# **2AC**

### T-Restriction

---we meet-foreign investment restrictions on production

Hirsch-former senior energy program adviser for Science Applications International Corporation-11 Commentary: Restrictions on world oil production

<http://www.energybulletin.net/stories/2011-03-28/commentary-restrictions-world-oil-production>

Restrictions on world oil production can be divided into four categories: 1. Geology 2. Legitimate National Interests 3. Mismanagement 4. Political Upheaval Consider each in reverse order: Political upheaval is currently rampant across the Middle East, resulting in a major spike in world oil prices. No one knows how far the impacts will go or how long it will take to reach some kind of stability and what that stability will mean to oil production in the Middle Eastern countries that produce oil. We are thus relegated to best guesses, which span weeks, months, or years before there are clear resolutions. One pre-Middle East chaos country limited by political upheaval is Iraq, which is believed to have the oil reserves to produce at a much higher level, but Iraqi government chaos has severely limited oil production expansion. In another long-standing case, Nigeria has been plagued by internal political strife, which has negatively impacted its oil production. Mismanagement of oil production within a country can be due to a variety of factors, all of which mean lower oil production than would otherwise be the case. Venezuela is the poster child of national mismanagement. The country has huge resources of heavy oil that could be produced at much higher rates. Underproduction is due to the government syphoning off so much cash flow that oil production operations are starved for needed funds. In addition, Venezuela has made it extremely difficult, if not impossible for foreign oil companies to operate in the country. Another example of mismanagement is Mexico, where government confiscation of oil revenues, substandard technology, and restrictions on foreign investment has led to significant Mexican oil production decline.

-xxx--We-meet-the plan reduces restrictions that block, delay, and alter foreign investment in energy production

Inside Energy with Federal Lands 4/12/10 (Herman Wang, HEADLINE: Foreign energy investments spark security concerns)

Foreign firms appear to be increasingly interested in investing in US oil companies, electric utilities and other parts of the US energy infrastructure, as they are seeking to profit from America's appetite for oil, coal and other commodities, as well as the Obama administration's emphasis on renewable power. But with those deals will come scrutiny from a little-known federal panel that has the power to block the transactions for national security reasons, through a review process that industry insiders say is sometimes inconsistent, politically driven and opaque. The Committee on Foreign Investment in the United States is an inter-agency panel that gave the Energy Department a permanent seat in 2007 to help it investigate business transactions in which foreign governments or companies seek to acquire "major energy assets" in the US. But some experts say CFIUS does not offer enough up-front guidance to US companies that are being acquired by foreign interests, wasting time and money. "We face situations where we tell our clients we see no security risk," said Billy Vigdor, a Washington-based partner with law firm Vinson & Elkins. "And then we spend hours trying to figure out whether we should file [a disclosure] because the government might think it is, in fact, a security risk. The last thing you want is to have a contract in place, and you think you're going to close in 30 days, and then CFIUS calls and says you need a filing." Companies being acquired by a foreign-owned firm can voluntarily notify CFIUS of the transaction, but the committee also has the power to investigate all transactions it sees fit to review. Representatives from 16 federal departments and agencies, headed by the Treasury Department, comprise the committee. Those investigations can leave foreign companies feeling unfairly targeted, potentially discouraging needed foreign investment in US energy infrastructure, said Al Troner, president of Houston-based Asia Pacific Energy Consulting. Troner said CFIUS' rulings on what constitutes a security threat can be arbitrary and inconsistent. Even when the committee determines there is no security risk for a transaction, politics can sometimes trump the ruling, Troner said. Troner cited CFIUS' approval in 2006 of a deal by a Dubai-based company to manage several US ports, only to have the company back out after many lawmakers cried foul due to fears of terrorism. "We want investment, but we want 'safe' investments, even though we can't define what is safe," Troner said. "So a big problem in all this is uncertainty, which makes this a funny market to invest in. [Foreign firms] don't feel treated fairly as to what the criteria are for energy security. If you don't know what you're getting into, at a certain point, you ask if this is worth it." Steven Cuevas, who was DOE's director of investment security in 2007 when the department gained a seat on CFIUS, said the committee makes its decisions apolitically. CFIUS, originally established in 1975, received a legislative mandate in 2007 to tighten its oversight of foreign transactions, including defining critical infrastructure as an asset so vital that its incapacity or destruction would severely impact national security. A bill signed by then-President George W. Bush, sparked in large part because of the uproar over the Dubai Ports World deal, formalized CFIUS' review process, which until then had been loosely defined and applied. That same bill also gave DOE its seat on CFIUS. The committee reviews about 150 to 200 foreign business deals a year. "We left politics at the door," Cuevas said. "As with any national security program, you really need to look at the issues in national security and not worry about politics. It's not a situation where there's a bright-line rule. You have to look at each transaction by itself. The standard is, does this transaction, by itself, pose a risk to national security?" Richard Oehler, a Seattle-based partner with law firm Perkins Cole, said prior to the 2007 legislation, CFIUS primarily concerned itself with defense contracting and other issues related to defense and intelligence. The legislation, however, with its definition of critical infrastructure, put an increased focus on US energy assets. "They were not focused on energy, until the politicians redefined [CFIUS]," Oehler said. Cuevas, now a renewable-energy lobbyist with French-owned nuclear company Areva, was a Bush administration political appointee assigned the task of setting up DOE's new role on CFIUS. He said he could not disclose, for confidentiality reasons, how many transactions DOE reviewed during his time working on the committee. Cuevas left his DOE post in 2009 with inauguration of the Obama administration. "When we started the CFIUS program at DOE, we had no processes in place," he said. "There was no record keeping. I spent the last year and a half with the department trying to standardize those steps of review, who signs off on transaction, who tracks them. We were simply trying to keep up with the transactions. We set the foundation, and the folks that are there now are fleshing it out." Last month, DOE issued a draft policy outlining its role on CFIUS that is similar to the Bush administration's policy. The policy, signed by DOE Deputy Secretary Daniel Poneman, prescribes that the department's risk analyses must consider the "criticality and/or vulnerability of the US assets being acquired" and "the threat to those assets posed by the acquiring entity and the consequences to national security if the threat is realized." Each transaction must also be reviewed on whether it involves critical infrastructure and technology, as well as how the transaction would impact long-term projections of US energy consumption. In addition, if a foreign government-owned entity is involved in the transaction, DOE will assess "the adherence of the subject country to nonproliferation control regimes, including treaties and multilateral supply guidelines," the draft policy states. After the review, DOE can clear the transaction with no further action; refer it to CFIUS for a 45-day national security investigation; clear the case conditionally, pending the creation of a "mitigation" plan to resolve security concerns; or recommend to the president to block the deal. Energy Secretary Steven Chu is DOE's primary representative to CFIUS, but much of the department's responsibilities on the committee are delegated to Jonathan Elkind, DOE's principal deputy assistant secretary for policy and international affairs. Elkin was not available for comment. Cliff Vrielink, a Houston-based partner with Vinson & Elkins, said CFIUS can sometimes give US companies pause when seeking to be acquired by a foreign firm. "CFIUS presents a hurdle for a foreign buyer that a domestic buyer doesn't have," Vrielink said. "When someone as an asset they want to sell, and they have an auction where multiple companies have put in bids, the foreign buyer has the uncertain timing of a CFIUS filing, which can be a significant factor." Complicating matters for foreign companies is the fact that CFIUS reviews are not based on a clear set of guidelines and regulations outlining, for instance, how much of a US company a foreign firm can acquire without triggering an investigation. "We, as Americans, are fortunate in that in so many areas, we have bright-letter law, and I think that's one thing that's always been an attraction for foreign investment, that we have the sanctity of contracts and bright-letter law," Vrielink said.

---Mitigation measures block, delay, and alter deaks, even if they aren’t blocked

Marchick 07 (David, partner at Covington & Burling, where he advises

companies on the CFIUS process, “Swinging the Pendulum too Far: An Analysis of the CFIUS Process Post-Dubai Ports World,” Jan, http://www.nfap.net/researchactivities/studies/NFAPPolicyBriefCFIUS0107.pdf)

In the 18 years that Exon-Florio has been in force, there have been slightly more than 1700 CFIUS filings. Only one transaction has formally been blocked by the President — a 1990 aerospace investment by a Chinese company. From the data, one would think that CFIUS has merely been a rubber stamp, approving 99.9 percent of the acquisitions. The data belie actual practice, since tough restrictions are imposed by CFIUS as a condition for approval — typically through “mitigation” or “national security” agreements. In addition, parties typically will abandon a transaction in the face of a possible rejection rather than force the President to formally block a proposed acquisition. The public relations damage to a company if a President were to block an acquisition would be substantial.

#### ---Production deals with a high level of scrutiny are considered “restricted”.

Vinson & Elkins LLP 12 (V&E China Practice Update E-communication, “China Amends Foreign Investment Policy: New Foreign Investment Industry Guidance Catalogue,” January 13, http://www.velaw.com/resources/pub\_detail.aspx?id=20405)

The Catalogue classifies foreign direct investments in the various Chinese industry sectors as “encouraged,” “restricted,” “permitted,” or “prohibited,” and sets out specific industries in which foreign investment is either “encouraged,” “restricted,” or “prohibited.” Activities not listed are, in the absence of other rules to the contrary, considered to be “permitted” for foreign investments. Foreign investment in “encouraged” industries may enjoy certain tax benefits and is often subject to less strict administrative requirements from approval authorities. The “restricted” category includes industries into which foreign investment is subject to a higher level of scrutiny, stricter administrative requirements, and may be denied at the discretion of the approval authorities. Foreign investment is not permitted in industries categorized as “prohibited.”

#### ---C/I

#### Restrictions mean qualification on production

Wright v. Magellan Behavioral Health, Inc., 2007 U.S. Dist. LEXIS 48718  2007

In the instant case, the Court is required to interpret the word "restriction" as used by the parties in the Agreement. The parties apparently agree that the legal definition of restriction--"a limitation or qualification," Black's Law Dictionary 1341 (8th ed. 1999)--is a good place to start. Thus, the Court must determine whether the board's supervision requirement falls within this definition.

#### That means conditions on production not just prohibitions

Google Dictionary

qual·i·fi·ca·tion

noun /ˌkwäləfəˈkāSHən/

qualifications, plural

A quality or accomplishment that makes someone suitable for a particular job or activity

- only one qualification required—fabulous sense of humor

The action or fact of becoming qualified as a practitioner of a particular profession or activity

- an opportunity for student teachers to share experiences before qualification

A condition that must be fulfilled before a right can be acquired; an official requirement

- the five-year residency qualification for presidential candidates

#### ---Their interpretation is bad

#### A. Over limits-Their interpretation limits the topic to drill baby drill which is bad ground. SQ production is sky high which means better debates on the topic should be about things other than ANWR or the offshore drilling moratorium.

#### B. Capital key-Future oil and gas production will depend on foreign capital. That’s Ellis-Vinson-That capital is intrinsically tied to energy production proves it should be core affirmative ground.

#### ---Reasonability-Competing interpretations encourage a race to the bottom. Limits for limits sake have destroyed affirmative ground on the last several topics. You should err affirmative if our interpretation is proven debatable.

### 2AC Courts CP

#### ---Conditionality is illegitimate and a voting issue. Time constraints and the no risk nature of conditionality undermine 2AC strategy. Independently, conditionality undermines the value of debate by causing superficial exploration of competing policy options.

#### Agent CPs are bad

#### Topic Education- CP shifts focus from the desirability of the aff to questions of implementation

#### Predictability and fairness- no literature comparing which agent should do the aff means we always lose to agent CP

#### Not key to ground- other CPs check- conditions and states, ect…

#### Voting issue

#### 1. Permute- do the counterplan-

#### A. Nullifying a law is the same thing as reducing a restriction.

Duchossois Indus. v. United States, 2010-1 U.S. Tax Cas. (CCH) P50,344 2010

In Kohler, the taxpayer purchased $ 19.5 million in Mexican pesos for debt in the amount of $ 11.1 million. The pesos had the same restrictions 2 as the restrictions imposed in the instant case; e.g., requiring that the pesos be used only to purchase Mexican goods and services, prohibiting guaranteed dividends, and prohibiting transfer of stock to any Mexican citizen or company for a period of ten years. These restrictions were specifically discussed in Kohler as lowering the value of the pesos that were disbursed in that case, just as in the instant case. "A dollar restricted to being used to purchase the currency of a country in the throes of a financial crisis is worth less than a dollar." Id. at 1035-37. Addressing the government's assessment in Kohler, the Seventh Circuit rejected the government expert's opinion that the stock restrictions had no economic cost or adverse impact. Consequently, the tax assessment in Kohler was "without any foundation whatsoever" and therefore the assessment was "naked." FOOTNOTES 2 The court agrees with plaintiff that the government's avoidance of the word "restrictions" [\*7] in its brief in opposition to plaintiff's motion for summary judgment, and its substitution of the word "conditions," constitutes a transparent attempt to minimize the impact of these restrictions to justify its position that they do not decrease the value of the pesos or the stock involved. As plaintiff points out, both the Seventh Circuit and the Fifth Circuit in GM Trading Corp. v. Commissioner, 121 F.3d 977 (5th Cir. 1997) describe these very same "conditions" as "restrictions." Indeed, the government's expert, Dr. Cragg, referred to them as "restrictions." Of course, a rose is a rose by any other name, and it is the impact of these conditions or restrictions that devalues the pesos and lowers the value of the stock.

