# --Turns Nuclear War

**Nuclear war/VTL? We turn and solve.**

**Thiele, ’94** teaches political theory and serves as Director of Sustainability Studies at the University of Florida (Leslie Paul, August 1994, Political Theory, “Twilight of Modernity: Nietzsche, Heidegger, and Politics,” Vol. 22, No. 3, pp. 481-2)

The importance of this 'secular' reading of Heidegger becomes clear in Kateb's subsequent reflections on human extinction. Kateb sets out to explore how we must think (about the world and about politics) so that a heightened attachment to existence induces us to do everything possible to eliminate the threat of nuclear annihilation. Democracy, or rather a democratic culture, is held to serve an important role in fostering the needed spiritual and emotional resources. Kateb's more surprising conclusion is that "the death of God, the end of all religiousness, best serves the cause of attachment to existence as such," and thus is the most important redress to our nuclear predicament.44 If we could somehow achieve an Archimedean point allowing an impartial judgment of life's worth, Kateb observes, then the abundant cruelty, waste, and ugliness of life would preclude its justification: "existence on the earth fails every test that is strenuously pressed by moral or teleological inquirers." 45But such metaphysical hypothesizing is beside the point. Kateb takes seriously Nietzsche's understanding that **we cannot properly evaluate life's worth**. Without a God's eye point of view, we can no more muster reasons to justify existence than we can muster reasons to condemn it. Religious or metaphysical justifications of life (under whose rubric we may subsume all moral and teleological efforts) are ill-begotten: at best they will fail to convince us of their impartiality and hence their prerogative to judge; at worst they will prove counterproductive begetting a destructive resentment of all the wickedness in life, for which they ultimately cannot account. This resentment of life may lead to political apathy or to a hyperactive pursuit of mastery, either of which may allow or **promote nuclear war making**. It follows that attachment to existence is best cultivated, and therefore the threat of human extinction best addressed, when all religious and metaphysical attempts to justify existence have been thoroughly discredited.

# 2NC Perm

**4. The perm bankrupts the alt – there is no middle ground for their motivations**

**Wrisley, ’10** (George, Prof of Philosophy @ U Iowa, 1 February 2010 “What Should Our Attitude Towards Suffering Be,” Nietzsche and Suffeirng- A Choice of Attitudes and Ideals, <http://www.google.com/search?hl=en&q=site%3Ageorgewrisley.com+What+Should+Our+Attitude+Towards+Suffering+Be&aq=f&oq=&aqi>=) Zanezor

How should we comport ourselves to the suffering we find in our lives? When touching a hot stove or confronted with danger, our natural reactions are to pull back, to flee, to find safety. In general it seems that we naturally shy away from discomfort and pain—suffering of all types. The child laments his boring afternoon and the adult fears the impending death of a parent and the subsequent anguish the loss will bring, hoping and wishing they will never come. Suffering, it seems, is quite rightly seen as undesirable. However: When a misfortune strikes us, we can overcome it either by removing its cause or else by changing the effect it has on our feelings, that is, by reinterpreting the misfortune as a good, whose benefit may only later become clear. So, should we seek to abolish suffering as far as we can by removing its cause, or should we attempt to change our attitude toward suffering such that it is no longer seen as (always) undesirable? Taking Nietzsche seriously when he says that it is the meaning of our suffering that has been the problem, I will attempt to indirectly answer this question by looking at two possibilities found in Nietzsche for giving meaning to our suffering. The first possibility concerns a religious ethic that, according to Nietzsche, views suffering as undesirable, but which ultimately uses mendacious and deleterious means to provide a meaning for human suffering. The second possibility concerns the extent to which we can say Nietzsche endorsed the idea of giving meaning to suffering through acknowledging its necessary role in human enhancement and greatness. Since the religious ethic sees suffering as undesirable and thus something ultimately to be avoided (being itself the paradigmatic means for easing suffering), and the means it uses to give suffering meaning are ultimately mendacious, I will argue that if Nietzsche is significantly correct in both his attack on religious morality and his alternative ideal, we can take this as evidence that the avoidance of suffering is not the proper attitude. Unfortunately, I will not be able to address the question of whether Nietzsche is significantly correct in this paper. Secondly, given Nietzsche’s positive alternative—one that embraces the necessary role suffering has for the enhancement of human life—I will argue that we can take this as evidence that it is our attitude toward suffering that needs to be modified, i.e., we should modify so that we no longer see suffering as something to be avoided. Because of this, the middle position of avoiding suffering when possible and then seeing its positive attributes when it does occur does not recommend itself. That is, since it will be argued that suffering has a positive and necessary role to play, to seek to avoid it as far as possible and then to acknowledge its positive aspects when it does occur, is not really to acknowledge and accept suffering’s positive and necessary role. However, as we will see, all of this is complicated by the issue of the order of rank as found in Nietzsche’s writings.

# AT: Cede the Political

2. No link – the ballot is an ethical affirmation of life, not a political action

**White 91** [alan, Mark Hopkins Professor of Philosophy Williams College, http://www.williams.edu/philosophy/faculty/awhite/WNL%20web/WNL%20contents.htm]

The most provocative teachings I find in Nietzsche are not political, but rather ethical; Nietzsche does not attempt to tell us how to save the world, but rather how to save ourselves -- how to save ourselves from living lives that we will come to view with regret rather than with pride.And he teaches that we can do that without becoming supermen who blithely crush their supposed inferiors

### 2NC – A2 Perm Do Both

#### Links to politics – Only PRIOR court action solves

Garrett and Stutz, 2005 (Robert T. Garrett and Terrence Stutz, Dallas Morning News, “School finance now up to court Justices to decide if overhaul needed after bills fail in Legislature” lexis)

That could foreshadow the court's response to a chief argument by state attorneys – that the court should butt out and leave school finance to the Legislature. A court finding against the state would put the ball back in the hands of lawmakers, who have tended to put off dealing with problems in schools, prisons and mental health facilities until state or federal judges forced them to act. "It's the classic political response to problems they don't want to deal with," said Maurice Dyson, a school finance expert and assistant law professor at Southern Methodist University. "There is no better political cover than to have a court rule that something must be done, which allows politicians to say their hands are tied."

