sponsored governments within communities, see themselves as working in the interests of their people. There is a strong, though fundamentally naive, belief among them that it is possible to 'promote change from within'. In retrospect, those who have tried that approach and failed see that belief as more of a justification than a reason. There are many political identities across Native America, and even within single communities the dynamics of personality and psychology produce varying responses to the colonial situation. The people who choose to work for or with the colonial institutions have constructed a political identity for themselves that justifies their participation. This is no excuse for being wrong-and they are--but it indicates the dire need for a stronger sense of traditional values among all Native people. In the absence of a political culture firmly rooted in tradition and a common set of principles based on traditional values, it is not surprising that individuals will tend to stray towards mainstream beliefs and attitudes.

The co-optive intent of the current system is clear to anyone who has worked within it, as is the moral necessity of rejecting the divisive institutions and leaders who emerge from a bureaucratic culture. It is one thing to seek out the heart of whiteness in order to prepare yourself for future battles-'know thine enemy' is still good advice. But it is quite another thing to have your own heart chilled by the experience. Whether in ?- bureaucratic context or an indigenous one, individual conduct and values are crucial in determining who the real leaders are.

#### Undermining discourse of sovereignty more effective than indigenous re-appropriation

Alfred 99 [Taiaike, A leading Kanien’kehaka scholar versed in both indigenous and western traditions, PhD at Cornell, direct of the Canadian Indigenous Governance Program, “Peace, Power, Righteousness: an indigenous Manifesto, p. 58]

To argue on behalf of indigenous nationhood within the dominant Western paradigm is self-defeating. To frame the struggle to achieve justice in terms of indigenous 'claims' against the state is implicitly to accept the fiction of state sovereignty. Indigenous peoples are by definition the original inhabitants of the land. They had complex societies and systems of government. And they never gave consent to European ownership of territory or the establishment of European sovereignty over them (treaties did not do this, according to both historic Native understandings and contemporary legal analysis). These are indisputable realities based on empirically verifiable facts. So why are indigenous efforts to achieve legal recognition of these facts framed as 'claims'? The mythology of the state is hegemonic, and the struggle for justice would be better served by undermining the myth of state sovereignty than by carving out a small and dependent space for indigenous peoples within it.

## \*\*\* 1NR

### 1NR—Overview

Limiting the topic to RESTRICTIONS is key. There are enough regulations to necessitate 5 million hours of research—

Tugwell, 1988 [PHD @ Columbia, Prof @ Pamona and Carnegie Melon. Serves on the Advisory Board and International Committee of the American Council on Renewable Energy and on the Joint Board of Councilors of the China-U.S. Center for Sustainable Development. *The Energy Crisis and the American Political Economy:*

*Politics and Markets in the Management of Natural Resources.* http://books.google.com/books?id=MT2sAAAAIAAJ&q=%22administering+energy+regulations+%22#v=snippet&q=%22administering%20energy%20regulations%20%22&f=false]

Finally, administering energy regulations proved a costly and cumbersome endeavor, exacting a price all citizens had to pay. As the energy specialist Paul MacAvoy has noted: "More than 300,000 firms were required to respond to controls, ranging from the three dozen major refining companies to a quarter of a million retailers of petroleum products. The respondents had to file more than half a million reports each year, which probably took more than five million man-hours to prepare, at an estimated cost alone of $80 mil- lion."64 To these expenditures must be added the additional costs to the government of collecting and processing these reports, monitor- ing compliance, and managing the complex process associated with setting forth new regulations and adjudicating disputes. All to- gether, it seems likely that the administrative costs, private and public, directly attributable to the regulatory process also exceeded $1 billion a year from 1974 to 1980.65

#### Default to precision—restrictions are totally distinct from regulations. Even if we over-limit, our topic allows a predictable stasis point for research.