#### B. the Court can “reduce restrictions”- contextual evidence

Shim 96 (Yumee, Mountain States Legal Foundation v. Glickman: When a Tree Falls in the Forest, is Anything Left (Of) Standing?, Fall, 1996, 15 Temp. Envtl. L. & Tech. J. 277)

Specifically, plaintiffs alleged that the implementation of the Guidelines would drive up the price of available timber, which would damage their economic well-being as well as the "quality of life of lumber-dependent communities." Additionally, plaintiffs claimed that the Guidelines were environmentally unsound because they would increase the risk of disease and wildfire. Finally, plaintiffs "argued that a favorable ruling by [the] Court [would] redress their injuries because striking down the Guidelines [would] reduce restrictions on timber harvesting, do less damage to the environment, and force the agency to comply with the procedural commands of NFMA and NEPA ...." Id.

#### 2. Permute- do both- Court action provides political cover.

Zotnick, law prof- RWU, 04

David M. Zlotnick, associate professor of law at the Roger Williams University School of Law, visiting professor of law at Washington College, Spring 2004, Roger Williams University Law Review, 9 Roger Williams U. L. Rev. 645, p. 684

On the federal level, the time has come to listen to the voices of reason. In a democracy that claims much of its strength from the power of an independent judiciary, we must heed the moment when its judges proclaim that democratically made laws are nevertheless morally flawed. While by rule and role, many judges feel compelled to restrain their voices, even small efforts may matter. Like the "Whos" of "Whoville" in the Dr. Suess classic, n196 sometimes all it takes is one more voice. Now that the Justices of the Supreme Court are weighing in more forcefully, these voices of conscience may be heard above the din of political posturing. Perhaps, too, these judicial voices will provide political cover to a courageous politician of either party willing to take on this issue. n197 Until that day, however, sentencing under the dual mandatory minimum and Guidelines regimes continues with prosecutors essentially serving as both partisan and judge. To federal judges, chosen for their experience and judgment, this makes a travesty of the justice they have sworn to uphold.

#### 3. CP Links to Politics

Treanor and Sperling, 1993 (William Michael, Associate Professor of Law @ Fordham University, and Gene B., Deputy Assistant to the President for Economic Policy, December, Prospective Overruling and the Revival of "unconstitutional" Statutes, 93 Colum. L. Rev. 1902, Columbia Law Review)

**A judicial decision invalidating a statute** also **skews the political dynamic because**, as a result of that decision, **proponents and opponents of the statute will attach different levels of symbolic importance to its repeal**. Similarly, they will attach different levels of symbolic importance to the passage of new statutes that are also unconstitutional under the invalidating decision. Again, **the skewing favors the proponents of the invalidated statute. The proponents,** having lost in the courts**, place a premium on** legislative endorsement of their position**: the legislature alone can provide a statement in favor of their views by an official governmental actor**. **Opponents of a statute will attach less symbolic value to what the legislature does.** For them, the effect of legislative endorsement will only be cumulative, since the courts have already embraced their position. This difference in symbolic importance for the two sides can alter the political process so that it produces a result inconsistent with majority wishes. **A legislator will incur the enmity of those who support an "unconstitutional" bill by working for its repeal or opposing similar legislation; she is unlikely to win offsetting support from the bill's opponents**. The fate of an Arkansas statute that required public schools to allocate as much time to the teaching of creation science as to evolution illustrates this phenomenon. Although understood to be unconstitutional, the statute was passed by the legislature almost without discussion. 64 The President Pro Tempore of the Senate explained, "It was meaningless, just a piece of junk, so why not vote for it." 65 Had opponents of the bill attached as much importance to blocking it as proponents did to ensuring its passage, the Senator would not have made that statement. But because the statute's symbolic importance was different for the two camps, he voted in favor of the bill.

#### 4. Congress key to Chinese investment – hostility perception.

Rosen and Hanemann 2011

Daniel H. Rosen is Founder and China Practice leader of the Rhodium Group and adjuct professor at Columbia University, Thilo Hanemann is Research Director at the Rhodium Group, AN AMERICAN OPEN DOOR?, May 2011, http://asiasociety.org/files/pdf/AnAmericanOpenDoor\_FINAL.pdf

Though the annual numbers are doubling, there is a growing perception in China that the United States is not enthusiastic about Chinese investment. Washington must recapture the high ground on this topic by pointing to the healthy growth in those investment flows to date and by making clear that U.S. policy will remain accommodative. A bipartisan congressional–executive statement is needed to send an unequivocal message of support for increased investment from China. It is especially important that the U.S. Congress plays a positive role in this messaging given its oversight role and recent activism on foreign investment.

#### 5. Turn- Delay-

#### the CP will be appealed which delays the final decision

Rosenberg, Law Prof- Chicago, 1991 (Gerald, The Hollow Hope, pg. 87)

The judiciary, like other large political institutions, is afflicted with many bureaucratic problems. However, as proponents of the Constrained Court view argue, the constraints imposed by the structure and process of the legal bureaucracy make courts a **singularly ineffective** institution in producing significant social reform. Among these constraints is the inability to respond quickly. The time between the initiation of a suit, the exhaustion of all appeals, and the issuance of a final decree can be years. This is no less the case when judges act in good faith. Delay is built into the judicial system and it serves to limit[s] the effectiveness of courts. Delay occurs for many reasons. One is overloaded court dockets. During the 1950s and 1960s, the Fifth Circuit, responsible for most of the South, had the nation's most congested dockets (Note 1963, 101). Appeals to that court were naturally delayed. Second, the judicial system allows for many appeals and will bend over backwards to hear a claim.21 Numerous appeals can serve as a tactic to delay final decision. Another reason for delay is the complicated nature of many civil rights suits. Questions of whether the suit is properly a class action, whether local remedies have been exhausted, or whether a different court is the more appropriate forum can keep cases bouncing around lower courts for years. Even if a lower court enjoins certain actions as discriminatory, it may stay the injunction pending appeal. Fourth, higher courts rarely order action. Normally, they remand to the lower court and order it to act. The time involved here, even assuming good faith, can add up. Finally, if a final order does not have a direct effect, if the discrimination is not remedied, the plaintiff's only judicial remedy is to return to court and re-start the process.

#### 6. Delays causes FDI chilling that wrecks the economy

Hamilton and Quinlan 06 (Daniel, and Joseph, Protecting Our Prosperity

Ensuring Both National Security and the Benefits of Foreign Investment in the United States, NATIONAL FOUNDATION FOR AMERICAN POLICY, JUNE, http://transatlantic.sais-jhu.edu/transatlantic-topics/Articles/economy/ProtectingOurProsperity\_NFAP\_June\_20\_2006.pdf)

Fifth, don’t shoot yourself in the foot. Political uncertainties and potential delays for foreign investors would have a huge chilling effect on their proclivity to buy American assets. The United States needs to attract almost $1 trillion of foreign financing a year to fund its huge and growing trade and current account deficits. The current account deficit has reached 6 percent of GDP, underscoring the wide gap that has developed between what Americans buy and what they sell to foreigners. This deficit has not harmed the U.S. economy because U.S. remains one of the best places in the world to invest. As a result, dollars that Americans send abroad when they buy imports are recycled back as capital investments. Americans are quite dependent on foreign investment inflows to cover the gap between what they produce and what they consume. At the end of 2004 (the most recent figures) foreigners owned about $12 trillion in US assets: $6 trillion in stocks and bonds; $3 trillion in debt to banks and other lenders and $3 trillion in hard assets such as factories. As we discussed earlier, these investments employ Americans, boost their salaries and keep interest rates down. If, however, the U.S. develops a reputation as a less welcoming place for investment, money will flow to other nations that otherwise may have fueled the U.S. economy. The result could be higher interest rates, higher mortgage rates, higher inflation, less innovation, lower wages, and lower stock prices. 35

#### 7. CP will be rolled back.

Pacelle, poli sci prof-Missouri, 02 (Richard, poli sci prof and legal studies coordinator at the univ of Missouri at St. Louis The Role of the Supreme Court in American Politics: The Least Dangerous Branch?, p92)

Even if the Supreme Court was to carve out some sphere of power for itself, there would be significant limitations. Any Court decision has to be enforced, but enforcement power is the province of the president and the executive branch. Thus, the Court is at their mercy. If the president does not like the decision, he does not have to enforce it. Indeed, history books report that Andrew Jackson, upset at the Worcester v. Georgia (1832) decision, growled that “John Marshall made his decision, now let him enforce it.” There was concern that Dwight Eisenhower would not bsack the Brown decision when the Southern states resisted. Ultimately, though quite reluctantly, Eisenhower sent troops to Little Rock to support the decision. What if the Court’s decision requires active policy intervention and the allocation of resources to help carry out the directives? If the courts determine that prisons are overcrowded or schools are substandard, will the legislature, which has the taxing and spending power, be willing to raise and spend money to correct the problem? It took a decade before serious legislative support for the Brown decision was provided. Title VI of the Civil Rights Act of 1964 empowered the government to cut off federal funds to school districts that did not comply with the desegregation directive (Halpern 1995, 30—59). The bottom line is the adage “the Court lacks the sword and the purse”—it lacks the ability to enforce its decisions and the power over the resources to do so. This places a limitation on the justices. If they stray too far from the acceptable boundaries set by Congress or the president, they risk a negative response from the branches with the real power. If the Court can safely be ignored by the other branches and the public, the cost is its institutional legitimacy.

#### 8. Turn- separation of powers

#### A. The CP is Court policy making which crushes SOP.

Dunn 08 (Joshua, Assistant Professor of Political Science at the University of Colorado-Colorado Springs and the author of Complex Justice: The Case of Missouri v. Jenkins, “The Perils of Judicial Policymaking: The Practical Case for Separation of Powers,” September 23, 2008, http://www.heritage.org/research/reports/2008/09/the-perils-of-judicial-policymaking-the-practical-case-for-separation-of-powers)

There is an obvious constitutional implication that flows from realism's normative position: If judges are simply to make good public policy, the effect must be to erode the boundaries among institutions. The judiciary necessarily becomes another legislative branch. Institutionally, anything goes. Nothing really separates what courts do from what elected branches do. In fact, some legal realists explicitly called for judges to be "social engineers." It would be inaccurate simply to label legal realism the jurisprudential twin of political Progressivism, but one notices striking similarities between the two. Both obviously shared many of the same sentiments toward political and social reform. Most notably, legal realism shared the Progressive movement's goal of replacing politics with government by enlightened experts. In this case, however, the experts were to be judges. Likewise, their dispositions toward the Constitution were strikingly similar. For instance, the most important legal realist, Karl Llewellyn of Columbia Law School, called America's reverence for the Constitution "real" but "blind," a sentiment certainly shared by many Progressives. The Constitution functioned as a great symbol of security for Americans, but like all symbols, it could be manipulated. Llewellyn also derided what he called "orthodox" constitutional interpretation for asking questions such as "Is this within the powers granted by the Document?" This question for him addressed the "nonessential" and "accidental," by which he meant "what language happens to stand in the document." He contrasted orthodox interpretation with "sane" interpretation, which instead of consulting the text consults an "ideal picture." Thus, his "sane theory would utterly disregard a Documentary text if any relevant practices existed to offer a firmer, more living basis for the ideal picture."Ultimately, for Llewellyn, the important constitutional questions facing judges were not clearly answered by the text but instead were "penumbra-like," and the penumbra, he said, "will always be in flux."[10] Many legal realists, such as William O. Douglas and Thurman Arnold, made their way to Washington in the 1930s to assist in designing and implementing the New Deal-with Douglas eventually making his way to the Supreme Court. Few exemplified political decision making on the Supreme Court more than Douglas, whose "breezy" "polemical" opinions, Jeffrey Rosen has observed, seem "unconcerned with the fine points of legal doctrines" and "read more like stump speeches than carefully reasoned constitutional arguments."[11] Echoing Llewellyn, Douglas also blessed us, in his majority opinion in Griswold v. Connecticut, with the hopelessly obscure declaration "that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."[12] Undoubtedly, there is some truth to the empirical claim of legal realism. The political preferences of judges obviously affect their voting behavior. Any advocate submitting a brief to the Court would certainly consider the political preferences of the justices when crafting his or her arguments. Today, if you want to predict how judges will decide cases, the best way to do so is to get some measure of their ideology. The "attitudinal" model, which "holds that judges decide cases in light of their sincere ideological values juxtaposed against the factual stimuli presented by the case,"[13] marshals powerful statistical evidence for its position. Even the most casual observer of the Supreme Court notes the dreary, even banal, predictability of its splits into liberal and conservative blocs in cases raising divisive social and political issues. Of course, many of these cases hinge on how factual stimuli will strike the ever-mercurial Justice Anthony Kennedy. The question is whether we must be resigned to this arbitrariness or whether there is instead some method of judicial decision making, such as originalism, which holds that the Constitution's meaning was established at the time it was written and can bind judges to something other than their political preferences. It is also reasonable to ask whether legal realism was a self-fulfilling prophecy: Perhaps telling judges that they should be social engineers led judges to embrace social engineering. While legal realism faded from prominence after the 1940s, its effects are still obviously with us. This is most apparent in the debate over judicial policymaking. The most able defenders of judicial policymaking explicitly reject, as they must, separation of powers: We have invested excessive time and energy in the effort to define…what the precise scope of judicial activity ought to be. Separation of powers comes in for a good deal of veneration in our political and judicial rhetoric, but it has always been hard to classify all government activity into three, and only three, neat and mutually exclusive categories.[14] Others have gone even further and said that judges have been willing to "engage in policy making" and violate "the long-standing principles of federalism, separation of powers, and the rule of law" because "there is something seriously wrong with all three principles." Separation of powers in particular is simply a relic of Newtonian science and "no longer operationally relevant."[15] This language, of course, harkens back to another critic of separation of powers, Woodrow Wilson, who also derided the Constitution for relying on Newtonian principles of physics and wanted to move us beyond such constitutional fetishism.