#### Mootness – the CP wont happen in a world of the perm

Lee, 1992 (Evan Tsen Lee, Associate Professor, University of California, Hastings College of the Law, Harvard Law Review, January, lexis)

ONE of the major impediments to the judicial protection of collective rights 1 is the group of doctrines falling under the rubric [\*606] of "justiciability" -- standing, ripeness, and mootness. 2 These are the gatekeeper doctrines; each regulates a different dimension of entrance to the federal courts. The law of standing considers whether the plaintiff is the proper person to assert the claim, the law of ripeness ensures that the plaintiff has not asserted the claim too early, 3 and the law of mootness seeks to prevent the plaintiff from asserting the claim too late. 4 By keeping certain public-minded plaintiffs and public-law claims out of federal court, these doctrines have shifted much of the battle for collective rights to the more steeply pitched fields of state courts or the political process. 5 In particular, defendants in public law litigation have had considerable success keeping such cases out of the federal courts by invoking the "case or controversy" requirement [\*607] of Article III. 6 Under current Supreme Court precedent, if a plaintiff cannot demonstrate that she possesses an ongoing "personal stake" in the outcome of the litigation, a federal court has no jurisdiction to adjudicate the claim on the merits. 7 No amount of judicial discretion can overcome this jurisdictional defect, because Article III demarcates the outer limit of federal court power. 8 As a result, many attempts to establish entitlements to important collective rights fail before courts can give them full consideration.

#### Even if the ruling happens, it would not make a constitutional claim.

Lee, 1992 (Evan Tsen Lee, Associate Professor, University of California, Hastings College of the Law, Harvard Law Review, January, lexis)

Doubtless some will point to Supreme Court opinions characterizing decisions in moot cases as advisory opinions and stating that the [\*651] court has no jurisdiction to proceed in moot cases. A few such opinions exist, 270 although many more imply that the mootness and advisory opinions doctrines are distinct (but related) ideas. 271 The most satisfying way to view the present doctrinal relationship of mootness, advisory opinions, and Article III is as follows: decisions in moot cases are currently prohibited because they are said to exceed the jurisdictional grants of Article III; additionally, decisions in moot cases implicate the prudential component of the advisory opinions doctrine, but they do not implicate the doctrine's constitutional core. Thus, the constitutional dimension to the prohibition against deciding moot cases stems directly from Article III and not from an analogy to advisory opinions. If the Court were to repudiate its position that the mootness doctrine is constitutionally compelled, the analogy to advisory opinions would pose no independent constitutional obstacle to deciding moot cases on the merits.

### 2NC - A2 Links to Politics —A2 Harrison

#### The Harrison evidence is not qualified, not supported by evidence, and should not be evaluated; this is NOT an ethical challenge.

Harrison, 2007(Lindsay Harrison, edebate, “Please post this email to edebate on my behalf” March 3, online)

It has come to my attention that teams are reading "evidence" from a debate blog that I ran last year when the high school topic was a legal one. I started the blog because, in judging debates on the topic, I was frustrated by what I saw as misunderstandings of the legal system by many in the debate community. I also was frustrated by a lack of creativity in devising arguments as a result of a lack of broad legal knowledge. I intended the blog both to educate and to generate new ideas for argumentation. I did NOT intend the blog to be used as evidence, especially not in college debates where I figured the community would recognize that none of my posts were peer-reviewed (or reviewed by anyone at all), none of my posts were backed up by specific research, and none of my posts would ever qualify as "legal scholarship." In fact, I am merely giving people ideas for arguments and I do not necessarily advocate any of the ideas as my own - I consider evidence to be taken out of context if it says, "debaters should argue that bush would get credit" and folks read only the part suggesting "bush would get credit," thereby attributing that idea to me. When I found out that people were reading "Harrison 06" evidence from the blog as link cards on the court politics argument, I made an effort to end this. Whenever anyone read this evidence in front of me, I asked that they not do so in the future. I also posted something on the blog that I intended as a disclaimer for people not to read "evidence" from the blog. I have been traveling internationally for several months and, upon my return, I found out that people have continued to read this evidence in debate rounds. Accordingly, I am now sending this to edebate in the hope that the community will recognize definitively that I do not want blog posts from my debate education blog to be read as "evidence" in rounds. Please do not read evidence from my debate education blog in rounds. I consider it to be taken out of context. I hope that if people do read this evidence in rounds that judges will penalize those teams for reading evidence that the author considers out of context.