Sinha 6 [Supreme Court of India Union Of India & Ors vs M/S. Asian Food Industries on 7 November, 2006 Author: S.B. Sinha Bench: S Sinha, Mark, E Katju CASE NO.: Writ Petition (civil) 4695 of 2006 PETITIONER: Union of India & Ors. RESPONDENT: M/s. Asian Food Industries DATE OF JUDGMENT: 07/11/2006 BENCH: S.B. Sinha & Markandey Katju JUDGMENT: J U D G M E N T [Arising out of S.L.P. (Civil) No. 17008 of 2006] WITH CIVIL APPEAL NO. 4696 OF 2006 [Arising out of S.L.P. (Civil) No. 17558 of 2006] S.B. SINHA, J: http://www.indiankanoon.org/doc/437310/]

We may, however, notice that this Court in State of U.P. and Others v. M/s. Hindustan Aluminium Corpn. and others [AIR 1979 SC 1459] stated the law thus:

"It appears that a distinction between regulation and restriction or prohibition has always been drawn, ever since Municipal Corporation of the City of Toronto v. Virgo. Regulation promotes the freedom or the facility which is required to be regulated in the interest of all concerned, whereas prohibition obstructs or shuts off, or denies it to those to whom it is applied. The Oxford English Dictionary does not define regulate to include prohibition so that if it had been the intention to prohibit the supply, distribution, consumption or use of energy, the legislature would not have contented itself with the use of the word regulating without using the word prohibiting or some such word, to bring out that effect."

### 1NR—Over Limit

#### Two—limits solve aff ground.

Gibbert et al. 7—Michael Gibbert, Assistant Professor of Management at Bocconi University (Italy), et al., with Martin Hoeglis, Professor of Leadership and Human Resource Management at WHU—Otto Beisheim School of Management (Germany), and Lifsa Valikangas, Professor of Innovation Management at the Helsinki School of Economics (Finland) and Director of the Woodside Institute, 2007 (“In Praise of Resource Constraints,” *MIT Sloan Management Review*, Spring, Available Online at https://umdrive.memphis.edu/gdeitz/public/The%20Moneyball%20Hypothesis/Gibbert%20et%20al.%20-%20SMR%20(2007)%20Praise%20Resource%20Constraints.pdf, Accessed 04-08-2012, p. 15-16)

Resource constraints can also fuel innovative team performance directly. In the spirit of the proverb "necessity is the mother of invention," [end page 15] teams may produce better results because of resource constraints. Cognitive psychology provides experimental support for the "less is more" hypothesis. For example, scholars in creative cognition find in laboratory tests that subjects are most innovative when given fewer rather than more resources for solving a problem.

The reason seems to be that the human mind is most productive when restricted. Limited—or better focused—by specific rules and constraints, we are more likely to recognize an unexpected idea. Suppose, for example, that we need to put dinner on the table for unexpected guests arriving later that day. The main constraints here are the ingredients available and how much time is left. One way to solve this problem is to think of a familiar recipe and then head off to the supermarket for the extra ingredients. Alternatively, we may start by looking in the refrigerator and cupboard to see what is already there, then allowing ourselves to devise innovative ways of combining subsets of these ingredients. Many cooks attest that the latter option, while riskier, often leads to more creative and better appreciated dinners. In fact, it is the option invariably preferred by professional chefs.

The heightened innovativeness of such "constraints-driven" solutions comes from team members' tendencies, under the circumstances, to look for alternatives beyond "how things are normally done," write C. Page Moreau and Darren W. Dahl in a 2005 Journal of Consumer Research article. Would-be innovators facing constraints are more likely to find creative analogies and combinations that would otherwise be hidden under a glut of resources.