#### B. Loss of SOP risks nuclear war.

Redish and Cisar 91 (Martin and Elizabeth, prof of law at Northwestern, clerk for judge Bauer, 41 Duke L.J. 449)

3. The Costs of Abandoning Separation of Powers. The most significant problem with the modern attacks on separation of powers is that they completely ignore the very real fears that led to the adoption of the system in the first place. No critic has adequately demonstrated either that the fears of undue concentrations of political power that caused the Framers to impose separation of powers are unjustified, or that separation of powers is not an important means of deterring those concentrations. It might be argued that the dangers of tyranny thought to be prevented by the use of separation of powers are at best speculative. After all, no one can predict with certainty that, but for the formal separation of branch power, the nation would be likely to sink into a state of tyranny. It is, then, conceivable that all of the Framers' efforts to separate and check powers have been wasted. But that is a risk inherent in the use of any form of prophylactic protection: We cannot be sure that, but for the use of the protection, the harm we fear would result. The decision regarding whether to employ a particular prophylactic device, then, must come down to a comparison of the costs incurred as a result of the device's use with an estimate of both the likelihood and severity of the feared harm. 125 Although some undoubtedly believe that separation of powers imposes severe costs on the achievement of substantive governmental goals, it would be inaccurate to suggest that government has been paralyzed as a result of separation of powers. Too much legislation is enacted by Congress to accept such a criticism. More importantly, in critiquing the failure of the federal government to act, one [\*472] must do so behind a Rawlsian "veil of ignorance": 126 Assuming that abolition of separation of powers would result in an increase in governmental action, we cannot know whether those actions will be ones with which we agree. Moreover, the facilitation of governmental action could just as easily lead to a withdrawal of existing governmental programs that we deem to be wise and just. For example, but for separation of powers, election of Ronald Reagan could have easily led to the abolition of social welfare programs that had been instituted in previous Democratic administrations. Liberals who criticize separation of powers for the constraints it imposes on governmental action should therefore recognize how removal of separation of powers could act as a double-edged sword. Thus, the costs imposed by maintenance of separation of powers are probably nowhere near as great as critics have suggested. Whether the costs that we actually do incur are justified by the system's benefits requires us to examine the likelihood and severity of harm that could result if separation of powers were removed. As previously noted, some might question the likelihood of tyrannical abuse of power if separation of powers were abolished. After all, England lacks our system of formalistic separation of powers, and democracy still flourishes. Why, then, could we not do the same here? The same could, however, be said of the First Amendment rights of free speech and press: In England, speech and press receive no counter-majoritarian constitutional protection, yet it is probably reasonable to believe that for the most part those institutions flourish there. Yet few, we imagine, would feel comfortable with the repeal of the First Amendment. In any event, the political history of which the Framers were aware tends to confirm that quite often concentration of political power ultimately leads to the loss of liberty. Indeed, if we have begun to take the value of separation of powers for granted, we need only look to modern American history to remind ourselves about both the general vulnerability of representative government, and the direct correlation between the concentration of political power and the threat to individual liberty. 127 [\*473] The widespread violations of individual rights that took place when President Lincoln assumed an inordinate level of power, for example, are well documented. 128 Arguably as egregious were the threats to basic freedoms that arose during the Nixon administration, when the power of the executive branch reached what are widely deemed to have been intolerable levels. 129 Although in neither instance did the executive's usurpations of power ultimately degenerate into complete and irreversible tyranny, the reason for that may well have been the resilience of our political traditions, among the most important of which is separation of powers itself. In any event, it would be political folly to be overly smug about the security of either representative government or individual liberty. Although it would be all but impossible to create an empirical proof to demonstrate that our constitutional tradition of separation of powers has been an essential catalyst in the avoidance of tyranny, common sense should tell us that the simultaneous division of power and the creation of interbranch checking play important roles toward that end. To underscore the point, one need imagine only a limited modification of the actual scenario surrounding the recent Persian Gulf War. In actuality, the war was an extremely popular endeavor, thought by many to be a politically and morally justified exercise. But imagine a situation in which a President, concerned about his failure to resolve significant social and economic problems at home, has callously decided to engage [\*474] the nation in war, simply to defer public attention from his domestic failures. To be sure, the President was presumably elected by a majority of the electorate, and may have to stand for reelection in the future. However, at this particular point in time, but for the system established by separation of powers, his authority as Commander in Chief 130 to engage the nation in war would be effectively dictatorial. Because the Constitution reserves to the arguably even more representative and accountable Congress the authority to declare war, 131 the Constitution has attempted to prevent such misuses of power by the executive. 132 It remains unproven whether any governmental structure other than one based on a system of separation of powers could avoid such harmful results.In summary, no defender of separation of powers can prove with certitude that, but for the existence of separation of powers, tyranny would be the inevitable outcome. But the question is whether we wish to take that risk, given the obvious severity of the harm that might result. Given both the relatively limited cost imposed by use of separation of powers and the great severity of the harm sought to be avoided, one should not demand a great showing of the likelihood that the feared harm would result. For just as in the case of the threat of nuclear war, no one wants to be forced into the position of saying, "I told you so."

### “Certainty” CPs-General 2AC

#### CPs that compete on the certainty of the plan are bad-

#### Fairness- the neg would always win with the delay CP and a politics disad

#### Ground- no inherent right to certainty CPs- they shift debate from the desirability of the plan

#### Bad for education- there isn’t any literature comparing doing the plan versus their CP

#### Voter for fairness

#### Permute- do the CP- it doesn’t compete because the aff doesn’t have to happen immediately

#### Turn- Delays cause FDI chilling that wrecks the economy.

Hamilton and Quinlan 06 (Daniel, and Joseph, Protecting Our Prosperity

Ensuring Both National Security and the Benefits of Foreign Investment in the United States, NATIONAL FOUNDATION FOR AMERICAN POLICY, JUNE, http://transatlantic.sais-jhu.edu/transatlantic-topics/Articles/economy/ProtectingOurProsperity\_NFAP\_June\_20\_2006.pdf)

Fifth, don’t shoot yourself in the foot. Political uncertainties and potential delays for foreign investors would have a huge chilling effect on their proclivity to buy American assets. The United States needs to attract almost $1 trillion of foreign financing a year to fund its huge and growing trade and current account deficits. The current account deficit has reached 6 percent of GDP, underscoring the wide gap that has developed between what Americans buy and what they sell to foreigners. This deficit has not harmed the U.S. economy because U.S. remains one of the best places in the world to invest. As a result, dollars that Americans send abroad when they buy imports are recycled back as capital investments. Americans are quite dependent on foreign investment inflows to cover the gap between what they produce and what they consume. At the end of 2004 (the most recent figures) foreigners owned about $12 trillion in US assets: $6 trillion in stocks and bonds; $3 trillion in debt to banks and other lenders and $3 trillion in hard assets such as factories. As we discussed earlier, these investments employ Americans, boost their salaries and keep interest rates down. If, however, the U.S. develops a reputation as a less welcoming place for investment, money will flow to other nations that otherwise may have fueled the U.S. economy. The result could be higher interest rates, higher mortgage rates, higher inflation, less innovation, lower wages, and lower stock prices. 35

#### Predictability key to energy investments

Sussman 11 (Edna, principal of SussmanADR LLC and has been appointed as the Distinguished ADR Practitioner in Residence by the Fordham University School of Law, A Multilateral Energy Sector Investment Treaty: Is it Time For a Call For Adoption by All Nations?, THE INTERNATIONAL LAWYER: A QUARTERLY PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW, Jan, http://www.sussmanadr.com/docs/Energy%20Charter%20Treaty%20%20SIL%201-2011%20as%20published\_new.pdf)

The predictability of regulation and host government action is of particular importance in the energy sector as the viability of the economics of many energy projects depend on incentives and subsidies granted by governments to encourage such investment.166 Energy project development is very capital-intensive and requires the investment of huge sums for projects that are very long-term in nature.167 This is not a business comprised of many short-term, low-cost investment opportunities. Energy is a critical natural resource that nations often regard as uniquely their own and has a history of expropriations which makes an assurance of investment protection all the more important.168

#### Politicization of the plan undermines US investment credibility- turns the case.

Feng, JD-NYU, 09 (YIHENG, CONSEQUENCES OF THE CONGRESSIONAL POLITICIZATION OF FOREIGN DIRECT INVESTMENT ON NATIONAL SECURITY GROUNDS, http://www.law.nyu.edu/ecm\_dlv1/groups/public/@nyu\_law\_website\_\_journals\_\_journal\_of\_international\_law\_and\_politics/documents/documents/ecm\_pro\_064915.pdf)

Legal and financial scholars have generally acknowledged the negative economic and political effects of the politicization of transactions, as laid out above. 193 But congressional or political interference with the CFIUS/FDI process is more deeply problematic than simply in its direct effects. Politicization, or, more accurately, inappropriate congressional oversight of the FDI review process, is flawed in its very nature, in that it threatens the legitimacy and effectiveness of FDI review. Politicization takes decisions out of the hands of CFIUS, a decision-making body that, while not perfect, is in the best position to analyze FDI threats to national security. It then places that decision-making power in the hands of politicians who are subject to short-term considerations and often have little expertise in the subject matter.

#### Even small conditions turn trade- unilateralism better

Daniel Ikenson, fellow and trade specialist at the Cato Institute, July 20, 2006, Trade Policy in the Wake of Doha, Cato Hill Briefing, p. http://www.freetrade.org/node/706

As the world's largest economy, the United States has a lot of negotiating leverage. But its positions are often perceived--or can be distorted to be perceived--as heavy-handed. We've heard from developing countries and the NGO's that purport to represent their interests throughout the Doha negotiations, accusations of U.S. arm-twisting and bullying. Many have alleged that the negotiating process is the exclusive domain of a few rich countries, and that proposals are presented on a take-it-or-leave-it basis, and do not reflect concerns of smaller countries. This asymmetry requires--in perception if not in reality--that the United States assume a greater share of the responsibility for the consequences of any agreement. So, if a trade agreement fails to deliver the advertised benefits expeditiously to the smaller, poorer countries--even if that failure may be attributable to purely domestic policy errors unrelated to the agreement, then the agreement, and by extension the United States, is to blame. Whether that is a fair conclusion is irrelevant. The point is that by insisting on reciprocity, the United States exposes itself to the fallout from any adverse consequences or short-term adjustment costs that are likely to be incurred. That to me can seriously undermine U.S. foreign policy and security objectives. Trade policy is potentially a shiny carrot in a quiver full of foreign policy sticks. By opening our markets unconditionally, we not only reap the economic rewards but we might engender some good will toward the U.S. But by insisting on even a small degree of reciprocity, trade policy is no longer perceived as that shiny carrot, but rather as another bludgeon through which the U.S. expresses its hegemony.

7. text is fucked

8. env collapse inevitable

### 2AC DA

#### Obama will inevitably spend political capital on energy production fights in the short term.

Felker 1-2 (Edward, Analysis: More cliffs await wind and biofuels, Energy Guardian, an email based energy newsletter, 2012)

In all the New Year's Day wrangling over the final fiscal cliff legislation, there were two clear winners beyond middle-class taxpayers -- the wind and biofuels lobbies. But the work to keep their tax credits is just beginning. Passage of the bill late Tuesday only re-set the clock for another year, one in which every special interest tax break will face possible elimination in a push to cut federal red ink. That's not to take away the victory the wind and biofuels groups won by getting their tax breaks included in the fiscal cliff bill as part of the Senate Finance Committee's $205 billion package of extensions for tax breaks that expired on Dec. 31. The "extenders" were clearly not a significant cause for heartburn in the Senate, which passed the bill by an overwhelming 89-8 vote, nor in the House. Republicans in that chamber initially balked at taking up the Senate bill, but not because of those tax breaks -- rather, over the lack of more ambitious spending cuts. But in the end, the legislation rolled through. Notably, it passed over the objections of some conservatives who had tried in recent weeks to kill the wind tax credit, which they and nuclear powerhouse Exelon Corp. argued has distorted regional electricity markets. With powerful Republicans like Sen. Chuck Grassley of Iowa and Sen. John Thune of South Dakota backing the wind tax break, the critics got little traction. Ironically, Grassley was one of five Republican senators to vote against passage of the bill early Tuesday morning, while his Iowa colleague Sen. Tom Harkin was one of three Democrats to vote no. The renewable energy Production Tax Credit extension was actually a double win for the wind industry. It not only continued through 2013 the 2.2 cents per kilowatt hour credit for energy produced by new projects for 10 years, but also was amended to apply to projects that begin construction in 2013. The bill also included tax credit extensions through 2013 for home energy efficiency improvements, for alternative fuel vehicle fueling stations, and for cellulosic biofuels, biodiesel and renewable diesel production. Lastly, the law allows alternative energy developers to take a one-year investment tax credit equal to the production tax credit, which is expected to help offshore wind development, biomass, geothermal and other projects that benefit from a larger up-front tax break. Yet the reprieve for all these groups is just that -- a 12-month stay in which more so-called cliffs over the national debt ceiling and federal spending arrive in just a few weeks. Resolving those fights between President Barack Obama and congressional Republicans could lead to a tax code rewrite that closes tax incentives for renewable and fossil fuel production alike. The American Wind Energy Association was already looking ahead in December when it said a six-year phaseout of the PTC would ensure a long-lasting domestic wind energy industry. Expect to see that idea and many others -- including defenses of oil and gas tax breaks by its trade groups -- come to the fore quickly after the fiscal cliff dust settles. One thing to keep in mind is that President Barack Obama continues to put energy among his top priorities. Late Tuesday, Obama alluded to the renewable energy tax breaks in the fiscal cliff bill, noting that the fiscal cliff bill will continue to give tax credits to companies for "the clean energy jobs they create." Obama campaigned for re-election on advancing clean energy, and he will be expected to fight for wind and solar energy in the tax talks ahead. He said Tuesday that deficit talks should not detract from other national challenges, including "protecting our planet from the harmful effect of climate change" and increasing domestic energy production. For now, the renewable energy sector can join the nation in breathing a sigh of relief over the fiscal cliff deal, knowing it got another year with the backing of Obama and members of both parties. More tests of that support are coming soon.