### 2NC – A2 Links to Politics

#### Court action avoids energy lobby backlash

Matthew Hall (JD, Loyola Law School, former associate attorney at a litigation firm, and was an Adjunct Professor of Law at Loyola Law School) Winter 2010 “ A Catastrophic Conundrum, But Not a Nuisance: Why the Judicial Branch is Ill-Suited to Set Emissions Restrictions on Domestic Energy Producers Through the Common Law Nuisance Doctrine” 13 Chap. L. Rev. 265, Lexis

The energy lobby has long been accused of attempting to prevent, delay or at a minimum, assure the energy industry favorable terms in any comprehensive policy on climate change. 167 Energy companies have committed large sums of money to these causes. For instance, The American Coalition for Clean Coal Electricity, an advocacy group consisting of 48 energy producers, mining companies, and railroads, had committed $ 9.95 million to those ends as of March 2009. 168 Energy producers routinely make large campaign contributions to high-ranking members of Congressional committees charged with energy regulation and environmental action. For example, one of the largest contributors during the 2009-2010 campaign cycle to Rep. Joe Barton, Chairman of the House Committee on Energy & [\*295] Commerce, is none other than American Electric Power Co., the lead defendant in Connecticut v. American Electric Power Co. 169 The industries making the two largest contributions to Rep. Barton are the lectric utilities and oil & gas industries. 170 Given the aggressive attempts to influence climate change legislation that the energy lobby has demonstrated, an event causing energy producers to support emissions reduction legislation would be significant in making progress in this area. A decision authorizing piecemeal judicial regulation of emissions could be such an event. While the energy lobby has long resisted comprehensive emissions reduction policies, if such policies are to be initiated, it follows that energy producers would prefer they come from a source over which influence can be asserted to assure favorable terms. A judicially created emissions restriction seems to be a worst case scenario for energy producers. Unlike the political branches of government, the judiciary is intended to be beyond reproach by lobbyists. Without the need for (or the ability to accept) political contributions, the influence that can be asserted over the judiciary should be markedly less than that over the legislative process in Congress. The executive can be influenced in a similar manner, especially a first-term President needing cooperation on other major policy initiatives, including health care reform.

#### Courts don’t link to politics- shielded from political pressure

Ward, 2009 (Artemus Ward, Professor at NIU, Political Foundations of Judicial Supremacy, Congress and The Presidency, pg. 119)

After the old order has collapse the once- united, new-regime coalition begins to fracture as original commitments are extended to new issues. In chapter 3 Whittington combines Skowronek's articulation and disjunctive categories into the overarching "affiliated" presidencies as both seek to elaborate the regime begun under reconstructive leaders. By this point in the ascendant regime, Bourts are staffed by justices from the dominant ruling coalition via the appointment process - and Whittington spends time on appointment politics here and more fully in chapter 4. Perhaps counter-intuitively, affiliated political actors - including presidents - encourage Courts to exercise vetoes and operate in issue areas of relatively low political salience. Of course, this "activism" is never used against the affiliated president per se. Instead, affiliated Courts correct for the overreaching of those who operate outside the preferred constitutional vision, which are often state and local governments who need to be brought into line with nationally dominant constitutional commitments. Whittington explains why it is easier for affilitated judges, rather than affiliated presidents, to rein in outliers and conduct constitutional maintenance. The latter are saddled with controlling opposition political figures, satisfying short-term political demands, and navigating intraregime gridlock and political thickets. Furthermore, because of their electoral accountability, politicians engage in position-taking, credit-claiming, and blame-avoidance behavior. By contrast, their judicial counterparts are relatively sheltered from political pressures and have more straightforward decisional processes. Activist Courts can take the blame for advancing and legitimizing constitutional commitments that might have electoral costs. In short, a division of labor exists between politicians and judges affiliated with the dominant regime.

#### No backlash to the counterplan—provides cover.

Cramton et al, 2009 (Paul D. Carrington, Professor of Law at Duke University; and Roger C. Cramton, Robert S. Stevens Professor of Law Emeritus at Cornell University, Cornell Law Review, March, lexis)

This expansion of the Court's political responsibility obviously encroaches upon the responsibility of elected officials but is not necessarily an offense to these elected officials. Clearly, many elected politicians welcome the opportunity to leave the duty of making unwelcome decisions to "life-tenured" judges. 109 The politicians are free to denounce such decisions without bearing accountability to voters or campaign contributors. 110

### 2NC – A2 No Test Case

#### Test cases are in the pike now

Lawrence Hurley (reporter for E&E Publishing) August 2012 “Fresh off Supreme Court win, legal group girds for more battles with EPA” http://eenews.net/public/Greenwire/2012/08/17/2

The success in Sackett looks as if it could open up a new front in PLF's battle against the government. Many of the potential clients who have called seeking advice since the ruling complain of similar treatment, not just at the hands of EPA but also other agencies, including the Army Corps of Engineers. Schiff hopes Sackett will help him challenge Army Corps decisions on wetlands jurisdiction. But first, he has a case in New Mexico involving property owners who had a "Sackett-like experience" with the corps. PLF might also file briefs in cases that were already under way before the Supreme Court issued its ruling. One involves a chicken farm in West Virginia; another concerns Gasco Energy Inc. in Colorado. In both cases, EPA issued a compliance order and the companies involved were not able to challenge it in court first.