### 1NR—Interp

#### The Aff is a CONDITION, not a RESTRICTION.

Pashman 63 [Morris, Justice on the NJ supreme court, 3/25/’63 “ISIDORE FELDMAN, PLAINTIFF AND THIRD-PARTY PLAINTIFF, v. URBAN COMMERCIAL, INC., AND OTHERS, DEFENDANT,” 78 N.J. Super. 520; 189 A.2d 467; 1963 N.J. Super.Lexis]

HN3A title insurance policy "is subject to the same rules of construction as are other insurance policies." Sandler v. N.J. Realty Title Ins. Co., supra, at [\*\*\*11] p. 479. It is within these rules of construction that this policy must be construed. Defendant contends that plaintiff's loss was occasioned by restrictions excepted from coverage in Schedule B of the title policy. The question is whether the provision in the deed to Developers that redevelopment had to be completed [\*528] within 32 months is a "restriction." Judge HN4 Kilkenny held that this provision was a "condition" and "more than a mere covenant." 64 N.J. Super., at p. 378. The word "restriction" as used in the title policy cannot be said to be synonymous with a "condition." A "restriction" generally refers to "a limitation of the manner in which one may use his own lands, and may or may not involve a grant." Kutschinski v. Thompson, 101 N.J. Eq. 649, 656 (Ch. 1927). See also Bertrand v. Jones, 58 N.J. Super. 273 (App. Div. 1959), certification denied 31 N.J. 553 (1960); Freedman v. Lieberman, 2 N.J. Super. 537 (Ch. Div. 1949); Riverton Country Club v. Thomas, 141 N.J. Eq. 435 (Ch. 1948), affirmed per curiam, 1 N.J. 508 (1948). It would not be inappropriate to say that the word "restrictions," as used [\*\*\*12] by defendant insurers, is ambiguous. The rules of construction heretofore announced must guide us in an interpretation of this policy. I find that the word "restrictions" in Schedule B of defendant's title policy does not encompass the provision in the deed to Developers which refers to the completion [\*\*472] of redevelopment work within 32 months because (1) the word is used ambiguously and must be strictly construed against defendant insurer, and (2) the provision does not refer to the use to which the land may be put. As the court stated in Riverton Country Club v. Thomas, supra, at p. 440, "HN5equity will not aid one man to restrict another in the uses to which he may put his land unless the right to such aid is clear, and that restrictive provisions in a deed are to be construed most strictly against the person or persons seeking to enforce them." (Emphasis added)

#### Think about it this way --- regulation is how you go about doing the thing, restriction is whether or not you can do it.

Schackleford 17 [ justice – Supreme Court of Florida, 3/12/’17 (J., “ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION, et al., Plaintiff in Error, v. THE STATE OF FLORIDA, Defendant in Error,” 73 Fla. 609; 74 So. 595; 1917 Fla. LEXIS 487)]