### 2AC – Wont Pass

#### Political capital doesn’t ensure passage – house ideology.

Soto 1-4-12

Victoria M. DeFrancesco Soto, NBC Latino and MSNBC contributor, Senior Analyst for Latino Decisions and Fellow at the Center for Politics and Governance at the LBJ School of Public Affairs at the University of Texas http://nbclatino.com/2013/01/04/opinion-immigration-reform-will-not-be-easy-but-its-not-impossible/

Unlike in his first administration, the president seems to be on board and ready for rolling up his sleeves and getting into immigration reform, but that won’t cut it. The problem for immigration reform in 2013 is rooted in Capital Hill. The president’s support is a necessary condition for any major policy overhaul, but it is not a sufficient condition. Let’s just assume the president can arm-wrestle the Senate Democrats and a few Senate Republicans into supporting his immigration reform. Two out of three won’t cut it. The Republican-controlled House is what stands in the way of immigration reform. More specifically, the GOP’s split mindset regarding Latinos and immigration is what will likely prevent the president from crossing off immigration reform from his 2013 to-do list.

#### Fiscal debates will screw immigration

Spaeth 1/3 (Ryu Spaeth , Editor, *The Week*, “Will Congress' budget battles kill immigration reform and gun control?”, 1/3/13 http://theweek.com/article/index/238367/will-congress-budget-battles-kill-immigration-reform-and-gun-control)

Congress' budget battles are only expected to get gorier over the next couple of months, as Republicans and Democrats try to reach a deal that would prevent $1.2 trillion in crippling spending cuts, a U.S. debt default, and a government shutdown. However, the White House insists that President Obama "is planning to move full steam ahead with the rest of his domestic policy agenda," say Elise Foley and Sam Stein at The Huffington Post. Immigration reform and gun control are at the top of the list, but the chances of their quick passage seem slim given the heated atmosphere in Congress. "The negative effect of this fiscal cliff fiasco is that every time we become engaged in one of these fights, there's no oxygen for anything else," an unidentified Senate Democratic aide told HuffPo. "It's not like you can be multi-tasking — with something like this, Congress just comes to a complete standstill."

Winners win

Singer, 2009 (Jonathan, Senior Writer and Editor for My Direct Democracy, March 3, http://www.mydd.com/story/2009/3/3/191825/0428)

From the latest NBC News-Wall Street Journal survey: Despite the country's struggling economy and vocal opposition to some of his policies, President Obama's favorability rating is at an all-time high. Two-thirds feel hopeful about his leadership and six in 10 approve of the job he's doing in the White House. "What is amazing here is how much political capital Obama has spent in the first six weeks," said Democratic pollster Peter D. Hart, who conducted this survey with Republican pollster Bill McInturff. "And against that, he stands at the end of this six weeks with as much or more capital in the bank." Peter Hart gets at a key point. Some believe that political capital is finite, that it can be used up. To an extent that's true. But it's important to note, too, that political capital can be regenerated -- and, specifically, that when a President expends a great deal of capital on a measure that was difficult to enact and then succeeds, he can build up more capital. Indeed, that appears to be what is happening with Barack Obama, who went to the mat to pass the stimulus package out of the gate, got it passed despite near-unanimous opposition of the Republicans on Capitol Hill, and is being rewarded by the American public as a result. Take a look at the numbers. President Obama now has a 68 percent favorable rating in the NBC-WSJ poll, his highest ever showing in the survey. Nearly half of those surveyed (47 percent) view him very positively. Obama's Democratic Party earns a respectable 49 percent favorable rating. The Republican Party, however, is in the toilet, with its worst ever showing in the history of the NBC-WSJ poll, 26 percent favorable. On the question of blame for the partisanship in Washington, 56 percent place the onus on the Bush administration and another 41 percent place it on Congressional Republicans. Yet just 24 percent blame Congressional Democrats, and a mere 11 percent blame the Obama administration. So at this point, with President Obama seemingly benefiting from his ambitious actions and the Republicans sinking further and further as a result of their knee-jerked opposition to that agenda, there appears to be no reason not to push forward on anything from universal healthcare to energy reform to ending the war in Iraq.

#### FDI in oil and gas is popular in DC- helps the US economy.

Orol 12 (Rob, senior writer for The Deal magazine and The Daily Deal newspaper, covering the activist hedge fund industry as well as other topics, including the S.E.C. and Capitol Hill. Orol is the author of the 'Over the Hedge' column, contributor to the 'Rules of the Road' weekly column, and is also a commentator on BBC World Television, CNBC TV, Business News Network and National Public Radio, “Cnooc's big deal for Nexen seen succeeding,” MarketWatch August 16, 2012, lexis)

Lobbyists hired early Also greasing the wheels, Cnooc hired Hill+Knowlton, a prominent lobbying firm in both Ottawa and Washington, to lobby on the Nexen deal. Regulatory observers don't believe the U.K. government will raise any objections to the deal. Fournier noted that North Sea oil production is declining, a situation that is driving the British to attract capital there. He noted that in 2010 a consortium of Chinese firms purchased three U.K. electricity networks with no regulatory opposition, indicating that this deal will also likely pass regulatory muster. “The British are pretty desperate to get new capital invested in the North Sea,” he said. For Clayton, the difference between Unocal and Nexen and between 2005 and 2012 is the economy. “Today's economic context is much more conducive to this type of foreign investment winning support in Washington, even in a politically sensitive sector like oil and gas, than was the case in 2005,” he said. “North American oil production is growing more quickly than any other part of the world and companies from all over the world want in on that action.”

Political capital is not key

Dickinson ‘9 (Matthew, Professor of Political Science – Middlebury College and Former Professor – Harvard University, “Sotomayor, Obama, and Presidential Power”, Presidential Power: A NonPartisan Analysis of Presidential Politics, 5-26, http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/

As for Sotomayor, from here the path toward almost certain confirmation goes as follows: the Senate Judiciary Committee is slated to hold hearings sometime this summer (this involves both written depositions and of course open hearings), which should lead to formal Senate approval before Congress adjourns for its summer recess in early August. So Sotomayor will likely take her seat in time for the start of the new Court session on October 5. (I talk briefly about the likely politics of the nomination process below). What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

No worker shortage – their ev is based on false allegations by corporations.

Gene Nelson, IT professional, “Foreign workers take jobs away from skilled Americans,” 8/21/2008, http://www.numbersusa.com/content/node/1304

Wealthy advocates of H-1B visas have industriously worked to keep this employer-designed program hidden from middle-class Americans, who are outraged when they learn how it harms them. In 2002, Nobel economics laureate Milton Friedman correctly identified the 1990 H-1B visa program as a "government subsidy" because it allows employers access to imported, highly skilled labor at below-market wages. False allegations of worker shortages have been a popular approach. But American colleges and universities graduate four to six times the number of students needed to fill openings in technology fields that are generated by retirements and business expansion.

- H-1B’s not key

Matloff 2007 /Norm, Professor of Computer Science @ UC Davis, “Fixing Our Badly Broken H-1B Visa and Employer-Sponsored Green Card Programs”, 9-19, http://www.cwalocal4250.org/outsourcing/binarydata/PrevWage.pdf/

4.2 **H-1B Is Mainly NOT About Innovation or Getting “the Best and the Brightest**” 4.2.1 Most H-1Bs Are Ordinary People, Doing OrdinaryWork The industry lobbyists claim that the H-1Bs are “the best and the brightest,” and are needed to keep American firms innovative. Yet the fact is that the vast majority of H-1Bs are ordinary people doing ordinary work: • The CIS study by John Miano11 is highly illuminating. Miano analyzed the H-1B data in terms of the four levels of experience that the Department of Labor uses in determining prevailing wage for foreign workers: Percent of Visas by Experience Level level qualifications percent of visas **I entry 56% II qualified 31%** III experienced 8% IV **fully competent 5%** Fully 56 percent of the workers are rated by their employers as Level I, which is defined by the Department of Labor as “beginning level employees who have only a basic understanding of the occupation [and who] perform routine tasks that require limited, if any, exercise of judgment.” This clearly shows that the H-1Bs are not brought in for innovation. Only 5 percent are rated at Level IV, which consists of workers who “plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques...” • The tech industry employers give the impression that many of the H-1Bs they hire have PhDs. Yet only 1.6 percent of the computer-related H-1Bs in 1999/2000 had a PhD.12 Moreover, the foreign doctoral students are disproportionately enrolled in the academically weaker universities, as seen here: 13 Percent of Foreign Students by Experience Level department quality % foreign highest quarter 37.2% second quarter 44.5% third quarter 47.5% lowest quarter 50.6% • A recent study has been much cited by industry lobbyists, because it finds that immigrant tech workers have been involved in founding a number of companies and in many projects that were awarded patents.14 However, as confirmed by the lead author, Vivek Wadhwa, the report’s data show that the immigrants have the same rates of entrepreneurship and patenting as the natives do. In other words, the influx from abroad is not bringing “better” engineers to the nation. The industry lobbyists highlight some of the famous immigrant entrepreneurs in the industry, such as Jerry Yang and Sergey Brin, co-founders of Yahoo and Google. Yet neither of them immigrated to the United States as an H-1B visa holder; both came to the United States as minors with their parents, and thus are irrelevant to the H-1B issue. The lobbyists also like to cite Andy Grove, an early Intel employee (and NOT a cofounder), yet he came to the United States as a refugee, not under employer sponsorship. More important, none of these firms has been pivotal to the industry technologically. There are lots of good Web search programs. In fact, Yahoo bought the one it uses, rather than developing its own. Rest assured, we would all still be surfing the Web without Yahoo and Google. And we would have computer chips to enable our surfing too: Although IBM launched Intel to world dominance by choosing the Intel chip for the first IBM PC in 1982, it had lots of other choices. IBM’s engineers preferred the chips by Motorola and NEC, and Bill Gates once called the Intel chip “brain damaged.”

6- Alt cause to competitiveness and innovation—Intellectual Property laws

Jerome, tech blogger for The Hill, 2010

(Sara, “Issa asks if long copyright is a barrier to entry,” The Hill, 9-16-2010, p. http://thehill.com/blogs/hillicon-valley/technology/119219-issa-asks-if-long-copyright-is-a-barrier-to-entry)

Rep. Darrell Issa (R-Calif.) asked witnesses at a House subcommittee hearing on Thursday whether strict intellectual property laws could be stifling competition and innovation. He asked if it's possible that a long copyright could serve as a barrier to entry and whether such laws need an update.  Ed Black, the president of CCIA, was quick to say yes, adding that strong copyright laws can even "interfere with free speech." "Copyright terms can be over 100 years," he said, creating "litigation that can tie up the Internet." While different industries need different treatment, Black said, "one suit" is now being applied to all, resulting in "anticompetitive and anti-innovative" effects. He called for a review of IP law.

#### Political capital doesn’t ensure passage – house ideology.

Soto 1-4-12

Victoria M. DeFrancesco Soto, NBC Latino and MSNBC contributor, Senior Analyst for Latino Decisions and Fellow at the Center for Politics and Governance at the LBJ School of Public Affairs at the University of Texas http://nbclatino.com/2013/01/04/opinion-immigration-reform-will-not-be-easy-but-its-not-impossible/

Unlike in his first administration, the president seems to be on board and ready for rolling up his sleeves and getting into immigration reform, but that won’t cut it. The problem for immigration reform in 2013 is rooted in Capital Hill. The president’s support is a necessary condition for any major policy overhaul, but it is not a sufficient condition. Let’s just assume the president can arm-wrestle the Senate Democrats and a few Senate Republicans into supporting his immigration reform. Two out of three won’t cut it. The Republican-controlled House is what stands in the way of immigration reform. More specifically, the GOP’s split mindset regarding Latinos and immigration is what will likely prevent the president from crossing off immigration reform from his 2013 to-do list.