#### The court can always find a test case.

Adamany, 1990 (David, Professor at Wayne State, The American Courts: A Critical Assessment, p. 9)

Since Congress adopted the Judges Bill of 1925, most cases on the appellate and miscellaneous dockets have been by writ of certiorari — a request for the justices to hear cases that they may, but are not required, to hear. Under Supreme Court Rule 17, which gives broad categories of cases that the Court may hear, at least four justices must agree to hear a case before it is considered by the Court. Some cases on the appellate docket have been “appeals by right,” certain cases involving the constitutionality of state or federal laws or state constitutional provisions. By law, the Court was required to hear these cases; but the justices developed broad discretion by rejecting cases that failed to pose a substantial federal question as defined by the justices. In 1988, Congress revised the law virtually to eliminate appeals by right, thus giving the justices almost complete choice about what cases to decide. With more than 5.000 cases pending annually, the Supreme Court can almost always find a case to raise any policy issue that the justices wish to decide. Chief Justice Earl Warren apparently asked his law clerks to find a case on the Court’s docket that would allow the justices to overrule a previous decision holding that there was no right for the poor to have an attorney in every criminal trial. The clerks found such a case, and the Court used it to announce a new constitutional rule guaranteeing the right to counsel (Danelski and Danelski 1989, 508). The Court has sometimes gone to great lengths to find the issue it wants to decide. In the landmark case of Mapp v. Ohio (367 U.S. 617 [1961]), the Court held that illegally seized evidence could not be used in state criminal trials. But the dissenting justices accused the majority of “reaching out” to find that issue in the brief of amicus curiae, because the jurisdictional statements, briefs, and oral arguments of the parties had all been devoted to First Amendment free speech issues. Where the Court cannot find an issue on its docket, it may order parties to argue an issue that the justices want to consider. Over the strong objection of four justices that the majority was raising “a question not presented” by the parties, five justices ordered the parties in Patterson v. McLean Credit Union (485 U.S. 617 [1988]) to rearue the case to determine whether the Court’s 1976 interpretation of a federal civil rights statute should be reconsidered and changed. The majority pointed out four previous cases within the past twenty years when the Court had also ordered reargument to determine whether an earlier decision should be reconsidered and changed.

### 2NC Solvency – Offshore Moratorium

#### Courts solve offshore drilling moratoria

Edward W. Thrasher (J.D. Candidate, Brooklyn Law School) Spring 2012 “Cleaning Up the Muck: A TAKINGS ANALYSIS OF THE MORATORIUM ON DEEPWATER DRILLING FOLLOWING THE BP OIL SPILL” 77 Brooklyn L. Rev. 1285, Lexis