There would seem to be no occasion to discuss whether or not the Railroad Commissioners had the power and authority to make the order, requiring the three specified railroads running into the City of Tampa to erect a union passenger station in such city, which is set out in the declaration in the instant case and which we have copied above. [\*\*\*29] It is sufficient to say that under the reasoning and the authorities cited in State v. Atlantic Coast Line R. Co., 67 Fla. 441, 458, 63 South. Rep. 729, 65 South. Rep. 654, and State v. Jacksonville Terminal [\*631] Co., supra, it would seem that HN14the Commissioners had power and authority. The point which we are required to determine is whether or not the Commissioners were given the authority to impose the fine or penalty upon the three railroads for the recovery of which this action is brought. In order to decide this question we must examine Section 2908 of the General Statutes of 1906, which we have copied above, in the light of the authorities which we have cited and from some of which we have quoted. It will be observed that the declaration alleges that the penalty imposed upon the three railroads was for the violation of what is designated as "Order No. 282," which is set out and which required such railroads to erect and complete a union depot at Tampa within a certain specified time. If the Commissioners had the authority to make such order, it necessarily follows that they could enforce a compliance with the same by appropriate proceedings in the courts, but [\*\*\*30] it does not necessarily follow that they had the power and authority to penalize the roads for a failure to comply therewith. That is a different matter. HN15Section 2908 of the General Statutes of 1906, which originally formed Section 12 of Chapter 4700 of the Laws of Florida, (Acts of 1899, p. 86), expressly authorizes the imposition of a penalty by the Commissioners upon "any railroad, railroad company or other common carrier doing business in this State," for "a violation or disregard of any rate, schedule, rule or regulation, provided or prescribed by said commission," or for failure "to make any report required to be made under the provisions of this Chapter," or for the violation of "any provision of this Chapter." It will be observed that the word "Order" is not mentioned in such section. Are the other words used therein sufficiently comprehensive to embrace an order made by the Commissioners, such as the one now under consideration? [\*632] It could not successfully be contended, nor is such contention attempted, that this order is covered by or embraced within the words "rate," "schedule" or "any report,' therefore we may dismiss these terms from our consideration and [\*\*\*31] direct our attention to the words "rule or regulation." As is frankly stated in the brief filed by the defendant in error: "It is admitted that an order for the erection of a depot is not a 'rate' or 'schedule' and if it is not a 'rule' or 'regulation' then there is no power in the Commissioners to enforce it by the imposition of a penalty." It is earnestly insisted that the words "rule or regulation" are sufficiently comprehensive to embrace such an order and to authorize the penalty imposed, and in support of this contention the following authorities are cited: Black's Law Dictionary, defining regulation and order; Rapalje & Lawrence's Law Dictionary, defining rule; Abbott's Law Dictionary, defining rule; Bouvier's Law Dictionary, defining order and rule [\*\*602] of court; Webster's New International Dictionary, defining regulation; Curry v. Marvin, 2 Fla. 411, text 515; In re Leasing of State Lands, 18 Colo. 359, 32 Pac. Rep. 986; Betts v. Commissioners of the Land Office, 27 Okl. 64, 110 Pac. Rep. 766; Carter V. Louisiana Purchase Exposition Co., 124 Mo. App. 530, 102 S.W. Rep. 6, text 9; 34 Cyc. 1031. We have examined all of these authorities, as well as those cited by the [\*\*\*32] plaintiffs in error and a number of others, but shall not undertake an analysis and discussion of all of them. While it is undoubtedly true that the words, rule, regulation and order are frequently used as synonyms, as the dictionaries, both English and law, and the dictionaries of synonyms, such as Soule's show, it does not follow that these words always mean the same thing or are interchangeable at will. It is well known that the same word used in different contexts may mean a different thing by virtue of the coloring which the word [\*633] takes on both from what precedes it in the context and what follows after. Thus in discussing the proper constructions to be placed upon the words "restrictions and regulations" as used in the Constitution of this State, then in force, Chap. 4, Sec. 2, No. 1, of Thompson's Digest, page 50, this court in Curry v. Marvin, 2 Fla. 411, text 415, which case is cited to us and relied upon by both the parties litigant, makes the following statement: "The word restriction is defined by the best lexicographers to mean limitation, confinement within bounds, and would seem, as used in the constitution, to apply to the amount and to the time [\*\*\*33] within which an appeal might to be taken, or a writ of error sued out. The word regulation has a different signification -- it means method, and is defined by Webster in his Dictionary, folio 31, page 929, to be 'a rule or order prescribed by a superior for the management of some business, or for the government of a company or society.' This more properly perhaps applies to the mode and form of proceeding in taking and prosecuting appeals and writs of error. By the use of both of those terms, we think that something more was intended than merely regulating the mode and form of proceedings in such cases." Thus, in Carter v. Louisiana Purchase Exposition Co., 124 Mo. App. 530, text 538, 102 S.W. Rep. 6, text 9, it is said, "The definition of a rule or order, which are synonymous terms, include commands to lower courts or court officials to do ministerial acts." In support of this proposition is cited 24 Amer. & Eng. Ency. of Law 1016, which is evidently an erroneous citation, whether the first or second edition is meant. See the definition of regulate and rule, 24 amer. & Eng. Ency. of Law (2nd Ed.) pages 243 to 246 and 1010, and it will be seen that the two words are not always [\*\*\*34] synonymous, much necessarily depending upon the context and the sense in which the words are used. Also see the discussion [\*634] of the word regulation in 34 Cyc. 1031. We would call especial attention to Morris v. Board of Pilot Commissioners, 7 Del. chan. 136, 30 Atl. Rep. 667, text 669, wherein the following statement is made by the court: "These words 'rule' and the 'order,' when used in a statute, have a definite signification. They are different in their nature and extent. A rule, to be valid, must be general in its scope, and undiscriminating in its application; an order is specific and not limited in its application. The function of an order relates more particularly to the execution or enforcement of a rule previously made." Also see 7 Words & Phrases 6271 and 6272, and 4 Words & Phrases (2nd Ser.) 419, 420. As we held in City of Los Angeles v. Gager, 10 Cal. App. 378, 102 Pac. Rep. 17, "The meaning of the word 'rules' is of wide and varied significance, depending upon the context; in a legal sense it is synonymous with 'laws.'" If Section 2908 had contained the word order, or had authorized the Commissioners to impose a penalty for the violation of any order [\*\*\*35] made by them, there would be no room for construction. The Georgia statute, Acts of 1905, p. 120, generally known as the "Steed Bill," entitled "An act to further extend the powers of the Railroad Commission of this State, and to confer upon the commission the power to regulate the time and manner within which the several railroads in this State shall receive, receipt for, forward and deliver to its destination all freight of every character, which may be tendered or received by them for transportation; to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said commission in the execution of these powers, and for other purposes," expressly authorized the Railroad Commissioners "to provide a penalty for non-compliance with any and all reasonable rules, regulations and orders prescribed by the said Commision." [\*635] See Pennington v. Douglas, A. & G. Ry. Co., 3 Ga. App. 665, 60 S.E. Rep. 485, which we cited with approval in State v. Atlantic Coast Line R. Co., 56 fla. 617, text 651, 47 South. Rep. 969, 32 L.R.A. (N.S.) 639. Under the reasoning in the cited authorities, especially State v. Atlantic Coast Line R. Co., [\*\*\*36] supra, and Morris v. Board of Pilot Commissioners, we are constrained to hold that the fourth and eighth grounds of the demurrer are well founded and that HN16the Railroad Commissioners were not empowered or authorized to impose a penalty upon the three railroads for failure to comply with the order for the erection of a union depot.