#### Fiscal debates will screw immigration

Spaeth 1/3 (Ryu Spaeth , Editor, *The Week*, “Will Congress' budget battles kill immigration reform and gun control?”, 1/3/13 http://theweek.com/article/index/238367/will-congress-budget-battles-kill-immigration-reform-and-gun-control)

Congress' budget battles are only expected to get gorier over the next couple of months, as Republicans and Democrats try to reach a deal that would prevent $1.2 trillion in crippling spending cuts, a U.S. debt default, and a government shutdown. However, the White House insists that President Obama "is planning to move full steam ahead with the rest of his domestic policy agenda," say Elise Foley and Sam Stein at The Huffington Post. Immigration reform and gun control are at the top of the list, but the chances of their quick passage seem slim given the heated atmosphere in Congress. "The negative effect of this fiscal cliff fiasco is that every time we become engaged in one of these fights, there's no oxygen for anything else," an unidentified Senate Democratic aide told HuffPo. "It's not like you can be multi-tasking — with something like this, Congress just comes to a complete standstill."

Can’t access heg – Deemed Export controls prevent visa holders from innovating military tech.

Deemed Export Advisory Committee, “The Deemed Export Rule in the Era of Globalization,” 12/20/2007, http://tac.bis.doc.gov/2007/deacreport.pdf

In its simplest context, a “Deemed Export” can be defined as (1) the release (2) of technology or source code (3) having both military and civilian application (4) to a foreign national (5) within the United States. [1] Thus, even though the transfer of the knowledge in question takes place within the confines of the United States, the transaction is “deemed” to be an export and therefore subject to certain export regulations. The role assigned to the Deemed Export Advisory Committee (DEAC) was to provide recommendations to the Secretary of Commerce for possible improvements to Deemed Export regulations, policies, and processes. The federal regulations governing Deemed Exports of dual-use items are set forth in certain provisions of the Export Administration Regulations (EAR), which are administered by the United States Department of Commerce’s (DOC) Bureau of Industry and Security (BIS). The EAR is the set of Federal rules that implement controls on the export of “dual-use” items, meaning items that have a predominantly commercial application but can also have military or other strategic purposes [2], thus potentially impacting United States security and foreign policy. The EAR differs from the International Traffic in Arms Regulations (ITAR), administered by the United States Department of State, in that the ITAR oversees the export of articles, services, and technical data (including all classified information) that have a primarily military application as defined by the United States Munitions List (USML). The Deemed Export rule is a unique export control implemented unilaterally by the United States Government (USG). The Deemed Export rule is not a part of any international treaty or obligation, so it can be enhanced, modified, or eliminated at the sole discretion of the USG. It should be noted that other treaty allies with the United States do not implement a Deemed Export licensing regime, but rely largely on their visa issuance process -- or simply do not regulate “intangible exports.” Deemed Export controls traditionally impact national security by precluding sensitive information (in the form of source code or technology) from being transferred to foreign nationals who might use that information to the United States’ disadvantage. However, as other nations begin to move to the forefront of many technologic fields, an important secondary and potentially conflicting impact of deemed exports is emerging. Because a relatively large percentage of America’s brightest minds in advanced areas of science and technology (S&T) are foreign nationals studying or working in the United States under student or work visas [3], the Deemed Export rule may be denying highly qualified persons from fully participating in time-sensitive research or technology development projects of importance to the United States. This may place the nation at a disadvantage vis-a-vis its own national security as well as commercial use of the technology. The United States may miss or be late to capitalize on new breakthroughs in science and technology discovered by foreign national students, researchers, or workers. These foreign nationals are not infrequently the best, and occasionally the only, candidates available to fill the voids left by United States citizens who are increasingly foregoing studies in science and technology for pursuing of higher paying professions. To illustrate how Deemed Exports can present a quandary for United States national (and economic) security, the following notional example is offered of a foreign national from a country of concern to the United States Government who has nonetheless been allowed to study in the United States on a student visa. The hypothetical foreign national, having achieved a Ph.D. from a United States university, is hired by a United States company as the most qualified candidate to be the lead researcher on a cutting edge project that will produce a commercial product. A representative of the United States Department of Defense has expressed to the company its interest in the project because multiple potential military applications for the material have been identified. The company has no current plans to export the material once produced. In this “dual-use” example, the foreign national researcher would require a Deemed Export license to participate in the project due to the individual’s country of citizenship (and the possible military application of the product). Such a license can contain provisos that prevent the researcher from having further access to certain information dealing with the research in question. Because of this limitation, the individual may no longer be a reasonable candidate for the job -- even though he or she is the most qualified. In this scenario, both the company and the military lose. If the individual is granted the job but does not have full access to the needed information because of the provisos, then the project is handicapped. However, if the individual gets the job without limitations and the project succeeds, the individual may repatriate to his home country (or to any other country) and divulge what is known to a foreign manufacturer. There are thus risks involved with each alternative. The simplest solution in this scenario is to hire a qualified United States person (citizen or “green card” holder) with the requisite engineering or scientific skills. However, according to most independent assessments, such as the “Skills Gap Report 2005” performed by Deloitte Consulting, “... the vast majority of American manufacturers are experiencing a serious shortage of qualified employees... the research show[s] that engineers and scientists are in short supply, with 65 percent of manufacturers reporting deficiencies -- 18 percent severe and 47 percent moderate.” [4] Foreign nationals with H-1B or similar visas are potential candidates to fill these positions, but, as noted, this approach poses a potential for significant S&T leakages. As the Hart-Rudman Commission on National Security stated in 2001: “...[T]he inadequacies of our system of research and education pose a greater threat to United States national security over the next quarter century than any potential conventional war that we might imagine. American national leadership must understand these deficiencies as threats to national security.”

### A2 K --- 2ac Frontlines

#### The judge is a policymaker evaluating policy action,– that’s key to predictability since our interpretation is contingent on the resolution and key to check multiple negative critical frameworks – even if one part of the 1AC is wrong, vote on the parts that are true because debate is about costs and benefits and relative risk – not an F.Y.I. on our research methods.

#### ---The Affirmative is a prerequisite to the critique.

#### (A.) Individual focus fuels economic nationalism --- CFIUS politicization means every local problem will be blamed on China & foreign investment.

Bello & Mittal 2000

Walden, Anuradha, Dangerous Liaisons: Progressives, the Right, and the Anti-China Trade Campaign, Institute for Food and Development Policy/Food First, May, http://www.tni.org/archives/archives\_bello\_china

Sixth, the anti-China trade campaign is dishonest. It invokes concern about the rights of Chinese workers and the rights of the Chinese people, but its main objective is to protect American jobs against cheap imports from China. This is cloaking self-interest with altruistic rhetoric. What the campaign should be doing is openly acknowledging that its overriding goal is to protect jobs, which is a legitimate concern and goal. And what it should be working for is not invoking sanctions on human rights grounds, but working out solutions such as managed trade, which would seek to balance the need of American workers to protect their jobs while allowing the market access that allows workers in other countries to keep their jobs and their countries to sustain a certain level of growth while they move to change their development model. (13) Instead, what the rhetoric of the anti-China trade campaign does is to debase human rights and democratic rights language with its hypocrisy while delegitimizing the objective of protecting jobs-which is a central social and economic right-by concealing it.

#### (B.) The alternative locks workers in the forced choice between accepting structural inequality and hating their foreign counterparts.

Hart-Landsberg & Burkett 2006

Martin, Professor of Economics and Director of the Political Economy Program at Lewis and Clark College, Paul, professor of economics at Indiana State University, China and the Dynamics of Transnational Accumulation: Causes and Consequences of Global Restructuring, Historical Materialism, volume 14:3 (3–43)

Although China’s National Bureau of Statistics has concluded, based on survey research, that only 5 per cent of the country’s population can currently be considered middle-class, the government is conﬁdent that its economic policies will raise this to 45 per cent by 2020. However, such a prediction ﬂies in the face of the lived experiences of Chinese working people. As a Hong Kong Confederation of Trade Unions report explains, ‘globalisation’ has left Chinese workers: isolated in a global equation in which job insecurity and poverty award employers with the upper hand in what has become known as the race to the bottom. Workers in developed countries are told that they must accept lower wages and ﬂexible working conditions to stop their bosses moving production abroad. Meanwhile, workers in SOEs in China are told they must accept a decline in conditions and welfare or be replaced by migrant workers from the countryside. And migrant workers, especially in the coastal Special Economic Zones, are told that they must accept wage arrears and lax health and safety or the boss will move to a more investor-friendly environment further inland.

#### ---The alternative fractures the left --- Rejecting the plan’s [global/production] focus unites the alternative with right wing china bashers and fractures opposition to the Pentagon’s militarist china policy.

Bello & Mittal 2000

Walden, Anuradha, Dangerous Liaisons: Progressives, the Right, and the Anti-China Trade Campaign, Institute for Food and Development Policy/Food First, May, http://www.tni.org/archives/archives\_bello\_china

A coalition of forces seeks to deprive China of permanent normal trading relations (PNTR) as a means of obstructing that country's entry into the World Trade Organization (WTO). We do not approve of the free-trade paradigm that underpins NTR status. We do not support the WTO; we believe, in fact, that it would be a mistake for China to join it. But the real issue in the China debate is not the desirability or undesirability of free trade and the WTO. The real issue is whether the United States has the right to serve as the gatekeeper to international organizations such as the WTO. More broadly, it is whether the United States government can arrogate to itself the right to determine who is and who is not a legitimate member of the international community. The issue is unilateralism-the destabilizing thrust that is Washington's oldest approach to the rest of the world. The unilateralist anti-China trade campaign enmeshes many progressive groups in the US in an unholy alliance with the right wing that, among other things, advances the Pentagon's grand strategy to contain China. It splits a progressive movement that was in the process of coming together in its most solid alliance in years. It is, to borrow Omar Bradley's characterization of the Korean War, "the wrong war at the wrong place at the wrong time".

#### ---It’s try or die --- Even if they win a long term inevitability claim, the alternative has zero mechanism for resolving our <> advantage(s) which happen <timeframe>. The permutation is the only option that allows people to survive long enough to implement the alternative.

#### ---Permutation Do Both --- <Engage in local consumption analysis> & <Aff>

#### ---Scapegoating government restrictions are good --- Even if it falsely distributes blame, it’s a prerequisite to the alternative’s critical knowledge production.

Lohmann 2012

Larry, FINANCIALIZATION, COMMODIFICATIONAND CARBON:THE CONTRADICTIONS OFNEOLIBERAL CLIMATE POLICY, SOCIALIST REGISTER, http://thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Socialist%20Register%20Neoliberal%20Climate%20Policy%20Contradictions.pdf

Scapegoating ideology, however, is as double-edged as its cynical variety, or as the climate commodification process itself. Depending on political circumstances, calls for ‘better regulation’ or ‘crackdowns on corruption’ can intersect fruitfully with the more strategic, long-term campaigns for decommodification of the earth’s carbon-cycling capacity being undertaken by grassroots movements and groups such as Via Campesina, the California Movement for Environmental Justice, and movements in Ecuador, Canada and Nigeria opposing fossil fuel extraction.37 Useful information on patterns of subsidies provided to fossil fuel polluters by the EU ETS, or on the perverse incentives associated with HFC-23 projects, often come from groups clinging to the fetish of reform, and important analyses of the contradictions of the climate commodity from Wall Street consultants who would be horrified at the extent to which their contributions are aiding the understanding of radical movements against the trade. Thus while frank discussion of the consequences of the continuing unfolding of the contradiction between exchange-value and use-value in carbon markets is more politically productive when undertaken with affected publics than with fetish-constrained state officials and technocrats, or in the pages of the financial press, political spaces for breaking the trance that carbon markets have imposed on climate policy can be, and are being, opened at many levels.