II. Legal Fallout The moratorium also sparked significant legal debate. On the extreme end of the spectrum, the moratorium was condemned as everything from a blatant executive overreach lacking reason and spurred by fear, 50 to an unconstitutional regulation of commerce by the executive branch in violation of the separation of powers. 51 Armchair debaters aside, there are real and tangible legal issues stemming from the actions of the federal government in the wake of the Deepwater Horizon accident. On June 7, 2010, Hornbeck Offshore Services, L.L.C. (Hornbeck) filed suit in the United States District Court for the Eastern District of Louisiana against the Secretary, the Department of the Interior, the Minerals Management Service (MMS), and the Director of the MMS seeking declaratory and injunctive relief to end the moratorium. 52 Subsequently, additional plaintiffs joined the litigation. 53 Judge Martin Feldman, presiding over the case, issued a preliminary injunction against the enforcement of the moratorium. 54 The court held that, based on the administrative record, the blanket moratorium on all drilling wells of more than five hundred feet of water was likely to be found "arbitrary and capricious" and was thus invalid under the Administrative Procedure Act (APA) and the Outer Continental Shelf Land Act (OCSLA) and its implementing regulations. 55 The following section will further explore that decision. A. The Hornbeck Decision Judge Feldman framed the issue to be decided in Hornbeck as "whether the federal government's imposition of a general moratorium on deepwater drilling for oil in the Gulf of Mexico was imposed contrary to law." 56 The statutes governing the [\*1294] outcome were OCSLA, which provides authority to the Secretary to suspend leases in the Gulf under certain circumstances, 57 and the APA, which authorizes the federal courts to review final agency action. 58 The plaintiffs generally alleged that the moratorium by the Secretary as well as the Notice to Lessees (NTL) implementing the moratorium were "arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the APA, OCSLA and its implementing regulations." 59 Additionally, they made a brief allegation that the moratorium was an impermissible "'taking' of . . . property rights in violation of the 5th Amendment to the United States Constitution." 60 The focus of the plaintiffs' complaint was directed at the arbitrary and capricious claim. 61 They claimed that the moratorium was unwarranted based on the Report provided to the Secretary by a panel of experts. 62 They alleged that the Secretary had exaggerated or entirely invented the experts' support and recommendations for the moratorium. 63 Further, they alleged the Secretary had failed to adequately explain the reasons behind the suspension of operations 64 or why he had chosen a general depth limit of five hundred feet for the drilling ban. 65 The plaintiffs pointed to a lack of individualized justification for the moratorium, stating, The Report itself does not contain any facts, data, analysis or risk assessment concerning why the Secretary imposed a Moratorium on further drilling by the "33 existing wells." Twenty-nine of these [\*1295] wells had been subjected to additional inspections following the Incident. According to the "MMS Deepwater Drilling Rig Inspection Report" . . . , issued on May 11, 2010, MMS found no violations of governing regulations or existing permit terms on 27 of the 29 drilling rigs inspected and only minor violations on the two others. Further, each of the 33 rigs had previously satisfied the rigors of the MMS permitting process. 66 Additionally, they expressed concern about the injurious economic effects of the moratorium, exclaiming that "lost wages for direct and indirect jobs lost could be over $ 165 million to $ 330 million per month for every month the 33 platforms are idle." 67 The long-term effects were viewed as similarly alarming. The Report stated that the offshore operations provide employment for approximately 150,000 people. 68 The moratorium put many of these jobs at risk. Further, without robust and continuous drilling activities, this labor force would lack incentive to remain in the region, thus reducing the ability of companies like the Hornbeck plaintiffs to find workers. 69 Finally, the plaintiffs also pointed to the possibility that the moratorium might actually last substantially longer than six months, 70 an unacceptable possibility for an industry that relied on contracts and equipment with a limited useful life. 71 The government countered by citing the relevant portions of OCSLA that specifically authorize the Secretary to direct a suspension of drilling whenever it determines that "'activities pose a threat of serious, irreparable, or immediate harm or damage' to human or animal 'life, property, [] mineral deposit, or the marine, coastal, or human environment.'" 72 The Secretary highlighted that the moratorium was needed to "address critical [\*1296] spill containment and response deficiencies" and warned that there were "insufficient available response resources should another deepwater spill occur while the containment and clean up efforts [were ongoing] . . . ." 73 The government pointed out that courts must defer to agency decisions that are supported by a thorough administrative record, and in this case, "the interim safety measures in the Safety Report and the corresponding suspension of deepwater drilling were appropriately supported by the Administrative Record." 74 The defendants spent little time addressing the Fifth Amendment takings claim, asserting only that it was "both wholly without merit and outside of the jurisdiction of this Court to adjudicate." 75 Judge Feldman issued his decision on June 22, 2010, holding that the moratorium was contrary to law and that he was "unable to divine or fathom a relationship between the findings and the immense scope of the moratorium." 76 He noted that the Report-supposedly the supporting basis for the moratorium-focused narrowly on the Deepwater Horizon incident alone. 77 In contrast, the resulting moratorium was exceedingly broad, applying to rigs that had exemplary safety records and that drilled in significantly shallower water than the Deepwater Horizon. 78 Judge Feldman found it hard to believe that such a suspension would be deemed appropriate in other contexts, asking, "If some drilling equipment parts are flawed, is it rational to say all are? Are all airplanes a danger because one was? All oil tankers like Exxon Valdez? All trains? All mines? That sort of thinking seems heavy-handed, and [\*1297] rather overbearing." 79 Accordingly, the court held that the government's actions in implementing the moratorium had been "arbitrary and capricious" and were thus contrary to the requirements of the APA and OSCLA. 80 Therefore, the court granted the plaintiffs' motion for a preliminary injunction preventing the moratorium from being enforced. 81 Because the parties had failed to fully argue it, and perhaps to avoid entering the difficult and muddled jurisprudence of takings analysis, the court did not analyze or even mention the merits of the plaintiffs' takings claim. 82 B. The Government's Response to the Injunction The decision by Judge Feldman led to additional controversy surrounding the moratorium. Only days after the ruling, the Secretary publicly announced that the government was working on passing a second moratorium. 83 The government reiterated this intention when-just hours before the district court's decision was appealed before the United States Court of Appeals for the Fifth Circuit-a senior administration official announced that the government "would immediately issue a new moratorium" regardless of the outcome of the appeal. 84 The maneuver sparked outrage from critics who claimed that the statements were made in a brazen attempt to intimidate the court. 85 Nevertheless, on July 12, 2010, the Secretary issued a [\*1298] memorandum rescinding the first moratorium but ordering a new-yet similar-blanket suspension on offshore oil drilling. 86 Additionally, the government moved to dismiss the original suit on the grounds of mootness since the original moratorium was no longer in effect. 87 Counsel for the plaintiffs, incensed by the government's actions, invoked Marbury v. Madison and exclaimed that the decision to pass a new moratorium with the same practical effects as the now enjoined original one constituted executive interference with the judicial branch and the judicial review process. 88 The motion for dismissal was addressed on September 1, 2010, when Judge Feldman again ruled against the government, holding that mootness did not apply and stating that the second moratorium was essentially the same as the first one. 89 In addressing the issue of whether the Secretary had the authority to rescind the first moratorium, he noted that the proper procedure for an agency seeking to reconsider a decision that is under judicial review is for the agency to move the court to remand. 90 The court voiced its concern that "if agencies are not required to move to remand, they may use rescission and reissuance of their decisions as a way to manipulate the federal jurisdiction of U.S. courts." 91 Ultimately, Judge Feldman concluded the rescission did have "some administrative force," 92 but this was not enough to save the defendants' motion to dismiss. The court criticized their maneuvering, expressing that, "In reality, the new moratorium covers precisely the same rigs and precisely the same deepwater drilling in the Gulf of Mexico as did the first moratorium." 93 The court did not specifically decide whether the second moratorium was again [\*1299] arbitrary and capricious (the sole issue before the court was whether the case surrounding the first moratorium was now moot), but instead focused on whether the harm imposed by the first moratorium would also be imposed by the second. 94 Under the voluntary cessation exception to mootness claims, a federal court will only find a case to be moot if the subsequent government action makes it clear that the initial harm could not reasonably be expected to recur. 95 Judge Feldman noted that the government's public announcements immediately following his initial ruling sharply undermined their argument that the second moratorium was based on a significantly supplemented administrative record. 96 More importantly, these public announcements and posturing indicated that there was a reasonable expectation the harm to the plaintiffs could recur and thus the government's repeal of the first moratorium did not render the action moot. 97 Accordingly, Judge Feldman denied the defendants' motion to dismiss. 98 For some time, while the Hornbeck suit was underway, new litigation continued to emerge as a result of the moratorium. Additional plaintiffs brought claims that the moratorium had effectively ended drilling in shallow water located in entirely different parts of the country. 99 But it now [\*1300] appears that any formal need for the courts to enjoin the moratorium has largely passed; the moratorium was lifted on October 12, 2010, several weeks before it was scheduled to terminate. 100 Following the lifting of the moratorium, the Hornbeck plaintiffs continued to evaluate their legal options, but it was generally believed that "this was a dispute that had run its course." 101 There was lingering concern, however, that a de facto moratorium remained in place. 102 Todd Hornbeck (CEO of Hornbeck) stated, The industry hasn't seen the final requirements for what we would have to do to be able to actually get a permit issued. . . . Until that is done, lifting the moratorium may be just a moot or perfunctory act. . . . I'm skeptical that it will be anytime soon that permits will be issued . . . . 103