#### Only our 1NC evidence defines restrictions ON ENERGY PRODUCTION. Defining the word in context is essential to predictability, precision, and resolutional context

Haneman 59 [Superior Court of New Jersey, Appellate Division, 12/4/’59“RUSSELL S. BERTRAND, ET AL., PLAINTIFFS-RESPONDENTS, v. DONALD T. JONES, ET AL., DEFENDANTS-APPELLANTS,” 58 N.J. Super. 273; 156 A.2d 161; 1959 N.J. Super. LEXIS 569]

HN4 In ascertaining the meaning of the word "restrictions" as here employed, it must be considered in context with the entire clause in which it appears. It is to be noted that the exception concerns restrictions "which have been complied with." Plainly, this connotes a representation of compliance by the vendor with any restrictions upon the permitted uses of the subject property. The conclusion that "restrictions" refer solely to a limitation of the manner in which the vendor may [\*\*\*14] use his own lands is strengthened by the further provision found in said clause that the conveyance is "subject to the effect, [\*\*167] if any, of municipal zoning laws." Municipal zoning laws affect the use of property.

HN5 A familiar maxim to aid in the construction of contracts is noscitur a sociis. Simply stated, this means that a word is known from its associates. Words of general and specific import take color from each other when associated together, and thus the word of general significance is modified by its associates of restricted sense. 3 Corbin on Contracts, § 552, p. 110; cf. Ford Motor Co. v. New Jersey Department of Labor and Industry, 5 N.J. 494 (1950). The [\*284] word "restrictions," therefore, should be construed as being used in the same limited fashion as "zoning."

### 1NR—Reasonability

#### Reasonability is impossible—it’s arbitrary and undermines research and preparation

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In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.