#### ---The alternative fails --- Collective structures are responsible for an overwhelming majority of consumption.

Jensen 2009

Derrick, activist and the author of many books, most recently What We Leave Behind and Songs of the Dead, Forget Shorter Showers, Orion Magazine, http://www.orionmagazine.org/index.php/articles/article/4801/

WOULD ANY SANE PERSON think dumpster diving would have stopped Hitler, or that composting would have ended slavery or brought about the eight-hour workday, or that chopping wood and carrying water would have gotten people out of Tsarist prisons, or that dancing naked around a fire would have helped put in place the Voting Rights Act of 1957 or the Civil Rights Act of 1964? Then why now, with all the world at stake, do so many people retreat into these entirely personal “solutions”? Part of the problem is that we’ve been victims of a campaign of systematic misdirection. Consumer culture and the capitalist mindset have taught us to substitute acts of personal consumption (or enlightenment) for organized political resistance. An Inconvenient Truth helped raise consciousness about global warming. But did you notice that all of the solutions presented had to do with personal consumption—changing light bulbs, inflating tires, driving half as much—and had nothing to do with shifting power away from corporations, or stopping the growth economy that is destroying the planet? Even if every person in the United States did everything the movie suggested, U.S. carbon emissions would fall by only 22 percent. Scientific consensus is that emissions must be reduced by at least 75 percent worldwide. Or let’s talk water. We so often hear that the world is running out of water. People are dying from lack of water. Rivers are dewatered from lack of water. Because of this we need to take shorter showers. See the disconnect? Because I take showers, I’m responsible for drawing down aquifers? Well, no. More than 90 percent of the water used by humans is used by agriculture and industry. The remaining 10 percent is split between municipalities and actual living breathing individual humans. Collectively, municipal golf courses use as much water as municipal human beings. People (both human people and fish people) aren’t dying because the world is running out of water. They’re dying because the water is being stolen. Or let’s talk energy. Kirkpatrick Sale summarized it well: “For the past 15 years the story has been the same every year: individual consumption—residential, by private car, and so on—is never more than about a quarter of all consumption; the vast majority is commercial, industrial, corporate, by agribusiness and government [he forgot military]. So, even if we all took up cycling and wood stoves it would have a negligible impact on energy use, global warming and atmospheric pollution.” Or let’s talk waste. In 2005, per-capita municipal waste production (basically everything that’s put out at the curb) in the U.S. was about 1,660 pounds. Let’s say you’re a die-hard simple-living activist, and you reduce this to zero. You recycle everything. You bring cloth bags shopping. You fix your toaster. Your toes poke out of old tennis shoes. You’re not done yet, though. Since municipal waste includes not just residential waste, but also waste from government offices and businesses, you march to those offices, waste reduction pamphlets in hand, and convince them to cut down on their waste enough to eliminate your share of it. Uh, I’ve got some bad news. Municipal waste accounts for only 3 percent of total waste production in the United States. I want to be clear. I’m not saying we shouldn’t live simply. I live reasonably simply myself, but I don’t pretend that not buying much (or not driving much, or not having kids) is a powerful political act, or that it’s deeply revolutionary. It’s not. Personal change doesn’t equal social change.

#### ---Individual local strategies fail to adapt to the inevitability of global concerns and guarantees a world dominated by violence.

Monbiot 2004

George, journalist, academic, and political and environmental activist, Manifesto for a New World Order, p. 11-13

The quest for global solutions is difficult and divisive. Some members of this movement are deeply suspicious of all institutional power at the global level, fearing that it could never be held to account by the world’s people. Others are concerned that a single set of universal prescriptions would threaten the diversity of dissent. A smaller faction has argued that all political programmes are oppressive: our task should not be to replace one form of power with another, but to replace all power with a magical essence called ‘anti-power’. But most of the members of this movement are coming to recognize that if we propose solutions which can be effected only at the local or the national level, we remove ourselves from any meaningful role in solving precisely those problems which most concern us. Issues such as cli­mate change, international debt, nuclear proliferation, war, peace and the balance of trade between nations can be addressed only globally or internationally. Without global measures and global institutions, it is impossible to see how we might distribute wealth from rich nations to poor ones, tax the mobile rich and their even more mobile money, control the shipment of toxic waste, sustain the ban on landmines, prevent the use of nuclear weapons, broker peace between nations or prevent powerful states from forcing weaker ones to trade on their terms. If we were to work only at the local level, we would leave these, the most critical of issues, for other people to tackle. Global governance will take place whether we participate in it or not. Indeed, it must take place if the issues which concern us are not to be resolved by the brute force of the powerful. That the international institutions have been designed or captured by the dictatorship of vested interests is not an argument against the existence of international institutions, but a reason for overthrowing them and re­placing them with our own. It is an argument for a global political system which holds power to account. In the absence of an effective global politics, moreover, local solutions will always be undermined by communities of interest which do not share our vision. We might, for example, manage to persuade the people of the street in which we live to give up their cars in the hope of preventing climate change, but unless everyone, in all communities, either shares our politics or is bound by the same rules, we simply open new road space into which the neighbouring communities can expand. We might declare our neighbour­hood nuclear-free, but unless we are simultaneously work­ing, at the international level, for the abandonment of nuclear weapons, we can do nothing to prevent ourselves and everyone else from being threatened by people who are not as nice as we are. We would deprive ourselves, in other words, of the power of restraint. By first rebuilding the global politics, we establish the political space in which our local alternatives can flourish. If, by contrast, we were to leave the governance of the necessary global institutions to others, then those institutions will pick off our local, even our national, solutions one by one. There is little point in devising an alternative economic policy for your nation, as Luis Inacio ‘Lula’ da Silva, now president of Brazil, once advocated, if the International Monetary Fund and the financial speculators have not first been overthrown. There is little point in fighting to protect a coral reef from local pollution, if nothing has been done to prevent climate change from destroying the conditions it requires for its survival.

#### ---The alternative reifies constructed Western notions of the ‘local’ that collapses autonomy and masks oppression.

Escobar 1995

Arturo, Associate professor of Anthropology @ UMASS, Encountering Development: The Making and Unmaking of the Third World, pg. 170

As Ana Maria Alonso (1992) remarked in the context of another peasant struggle at another historical moment, one must be careful not to naturalize “traditional” worlds, that is, valorize as innocent and “natural” an order produced by history (such as the Andean world in PRATEC’s case or many of the grassroots alternative spoken about by activists in various countries). These orders can also be interpreted in terms of specific effects of power and meaning. The “local,” moreover, is neither unconnected nor unconstructed, as it is thought at times. The temptation to “consume” grassroots experiences in the market for “alternatives” in Western academe should also be avoided. As Rey Chow warns (1922), one must resist participating in the reification of Third World experiences that often takes place under such rubrics as multiculturalism and cultural diversity. This reification hides other mechanisms; The apparent receptiveness of our curricula to the Third World, as receptiveness that makes full use of non-Western human specimens as instruments for articulation, is something we have to practice and deconstruct at once…We [must] find a resistance to the liberal illusion of the autonomy and independence we can “give” the other. It shows that social knowledge (and the responsibility that this knowledge entails) is not simply a matter of empathy or identification with “the other” whose sorrows and frustrations are being made part of the spectacle…This means that *our* attempts to “explore the ‘other’ point of view” and “to give it a chance to speak for itself,” as the passion of many current discourse goes, must always be distinguished from the other’s struggles, no matter how enthusiastically we assume the nonexistence of that distinction. (111,112)

# **1AR**

### **T**

#### We meet---2AC Hirsh Marchick Ellis and Inside energy production evidence prove CFIUS reviews on oil and gas are restrictions on production, contextual use outweighs, proves our aff is grounded in the literate and is predicable, prefer our evidence their definitions don’t assume CFUIS restrictions only on energy which is all we deal with

#### Its an access restriction, foreign countries like china or Germany cannot come here to drill, THEIR WORKERS ARE NOT ALLOWED, it’s the same as saying shell cant drill in anwr, if this doesn’t meet no case meets.

#### ---Restrictions on foreign investment are access limitations.

Exxon Mobile no date (“Risk factors,” http://www.exxonmobil.com/Corporate/safety\_climate\_mgmt\_risk.aspx)

Access limitations. A number of countries limit access to their oil and gas resources, or may place resources off-limits from development altogether. Restrictions on foreign investment in the oil and gas sector tend to increase in times of high commodity prices, when national governments may have less need of outside sources of private capital. Many countries also restrict the import or export of certain products based on point of origin.

#### The president has the ability to VETO AND BAN A DEAL—that is a access limitation, their distinction about it being possible vs impossible is just for limits sake, lit should guide interpretations not limits, it’s the only way to make debate relevant to the real world.

#### ---Foreign investment restrictions apply to extraction, sever the extra portions

Clark-partner Dewey & LeBoeuf LLP-11

LIMITS ON INTERNATIONAL BUSINESS IN THE PETROLEUM SECTOR: CFIUS INVESTMENT SCREENING,

ECONOMIC SANCTIONS, ANTI-BRIBERY RULES, AND OTHER MEASURES

<http://tjogel.org/wp-content/uploads/2012/05/ware_final1.pdf>

B. Petroleum Industry Experience and Challenges: Exon-Florio Although CFIUS’s focus on energy-related transactions is a recent development, U.S. government decision-makers have long viewed oil company deal-making as having a strategic dimension. 34 Concern about the oil and gas industry was a driving factor in the original establishment of CFIUS in 1975. In the 1970s Congress had grown concerned over the rapid increase in investments by Organization of the Petroleum Exporting Countries (“OPEC”) in portfolio assets, suspecting that they may be driven by political, rather than by economic, motives. 35 In 2006 congressional outcry over a CFIUS-approved acquisition of a port management business by UAE-controlled Dubai Ports World led to a broad reformulation of Exon-Florio. The legislation, the Foreign Investment on National Security Act (“FINSA”), reflects a congressional intent to scrutinize oil and gas acquisition intensively. As indicated above, the statute urges CFIUS to consider in assessing transactions “the long-term projection of the United States requirements for sources of energy and other critical resources and material” and “the potential national security-related effects on United States critical infrastructure, including major energy assets.” 36 The legislative history “makes clear that national security encompasses national security threats to . . . energy-related infrastructure.” 37 The House of Representatives committee that prepared the legislation expressed its view that it “expects that acquisitions of U.S. energy companies or assets by foreign governments or companies controlled by foreign governments . . . will be reviewed closely for their national security impact.” 38 Transactions in the energy sector have been subject to CFIUS review at various stages of the value chain, including extraction, transportation, conversion to power, and supply to the U.S. government. 39 Over time CFIUS appears to be paying closer attention to deals involving these types of assets, creating some uncertainty for potential mergers and acquisitions in this sector.

#### ---On indicates focus of the plan

Merriam Webster Online

<http://www.merriam-webster.com/dictionary/on>

Definition of ON

9a —used as a function word to indicate destination or the focus of some action, movement, or directed effort <crept up on him> <feast your eyes on this> <working on my skiing> <made a payment on the loan>

b —used as a function word to indicate the focus of feelings, determination, or will <have pity on me> <keen on sorts> <a curse on you>

c —used as a function word to indicate the object with respect to some misfortune or disadvantageous event <the crops died on them>

d —used as a function word to indicate the subject of study, discussion, or consideration <a book on insects> <reflect on that a moment> <agree on price>

e : with respect to <go light on the salt> <short on cash>

#### ---We meet---the investment restrictions are on energy production

#### ---the plan applies to 100 percent of production

Rosen and Hanemann-Rhodium Group-11 (An American Open Door? Maximizing the Benefits of Chinese Foreign Direct Investment, http://www.ogilvypr.com/files/anamericanopendoor\_china\_fdi\_study.pdf)

Several high-profile deals fired up these debates, such as the takeover of Peninsular and Oriental Steam Navigation Company by Dubai Ports World in 2005–2006, and the failed acquisition of California-based Unocal by CNOOC in 2005. These transactions provoked negative public reaction, congressional pressure, and, ultimately, legislative action that compelled the firms involved to withdraw. 80 In 2007, FINSA updated and elaborated the CFIUS process and, for the first time, provided it with a legislative mandate. FINSA extended CFIUS review to cover “critical” U.S. infrastructure, added the director of national intelligence and secretary of labor to the CFIUS committee as nonvoting members, and required that all deals involving critical infrastructure or foreign-government-controlled entities be reviewed unless explicitly exempted by the Treasury Department or a lead agency from among the CFIUS members (with a highlevel official—deputy secretary or higher—taking responsibility for the exemption).

#### ---The plan is directly tied to oil and gas production-Capital is intrinsically tied to future increases

Houston Chronicle 1/4/12 International players jump at U.S. shale Simone Sebastian

<http://www.chron.com/business/article/International-players-jump-at-U-S-shale-2439490.php>

Energy companies are funneling billions of dollars into the booming business of U.S. shale drilling. They are investing euros, yuan and krone, too. Chinese corporation Sinopec and French company Total this week became the latest in a string of foreign firms to announce big bets on the resurgence of U.S. fossil fuel production. International energy companies are signing billion-dollar deals with U.S. firms to reap the financial benefits of their oil fields and siphon knowledge from their experience in extracting petroleum from dense shale rock to carry the skills overseas. In return, they are ponying up the funds to get more wells drilled, so the oil and natural gas bounty trapped deep below can get to market quickly. "The big motivation for (U.S.companies) wanting to find a partner is finding someone with big pockets," said Scott Hanold, energy research analyst for RBC Capital Markets. "They are just money men at the end of the day." Total signed its second shale compact with Oklahoma-based natural gas producer Chesapeake Energy last week to secure acreage in Ohio's burgeoning Utica shale. The French energy giant got 25 percent interest in a 619,000-acre joint venture with Chesapeake and Houston-based EnerVest. In exchange, it forked over $700 million cash along with a promise to fund 60 percent, or about $1.63 billion, of the group's drilling and well completion costs in the Utica. The companies plan to have 25 rigs operating by 2014. China's Sinopec International Petroleum Exploration & Production Corp. muscled its way into U.S. shale with a $2.2 billion investment in oil fields owned by Oklahoma-based energy company Devon, announced Tuesday. The Chinese corporation gains one-third interest in Devon's 1.2 million acres in the Utica shale, the Michigan Basin, the Mississippian in Oklahoma, the Tuscaloosa marine shale in Louisiana and the Niobrara in Wyoming. Sinopec will pay $900 million cash when the deal closes, expected in 2012's first quarter, and cover 70 percent of Devon's drilling costs, about $1.6 billion.