### 2NC – Solvency – A2 Rollback/Non-Compliance

#### Recent data proves – Court will have the last word

Adam Litpak (Writer for the New York Times) August 20, 2012 “In Congress’s Paralysis, a Mightier Supreme Court” http://www.nytimes.com/2012/08/21/us/politics/supreme-court-gains-power-from-paralysis-of-congress.html

The Supreme Court does not always have the last word. Sure, its interpretation of the Constitution is the one that counts, and only a constitutional amendment can change things after the justices have acted in a constitutional case. But much of the court’s work involves the interpretation of laws enacted by Congress. In those cases, the court is, in theory at least, engaged in a dialogue with lawmakers. Lately, though, that conversation has become pretty one-sided, thanks to the legislative paralysis brought on by Congressional polarization. The upshot is that the Supreme Court is becoming even more powerful. Here is the way things are supposed to work. In cases concerning the interpretation of ambiguous federal statutes, the justices give their best sense of what the words of the law mean and how they apply in the case before them. If Congress disagrees, all it needs to do is say so in a new law. The most prominent recent example of this dynamic was Ledbetter v. Goodyear Tire and Rubber Company, the 2007 ruling that said Title VII of the Civil Rights Act of 1964 imposed strict time limits for bringing workplace discrimination suits. In her dissent, Justice Ruth Bader Ginsburg reminded lawmakers that on earlier occasions they had overridden what she called “a cramped interpretation of Title VII.” “Once again,” she wrote, “the ball is in Congress’s court.” Congress responded with the Lilly Ledbetter Fair Pay Act of 2009, which overrode the 2007 decision. This sort of back and forth works only if Congress is not paralyzed. An overlooked consequence of the current polarization and gridlock in Congress, a new study found, has been a huge transfer of power to the Supreme Court. It now almost always has the last word, even in decisions that theoretically invite a Congressional response. “Congress is overriding the Supreme Court much less frequently in the last decade,” Richard L. Hasen, the author of the study, said in an interview. “I didn’t expect to see such a dramatic decline. The number of overrides has fallen to almost none.” The few recent overrides of major decisions, including the one responding to the Ledbetter case, were by partisan majorities. “In the past, when Congress overturned a Supreme Court decision, it was usually on a nonpartisan basis,” said Professor Hasen, who teaches at the University of California, Irvine. In each two-year Congressional term from 1975 to 1990, he found, Congress overrode an average of 12 Supreme Court decisions. The corresponding number fell to 4.8 in the decade ending in 2000 and to just 2.7 in the last dozen years. “Congressional overruling of Supreme Court cases,” Professor Hasen wrote, “slowed down dramatically since 1991 and essentially halted in January 2009.” Tracking legislative overrides is not an exact science, as some fixes may be technical and trivial. And there may be other reasons for the decline, including drops in legislative activity generally and in the Supreme Court’s docket. But scholars who follow the issue say that Professor Hasen has discovered something important. “Particularly since the 2000 elections, there has been a big falloff in overrides,” said William N. Eskridge Jr., a law professor at Yale and the author of a seminal 1991 study on which Professor Hasen built his own. “It gives the Supreme Court significantly more power and Congress significantly less power.” Richard H. Pildes, a law professor at New York University, said the findings were further proof that “the hyperpolarization of Congress is the single most important fact about American governance today.” It is, he said, a phenomenon that has “been building steadily over the last 30 years and is almost certainly likely to be enduring for the foreseeable future.” “The assumption,” he added, “has long been that when the court interprets a federal statute, Congress can always come back in and fix the statute if it disagrees with the court. Now, however, the court’s decisions are likely to be the last word, not the first word, on what a statute means.”

### 2NC – A2 Perm Do the CP

Congress should require the Department of the Interior to open all of America’s territorial waters for leasing, exploration, and drilling

#### First, it severs the agent. “The” means whole [USFG].

Merriam-Websters, 2010 (Online dictionary)

used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole

#### Courts can’t reduce—they rely on acquiescence.

Hanson et al, 2006 (Jon D. Hanson, professor at Harvard Law School; and Adam Benforado, Frank Knox Fellow at Cambridge University, “The drifters: Why the supreme court makes justices more liberal” January/February, online)

It would be a mistake to believe that the only situation that influences justices comes from within the Supreme Court building or individual judges’ limited spheres of interaction. The mechanisms designed to keep the judiciary independent of the other branches of government are necessarily incomplete, and there is good evidence that judges frequently interpret laws in ways that align with the particular policy desires of sitting members of Congress and the current president. This is not surprising given the forces that Congress and the president can bring to bear on the judiciary—including limiting or even stripping jurisdiction in certain areas, altering the size of federal courts, and instituting impeachment hearings. Just as important is the fact that the court cannot implement its orders without the acquiescence and assistance of other government actors. In addition, lower-court judges may be constrained by pressures not to be overruled by higher courts or the need to stake out particular positions in order to improve their chances of promotion within the judiciary.