#### ---C/I-Production is a distinct stage from exploration, transportation, storage, and distribution.

Elcock 04 (Deborah, ‘Environmental Policy and Regulatory Constraints to Natural Gas Production,” Argonne National Laboratory, Dec, http://www.ipd.anl.gov/anlpubs/2004/12/51652.pdf)

In 1999, the National Petroleum Council (NPC) reported that the demand for natural gas was growing and that the resource base was adequate to meet this demand; however, certain factors needed to be addressed to realize the full potential for natural gas use in the United States (NPC 1999). In 2001, the National Energy Policy Development Group (NEPDG), established by the President to develop a plan to help the private and public sectors promote dependable,2 affordable, and environmentally sound energy for the future, presented its National Energy Policy (NEPDG 2001). The NEP recommendations included investigating several areas that could be limiting domestic natural gas production. The potential for a near-term natural gas shortage prompted a June 26, 2003, Natural Gas Summit, designed to give the Secretary of Energy and other DOE officials information on the ramifications and potential resolutions of short-term challenges to the natural gas industry. In September 2003, the NPC released an update to its 1999 study (NPC 2003). In the update, the NPC reports that government policies encourage the use of natural gas but fail to address the need for additional natural gas supplies. The 2003 report states that a status quo approach to these conflicting policies will result in undesirable impacts to consumers and the economy. A key issue raised but not fully explored in these efforts was how environmental and regulatory policy constraints, which were developed to meet national environmental protection goals, can, at the same time, limit natural gas exploration and production (E&P) and transportation. Recent studies have examined limitations to accessing natural gas, particularly in the Rocky Mountain region, but even after the gas is accessed, numerous additional environmental policy and regulatory constraints can affect production and delivery to consumers. The purpose of this Phase I study is to identify specific existing and potential environmental policy and regulatory constraints on E&P, transportation, storage, and distribution of natural gas needed to meet projected demands. It is designed to provide DOE with information on potential constraints to increased natural gas supply and development in both the long and short terms so that the Department can develop, propose, and support policies that eliminate or reduce negative impacts of such constraints, or issues, while continuing to support the goals of environmental protection. It can also aid in setting priorities for regulatory reviews and for research and development (R&D) efforts. 1 A possible future Phase II study would identify potential short-, mid-, and long-term strategies for mitigating these environmental policy and regulatory constraints.

**Foreign capital has to be included in the discussion, production is sky high now, the question is where new money is going to come from, key to aff ground, innovation and education.**

#### A restriction is a qualification on production, That’s Wright v Magellan and Google Dictionary

#### prefer our interpretation.

#### Don’t ruin the topic because of their ticky tacky distinction, democracy was ruined because no affs had a mechanism that could defeat generic counterplans---

#### Aff ground outweighs,

#### Staleness: they only allow offshore drilling and anwr affs, those don’t have advantages outside of energy security and price shocks, that stifles aff innovation, they limit out the fracking aff, SMR lisencing barriers and EPA regs because those are not explicit prohibitions, those affs are key to novelty which defeats generics. It also makes education less valuable because its all redundant, their interpretation is just the nuclear subsidies topic.

#### Neg ground is inevitable, they number of affs is a red herring, we only add one mechanism, its still a restriction that prevents production, they get links to their energy disads.

#### Arbitrary limits are worse than no limits---the aff wont have a reasonable idea of what is t or not, causes shallow poorly researched debates.

#### Reasonability is critical, topicality is the death penalty which means they have a high burden to prove we ruin the topic, your role is not to craft the topic anyway it is to decide if our affirmative made it impossible to debate, otherwise going for t is over incentivized which trades off with substance, competiting interpretations are a hollow race to limits.

### 1ar- No compromise bill

#### Obama’s strategy is to make sure immigration doesn’t pass

Munro 12-31 – Neil Munro, reporter for the Daily Caller, December 31st, 2012, "Obama promises new immigration plan but keeps endgame close to his vest" dailycaller.com/2012/12/31/obama-promises-new-immigration-plan-but-keeps-endgame-close-to-his-vest/?print=1

President Barack Obama promised Dec. 30 to introduce an immigration bill during 2013, but activists on all sides of the debate are trying to understand his strategy.¶ **He may be gunning for a victory in the mid-term elections by introducing** a bill so radical that it will **spark an emotional controversy from whites**, which would then **spur many angry Latino**s to vote Democratic in the 2014 midterm elections, said Robert de Posada, former head of a GOP-affiliated group, The Latino Coalition.¶ **“The word that I’ve heard from many, is [that** he will] submit a very, very liberal plan that most Republicans will not support, that most southern and moderate Democrats will not support**,”** he said.¶ When the bill fails**, “they can announce once again that they tried [and that Latinos] need to rally in the next election**,” said Posada, who helped President George W. Bush win 40 percent of the Latino vote in 2004, during the housing boom.

### 1ar- Fiscal Debates N/U

#### The link is inevitable – the fight over the fiscal cliff and debt ceiling will kill immigration

Sarlin 1/3 (Benjy Sarlin, “Debt Fight Threatens To Overshadow Obama’s Immigration Push,” <http://tpmdc.talkingpointsmemo.com/2013/01/debt-fight-threatens-to-overshadow-obamas-immigration-push.php>)

President Obama may be celebrating a victory on taxes over the House GOP this week, but the fiscal cliff agreement sets up an even nastier spending battle in the coming months, potentially complicating what was supposed to be his No. 1 legislative priority: immigration reform.¶ Supporters of reform insist that Obama and Congress can walk and chew gum at the same time, especially given that the same demographic trends sending panicked Republicans to the negotiating table will persist.¶ “There’s still a 2014 election scheduled,” Laura Vazquez, a legislative analyst for the National Council of La Raza, told TPM. “The president wants to move quickly with the momentum coming out of the election, which gives us a chance to get started very soon — as soon as the inauguration happens we’re ready to go.”¶ Unfortunately for Obama and his reform allies, the fiscal cliff fight that dominated Washington’s attention since the election is only extended by the deal struck this week. Scheduled spending cuts to defense and domestic programs are postponed for two months, and Republicans are threatening a simultaneous standoff over the debt ceiling.¶ As the president made clear in his statement announcing the fiscal cliff deal, every minute spent on these issues eats at his other priorities, a list that now includes gun control as well: “We can settle this debate, or at the very least, not allow it to be so all-consuming all the time that it stops us from meeting a host of other challenges that we face — creating jobs, boosting incomes, fixing our infrastructure, fixing our immigration system, protecting our planet from the harmful effects of climate change, boosting domestic energy production, protecting our kids from the horrors of gun violence.”¶ Immigration advocates are still expecting big movement this month from the White House on comprehensive reform, especially in the president’s State of the Union address. With Republican leaders publicly calling for a debate on the issue before the 2014 elections in the hopes of winning over Latino voters, Obama still has his best shot yet at moving a bill through Congress.¶ But there are still plenty of things that can derail reform efforts, some possibly exacerbated by an extended debate on taxes and spending. Republican presidential candidates are threatened by an energized Latino vote, but most members of Congress are in safe districts where their biggest threat is a conservative primary challenger. The closer the 2014 election season gets, the more skittish those Members could grow about taking difficult votes even as national party builders demand swift action.

#### Budget fights outweigh---consumes agenda

Helderman 1/1 Rosalind S, "After a 'fiscal cliff' deal, what next?", 2013, www.washingtonpost.com/politics/after-a-fiscal-cliff-deal-what-next/2012/12/31/b9d9a452-5384-11e2-bf3e-76c0a789346f\_story.html?wprss=rss\_politics

Assuming the deal is approved by the House, it will nevertheless give way to a nearly continuous series of fights that will consume the first part of the year, even as President Obama might hope to shift Congress’s attention to immigration reform and gun control.¶ “It’s become less like a fiscal cliffhanger and more like a journey over the fiscal mountains,” said Rep. Jeff Fortenberry (R-Neb.).¶ The next big deadline is likely to come around the end of February, when the Treasury Department will exhaust the measures now in place to extend the nation’s $16.4 trillion debt ceiling. At that point, the government will not be able to pay its bills unless Congress votes to raise the nation’s legal borrowing limit.¶ Republicans hope to use that moment to force Obama and congressional Democrats to agree to major spending cuts in return for the increase — in what could be a sequel to the contentious face-off over the debt limit in the summer of 2011.¶ Provided Monday’s deal is approved, in early March would come another deadline: the $110 billion cut in spending, half from the Pentagon, delayed as part of this deal.¶ A month or so later — on March 27 — a short-term measure that funds government agencies will lapse. Without a renewal, the government will shut down, setting up another possible showdown.¶ “Round two’s coming,” said Sen. Lindsey O. Graham (R-S.C.). “And we’re going to have one hell of a contest about the direction and the vision of this country.”¶ Many Republicans believe they’ll have more leverage then than they do now because the debate over tax rates on the wealthy will be settled.

### 1ar links

#### The current economic context has changed FDI policy, its popular because its perceived to be a booster, empirically proven by japan in the 80’s, that’s shatz

#### FDI in oil and gas is popular in DC- helps the US economy.

Orol 12 (Rob, senior writer for The Deal magazine and The Daily Deal newspaper, covering the activist hedge fund industry as well as other topics, including the S.E.C. and Capitol Hill. Orol is the author of the 'Over the Hedge' column, contributor to the 'Rules of the Road' weekly column, and is also a commentator on BBC World Television, CNBC TV, Business News Network and National Public Radio, “Cnooc's big deal for Nexen seen succeeding,” MarketWatch August 16, 2012, lexis)

Lobbyists hired early Also greasing the wheels, Cnooc hired Hill+Knowlton, a prominent lobbying firm in both Ottawa and Washington, to lobby on the Nexen deal. Regulatory observers don't believe the U.K. government will raise any objections to the deal. Fournier noted that North Sea oil production is declining, a situation that is driving the British to attract capital there. He noted that in 2010 a consortium of Chinese firms purchased three U.K. electricity networks with no regulatory opposition, indicating that this deal will also likely pass regulatory muster. “The British are pretty desperate to get new capital invested in the North Sea,” he said. For Clayton, the difference between Unocal and Nexen and between 2005 and 2012 is the economy. “Today's economic context is much more conducive to this type of foreign investment winning support in Washington, even in a politically sensitive sector like oil and gas, than was the case in 2005,” he said. “North American oil production is growing more quickly than any other part of the world and companies from all over the world want in on that action.”

#### The investment lobby is powerful and would fight for the plan.

Lyons 12 (Christina, freelance writer and editor focused on American politics and public policy. She held a variety of positions at Congressional Quarterly between 1994 and 2010, becaming a news editor and senior editor for CQ’s New Media department, “OFII Advocates for New Foreign Investment Measure,” June 8, http://firststreetresearch.cqpress.com/2012/06/08/ofii-advocates-for-new-foreign-investment-measure/)

The Organization for International Investment, which in recent years has spent more than $2 million annually lobbying in Washington, D.C., is lauding legislation that Senate and House leaders unveiled this week which aims to boost the United State’s share of global foreign investment. Nancy L. McLernon, president and CEO of OFII, which was created about 20 years ago to represent the U.S. interests of global firms, said: “This bold recognition of the benefits of global investment comes at a critical time for our nation’s economy.” She said it would send a message to the international business community that the U.S. is trying to improve its competitiveness. OFII 2012 Lobbying Activity OFII’s members represent major international food, transportation, pharmaceutical and other companies, including such major names as Anheuser-Busch, Volkswagen of America, Shell Oil, Food Lion LLC, and Nestle USA Inc. Sens. John Kerry, D-Mass. chairman of the Foreign Relations Committee and member of the Finance Committee, and Bob Corker, R-Tenn., member of the Banking, Housing and Urban Affairs Committee and the Foreign Relations Committee, introduced the Senate bill. Reps. Robert J. Dold, R-Il., member of the Financial Services Committee; Peter Roskam, R-Il, member of the Ways and Means Committee; Gary Peters, D-Mich., member of the Financial Services Committee, and John Barrow, D-Ga., member of the Energy and Commerce Committee, introduced the companion bill in the House. Both measures would call on the Department of Commerce to determine policy changes necessary to entice more global companies to invest in the U.S. A slew of other business groups are likely to take interest in the legislation. OFII attended a roundtable discussion on the issue in Chicago yesterday, which also was attended by Zurich North America CEO Mike Foley; Chemical Industry Council of Illinois Executive Director Mark Biel, and Andy Milnes, regional business leader for BP Products North America Inc. Price WaterhouseCoopers, which regularly keeps watch on tax and investment issues, itself represented 11 other organizations in the first quarter of this year. While the OFII was its top paying client, next was the Business Roundtable, which on its own spent $2.8 million lobbying on a range of business and finance issues in the first quarter. In 2011, OFII reported $2.2 million in lobbying expenditures, and hired several outside firms to assist in its efforts, paying anywhere from $10,000 to $60,000 per quarter for those outside firms. In the first quarter of 2012, OFII reported $210,000 in lobbying expenditures, and hired five outside firms, including PricewaterhouseCoopers for $220,000. OFII during this session of Congress also has been lobbying issues related to improving the L-1 Visa process to improve American job growth and issues relating to United States policies to attract and retain foreign direct investment. Specific bills it has lobbied include: H.R.1439: Business Activity Tax Simplification Act of 2011 112 H.R.7: American Energy and Infrastructure Jobs Act of 2012 – Amendment that seek to alter and expand Buy America requirements S.1813: Moving Ahead for Progress in the 21st Century Act — provisions that seek to alter and expand Buy America Requirements H.R.3157: To amend the Internal Revenue Code of 1986 to prevent the avoidance of tax by insurance companies through reinsurance with non-taxed affiliates. S.1573: Financial Services and General Government Appropriations Act, 2012 S.1693: A bill to amend the Internal Revenue Code of 1986 to prevent the avoidance of tax by insurance companies through reinsurance with non-taxed affiliates. S.1946: Foreign Manufacturers Legal Accountability Act of 2011 S.1346: Stop Tax Haven Abuse Act S.1373: International Tax Competitiveness Act of 2011 S.1573: Financial Services and General Government Appropriations Act, 2012 H.R.1439: Business Activity Tax Simplification Act of 2011 H.R.64: To amend the Internal Revenue Code of 1986 to prevent corporations from exploiting tax treaties to evade taxation of United States income. S.23: America Invents Act

### 1ar political capital not key

#### Even if the plan is unpopular they have no reason the backlash would be on <issue>, proven in the cross-x, the votes based on this are ideological GOP X and democrats Y.

#### The hill is way to polarized for Obama to use the power of persuasion to bring people on board, that’s Klein, if there is agreement now that just proves the agreement is inevitable because ideas are lining up ideologically.

#### Don’t prefer issue specific evidence, their authors distort the language of political capital

Dickinson ‘9 (Matthew, Professor of Political Science – Middlebury College and Former Professor – Harvard University, “Sotomayor, Obama, and Presidential Power”, Presidential Power: A NonPartisan Analysis of Presidential Politics, 5-26, http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/

As for Sotomayor, from here the path toward almost certain confirmation goes as follows: the Senate Judiciary Committee is slated to hold hearings sometime this summer (this involves both written depositions and of course open hearings), which should lead to formal Senate approval before Congress adjourns for its summer recess in early August. So Sotomayor will likely take her seat in time for the start of the new Court session on October 5. (I talk briefly about the likely politics of the nomination process below). What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee.

#### Link=yes no question, da can only be as strong as its weakest parts.

#### Answer here is no, empirical studies go aff

Klein 12 (Ezra, citing George Edwards, the director of the Center of Presidential studies at Texas A and M is the editor of Wonkblog and a columnist at the Washington Post, as well as a contributor to MSNBC and Bloomberg. “THE UNPERSUADED” <http://www.newyorker.com/reporting/2012/03/19/120319fa_fact_klein?currentPage=5>, Donnie)

Edwards, ever the data cruncher, has the numbers to back up this perception. “When President Obama took office, he enjoyed a 68 percent approval level, the highest of any newly elected president since John F. Kennedy,” he wrote in a recent paper. “For all of his hopes about bipartisanship, however, his early approval ratings were the most polarized of any president in the past four decades. By February 15, less than a month after taking office, only 30 percent of Republicans approved of his performance in office while 89 percent of Democrats and 63 percent of Independents approved. The gap between Democratic and Republican approval had already reached 59 percentage points—and Obama never again reached even 30 percent approval among Republicans.” This, Edwards says, is the reality facing modern Presidents, and one they would do well to accommodate. “In a rational world, strategies for governing should match the opportunities to be exploited,” he writes. “Barack **Obama is only the latest in a long line of presidents who have not been able to transform the political landscape through their efforts at persuasion.** When he succeeded in achieving major change, it was by mobilizing those predisposed to support him and driving legislation through Congress on a party-line vote.” That’s easier said than done. We don’t have a system of government set up for Presidents to drive legislation through Congress. Rather, we have a system that was designed to encourage division between the branches but to resist the formation of political parties. The parties formed anyway, and they now use the branches to compete with one another. Add in minority protections like the filibuster, and you have a system in which the job of the President is to persuade an opposition party that has both the incentive and the power to resist him. Jim Cooper says, “We’ve effectively lost our Congress and gained a parliament.” He adds, “At least a Prime Minister is empowered to get things done,” but “we have the extreme polarization of a parliament, with party-line voting, without the empowered Prime Minister.” And you can’t solve that with a speech

Reagan, Roosevelt and Clinton prove

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In 1993, George Edwards, the director of the Center for Presidential Studies, at Texas A. & M. University, sponsored a program in Presidential rhetoric. The program led to a conference, and the organizers asked their patron to present a paper. Edwards didn’t know anything about Presidential rhetoric himself, however, so he asked the organizers for a list of the best works in the field to help him prepare. Like many political scientists, Edwards is an empiricist. He deals in numbers and tables and charts, and even curates something called the Presidential Data Archive. The studies he read did not impress him. One, for example, concluded that “public speech no longer attends the processes of governance—it is governance,” but offered no rigorous evidence. Instead, the author justified his findings with vague statements like “One anecdote should suffice to make this latter point.” Nearly twenty years later, Edwards still sounds offended. “They were talking about Presidential speeches as if they were doing literary criticism,” he says. “I just started underlining the claims that were faulty.” As a result, his conference presentation, “Presidential Rhetoric: What Difference Does It Make?,” was less a contribution to the research than a frontal assault on it. The paper consists largely of quotations from the other political scientists’ work, followed by comments such as “He is able to offer no systematic evidence,” and “We have no reason to accept such a conclusion,” and “Sometimes **the authors’ assertions, implicit or explicit, are clearly wrong**.” Edwards ended his presentation with a study of his own, on Ronald Reagan, who is generally regarded as one of the Presidency’s great communicators. Edwards wrote, “If we cannot find evidence of the impact of the rhetoric of Ronald Reagan, then we have reason to reconsider the broad assumptions regarding the consequences of rhetoric.” As it turns out, there was reason to reconsider. Reagan succeeded in passing major provisions of his agenda, such as the 1981 tax cuts, but, Edwards wrote, “surveys of public opinion have found that support for regulatory programs and spending on health care, welfare, urban problems, education, environmental protection and aid to minorities”—all programs that the President opposed—“increased rather than decreased during Reagan’s tenure.” Meanwhile, “support for increased defense expenditures was decidedly lower at the end of his administration than at the beginning.” In other words, people were less persuaded by Reagan when he left office than they were when he took office. Nor was Reagan’s Presidency distinguished by an unusually strong personal connection with the electorate. A study by the Gallup organization, from 2004, found that, compared with all the Presidential job-approval ratings it had on record, Reagan’s was slightly below average, at fifty-three per cent. It was only after he left office that Americans came to see him as an unusually likable and effective leader. According to Edwards, Reagan’s real achievement was to take advantage of a transformation that predated him. Edwards quotes various political scientists who found that conservative attitudes peaked, and liberal attitudes plateaued, in the late nineteen-seventies, and that Reagan was the beneficiary of these trends, rather than their instigator. Some of Reagan’s closest allies support this view. Martin Anderson, who served as Reagan’s chief domestic-policy adviser, wrote, “What has been called the Reagan revolution is not completely, or even mostly, due to Ronald Reagan. . . . It was the other way around.” Edwards later wrote, “As one can imagine, I was a big hit with the auditorium full of dedicated scholars of rhetoric.” Edwards’s views are no longer considered radical in political-science circles, in part because he has marshalled so much evidence in support of them. In his book “On Deaf Ears: The Limits of the Bully Pulpit” (2003), he expanded the poll-based rigor that he applied to Reagan’s rhetorical influence to that of nearly every other President since the nineteen-thirties. Franklin Delano Roosevelt’s fireside chats are perhaps the most frequently cited example of Presidential persuasion. Cue Edwards: “He gave only two or three fireside chats a year, and rarely did he focus them on legislation under consideration in Congress. It appears that FDR only used a fireside chat to discuss such matters on four occasions, the clearest example being the broadcast on March 9, 1937, on the ill-fated ‘Court-packing’ bill.” Edwards also quotes the political scientists Matthew Baum and Samuel Kernell, who, in a more systematic examination of Roosevelt’s radio addresses, found that they fostered “less than a 1 percentage point increase” in his approval rating. His more traditional speeches didn’t do any better. He was unable to persuade Americans to enter the Second World War, for example, until Pearl Harbor. No President worked harder to persuade the public, Edwards says, than Bill Clinton. Between his first inauguration, in January, 1993, and his first midterm election, in November, 1994, he travelled to nearly two hundred cities and towns, and made more than two hundred appearances, to sell his Presidency, his legislative initiatives (notably his health-care bill), and his party. But his poll numbers fell, the health-care bill failed, and, in the next election, the Republicans took control of the House of Representatives for the first time in more than forty years. Yet Clinton never gave up on the idea that all he needed was a few more speeches, or a slightly better message. “I’ve got to . . . spend more time communicating with the American people,” the President said in a 1994 interview. Edwards notes, “It seems never to have occurred to him or his staff that his basic strategy may have been inherently flawed.” George W. Bush was similarly invested in his persuasive ability. After the 2004 election, the Bush Administration turned to the longtime conservative dream of privatizing Social Security. Bush led the effort, with an unprecedented nationwide push that took him to sixty cities in sixty days. “Let me put it to you this way,” he said at a press conference, two days after the election. “I earned capital in the campaign, political capital, and now I intend to spend it.” But the poll numbers for privatization—and for the President—kept dropping, and the Administration turned to other issues. Obama, too, believes in the power of Presidential rhetoric. After watching the poll numbers for his health-care plan, his stimulus bill, his Presidency, and his party decline throughout 2010, he told Peter Baker, of the Times, that he hadn’t done a good enough job communicating with the American people: “I think anybody who’s occupied this office has to remember that success is determined by an intersection in policy and politics and that you can’t be neglecting of marketing and P.R. and public opinion.” The annual State of the Union address offers the clearest example of the misconception. The best speechwriters are put on the task. The biggest policy announcements are saved for it. The speech is carried on all the major networks, and Americans have traditionally considered watching it to be something of a civic duty. And yet Gallup, after reviewing polls dating back to 1978, concluded that “these speeches rarely affect a president’s public standing in a meaningful way, despite the amount of attention they receive.” Obama’s 2012 address fit the pattern. His approval rating was forty-six per cent on the day of the speech, and forty-seven per cent a week later. Presidents have plenty of pollsters on staff, and they give many speeches in the course of a year. So how do they so systematically overestimate the importance of those speeches? Edwards believes that by the time Presidents reach the White House their careers have taught them that they can persuade anyone of anything. “Think about how these guys become President,” he says. “The normal way is talking for two years. That’s all you do, and somehow you win. You must be a really persuasive fellow.” But being President isn’t the same as running for President. When you’re running for President, giving a good speech helps you achieve your goals. When you are President, giving a good speech can prevent you from achieving them.

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Feng, JD-NYU, 09 (YIHENG, CONSEQUENCES OF THE CONGRESSIONAL POLITICIZATION OF FOREIGN DIRECT INVESTMENT ON NATIONAL SECURITY GROUNDS, http://www.law.nyu.edu/ecm\_dlv1/groups/public/@nyu\_law\_website\_\_journals\_\_journal\_of\_international\_law\_and\_politics/documents/documents/ecm\_pro\_064915.pdf)

Legal and financial scholars have generally acknowledged the negative economic and political effects of the politicization of transactions, as laid out above. 193 But congressional or political interference with the CFIUS/FDI process is more deeply problematic than simply in its direct effects. Politicization, or, more accurately, inappropriate congressional oversight of the FDI review process, is flawed in its very nature, in that it threatens the legitimacy and effectiveness of FDI review. Politicization takes decisions out of the hands of CFIUS, a decision-making body that, while not perfect, is in the best position to analyze FDI threats to national security. It then places that decision-making power in the hands of politicians who are subject to short-term considerations and often have little expertise in the subject matter.

#### Politicization turns the whole aff- protectionism, investment, relations.

Rosen and Hanemann-Rhodium Group-11 (An American Open Door? Maximizing the Benefits of Chinese Foreign Direct Investment, http://www.ogilvypr.com/files/anamericanopendoor\_china\_fdi\_study.pdf)

The current screening process is not perfect. Key definitions in U.S. regulations are ambiguous, such as those defining what constitutes a “critical industry” and “foreign-government control.” Determining whether a transaction is benign or threatening is an art, not a science, and the subjective discretion left open by these definitions is intentional, so as to give screeners sufficient leeway to adapt as technology and industries evolve. If every aspect of the system were defined in advance—for instance, a list of open and closed industries—it would necessarily be more restrictive. Understandable as such discretion may be, there have been outcomes that seem hard to justify in terms of specific national security concerns. Our general conclusion that CFIUS is admirably focused on the discreet national security concerns it is tasked with by law can only be maintained as long as it remains clear that no matter what its members discuss internally, its determinations are subject to due process and appropriate oversight. If faith that the Committee is not being used as a tool for protectionism slips, then the interests of the United States will be seriously damaged. In light of foreign and domestic misgivings, whether reasonable or not, the Committee will likely need to offer even better assurance in the future that it is keeping to its mandate. The greater concern is not U.S. policy, but U.S. politics, which is prone to capriciousness and ends up diverting the benefits of Chinese direct investment to workers and communities in other nations if not corrected. Political interference in the FDI screening process, whether to protect special interests here from economic competition or to pursue a “fortress America” vision of national security, will have a toxic effect on even the most well-thought-out policy regimes. As shown in Section IV, it already has, as Chinese investments have been subject to serious politicization, an outgrowth of unfamiliarity, suspiciousness, lobbying efforts by vested interests, and the complexity of the overall U.S.–China relationship.