#### Also, unenforceability.

Treanor and Sperling, 1993 (William Michael Treanor, Associate Professor of Law, Fordham University; and Gene B. Sperling, J.D., Yale Law School, Columbia Law Review, December, lexis)

Commentators have generally agreed with the overwhelming majority of courts that an overruling decision has the effect of automatically reviving statutes. For example, Erica Frohman Plave observed that revival was a necessary function of the limited scope of a judicial determination of unconstitutionality: "Such laws found unconstitutional are merely unenforceable until such time as they are found valid." 54 Professor Gerald Gunther has pronounced Attorney General Cummings's conclusion that Adkins "simply "suspended' enforcement" 55 of the District of Columbia minimum wage statute "persuasive," 56 and Professor Melville Nimmer similarly declared that "it seems clear that Attorney General Homer Cummings' opinion was correct." 57 Finally, Professor Oliver Field noted that a statute that has been found unconstitutional becomes enforceable when the case in which it was held unconstitutional is reversed because "a declaration of unconstitutionality does not operate as a repeal of a statute." 58 [\*1916]

#### ‘reduce’ modifies ‘restriction’ – means there must be legislative action

Hill and Hill (Gerald, Executive Director of the California Governor’s Housing Commission, Practice law for more than four decades, Kathleen, M.A. in political psychology from California State University. She was also a Fellow in Public Affairs with the prestigious Coro Foundation) 2005 “restriction” http://legal-dictionary.thefreedictionary.com/restriction

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

#### Resolved.

Random House Dictionary, 2010 (© Random House, Inc. 2010)

firm in purpose or intent; determined.

#### Should.

[Same Source] Random House Dictionary, 2010 (© Random House, Inc. 2010)

must; ought (used to indicate duty, propriety, or expediency

### 2NC Impacts

#### Russian collapse causes terrorist nuclear theft and escalates all conflicts

Patrick, Speice 2006 J.D. Candidate 2006, Marshall-Wythe School of Law, College of William and Mary, “NEGLIGENCE AND NUCLEAR NONPROLIFERATION: ELIMINATING THE CURRENT LIABILITY BARRIER TO BILATERAL U.S.-RUSSIAN NONPROLIFERATION ASSISTANCE PROGRAMS,” William & Mary Law Review, Lexis

The potential consequences of the unchecked spread of nuclear knowledge and material to terrorist groups that seek to cause mass destruction in the United States are truly horrifying. A terrorist attack with a nuclear weapon would be devastating in terms of immediate human and economic losses. (49) Moreover, there would be immense political pressure in the United States to discover the perpetrators and retaliate with nuclear weapons, massively increasing the number of casualties and potentially triggering a full-scale nuclear conflict. (50) In addition to the threat posed by terrorists, leakage of nuclear knowledge and material from Russia will reduce the barriers that states with nuclear ambitions face and may trigger widespread proliferation of nuclear weapons. (51) This proliferation will **increase the risk of nuclear attacks** against the United States or its allies by hostile states, (52) as well as increase the likelihood that **regional conflicts will draw in the United States and escalate to the use of nuclear weapons**. (53)

#### US-Russia nuclear war causes extinction and outweighs

Nick Bostrum March 2002 faculty of philosophy at Oxford and winner of the esteemed Eugene Gannon Award, <http://marukuwato.multiply.com/journal/item/157>

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

#### Even if Russia doesn’t collapse, opportunistic aggression by China would escalate – causes extinction

AlexanderSharavin2001 Director of the Institute for Military and Political Analysis, What the Papers Say, Oct 3)

Now, a few words about the third type of war. A real military threat to Russia from China has not merely been ignored; it has been denied by Russia's leaders and nearly all of the political forces. Let's see some statistic figures at first. The territory of Siberia and the Russian Far East comprises 12,765,900 square kilometers (75% of Russia's entire area), with a population of 40,553,900 people (28% of Russia's population). The territory of China is 9,597,000 square kilometers and its population is 1.265 billion (which is 29 times greater than the population of Siberia and the Russian Far East). China's economy is among the fastest-growing economies in the world. It remains socialistic in many aspects, i.e. extensive and highly expensive, demanding more and more natural resources. China's natural resources are rather limited, whereas the depths of Siberia and the Russian Far East are almost inexhaustible. Chinese propaganda has constantly been showing us skyscrapers in free trade zones in southeastern China. It should not be forgotten, however, that some 250 to 300 million people live there, i.e. at most a quarter of China's population. A billion Chinese people are still living in misery. For them, even the living standards of a backwater Russian town remain inaccessibly high. They have absolutely nothing to lose. There is every prerequisite for "the final throw to the north." The strength of the Chinese People's Liberation Army (CPLA) has been growing quicker than the Chinese economy. A decade ago the CPLA was equipped with inferior copies of Russian arms from late 1950s to the early 1960s. However, through its own efforts Russia has nearly managed to liquidate its most significant technological advantage. Thanks to our zeal, from antique MiG-21 fighters of the earliest modifications and S-75 air defense missile systems the Chinese antiaircraft defense forces have adopted Su-27 fighters and S-300 air defense missile systems. China's air defense forces have received Tor systems instead of anti-aircraft guns which could have been used during World War II. The shock air force of our "eastern brethren" will in the near future replace antique Tu-16 and Il-28 airplanes with Su-30 fighters, which are not yet available to the Russian Armed Forces! Russia may face the "wonderful" prospect of combating the Chinese army, which, if full mobilization is called, is comparable in size with Russia's entire population, which also has nuclear weapons (even tactical weapons become strategic if states have common borders) and would be absolutely insensitive to losses (even a loss of a few million of the servicemen would be acceptable for China). Such a war would be more horrible than the World War II. It would require from our state maximal tension, universal mobilization and complete accumulation of the army military hardware, up to the last tank or a plane, in a single direction (we would have to forget such "trifles" like Talebs and Basaev, but this does not guarantee success either). Massive nuclear strikes on basic military forces and cities of China would finally **be the only way out**, what would exhaust Russia's armament completely. We have not got another set of intercontinental ballistic missiles and submarine-based missiles, whereas the general forces would be extremely exhausted in the border combats. In the long run, even if the aggression would be stopped after the majority of the Chinese are killed, our country would be absolutely unprotected against the "Chechen" and the "Balkan" variants both, and even against the first frost of a possible nuclear winter.

### 2NC Link – Oil

#### Oil production decreases futures prices – lowers expectations of supply shortfalls

Paul Driessen 3-25-2012; Driessen received his bachelor's degree in geology and field ecology from Lawrence University, JD from the University of Denver College of Law, and accreditation in public relations from the Public Relations Society of America. Driessen is currently a senior policy advisor for the Congress of Racial Equality and a senior fellow with the Committee for a Constructive Tomorrow, Center for the Defense of Free Enterprise and the Atlas Economic Research Foundation. “Several Reasons Why Gasoline Prices are so High” http://oilprice.com/Energy/Gas-Prices/Several-Reasons-Why-Gasoline-Prices-are-so-High.html

Energy Information Administration (EIA) data show that 76% of what we pay for gasoline is determined by world crude oil prices; 12% is federal and state taxes; 6% is refining; and 6% is marketing and distribution. Global markets set the price that refiners pay for crude oil. World prices are driven by supply and demand, and unstable global politics. That means today’s prices are significantly affected by expectations and fears about tomorrow. A major factor is Asia’s growing appetite for oil – coupled with America’s refusal to produce more of its own petroleum. Prices are also whipsawed by uncertainty over potential supply disruptions, due to drilling accidents and warfare in Nigeria; disputes in Syria, Yemen and Israeli-Palestinian territories; erroneous reports of a pipeline explosion in Saudi Arabia; concern about attacks on Middle East oil pipelines and processing centres; and new Western sanctions on Iran over its nuclear program and the mullahs’ threats to close the Straits of Hormuz. Amid this uncertainty and unrest, speculators try to forecast future prices and price shocks, pay less today for crude oil that could cost more four weeks hence, and get the best possible price for clients who need reliable supplies. When they’re wrong, speculators end up buying high, selling low and losing money. Oil speculators play a vital role, just as they do in corn and other commodities futures markets. Today demand competes for oil instead of supply competing for buyers. Moreover, oil is priced in US dollars, and the Federal Reserve’s easy money, low interest policies called quantitative easing – combined with massive US indebtedness – have weakened the dollar’s value. It now costs refineries more dollars to buy a barrel of crude than it did three years ago. Compared to safe haven currencies like the Swiss franc the dollar is down by 35% in three years. Oil for those with strong currencies seems cheap. US Dollar vs Swiss Franc US Dollar vs Swiss Franc 2007 to Mar 2012 Basic chemistry dictates that a barrel of crude (42 gallons) cannot be converted entirely into gasoline. Depending on the type of crude, some 140 refineries across the USA transform each barrel into gasoline, diesel, and jet fuel, heating oil, asphalt, waxes, petrochemicals and other essential products. This manufacturing process leaves them with excess diesel fuel, because American vehicles consume less diesel than refineries produce – due to air pollution laws that limit diesel use. US refineries export that excess diesel to Europe, which uses more diesel than gasoline, and Europeans ship their surplus gasoline to mostly East Coast consumers. US refineries also sell excess inventories of other manufactured products to overseas markets, but diesel is by far their principal export. America exports $180 billion in finished products every month – $2.2 trillion annually in corn, wheat, cars, tractors, appliances, airplanes, pharmaceuticals and much more. Last year, for the first time since 1949, America was a net exporter of fuel and other petroleum products. Those exports injected $107 billion into our economy and sustained thousands of refinery and other jobs that otherwise might have been lost, as refineries also struggled in our stagnant economy. Farm and factory jobs would evaporate if we made exporting their products illegal. Prohibiting fuel exports, and demanding that refineries manufacture only what we need here in the States, would have the same effects on our employment, economy and living standards. The USA has 1.4 trillion barrels of technically recoverable conventional oil, the EIA and other experts estimate, and enormous additional supplies in shale and tight sand deposits. The best way to keep prices down is to produce more of this American oil, and import more from secure, friendly, nearby suppliers like Canada.

### Link – Oil Independence

#### US production increase would bring down prices and hurt exporters

Derek Brower July 2012; editor of Petroleum Economist, Saudi Arabia steps into the breach HIGHLIGHT: The kingdom's efforts to balance the market are working. It may herald a new era of oil abundance, writes Derek Brower, Lexis

That's the official line, and other Opec members say they are relaxed about rising output in Canada and the US. The Middle East isn't about to lose its pre-eminence as an oil-exporting powerhouse. But outside the region things are moving fast. "North America could become self sufficient in oil as well (as gas) by 2025," ConocoPhillips' Ryan Lance told the Opec seminar in Vienna in June. For exporters, the loss of the world's biggest consumer would be difficult to shrug off, especially as unconventional oil and gas loom on the radar in other consuming areas, too, from Asia to Europe. Said Lance: "For too long, we've faced inaccurate perceptions in consuming nations of resource scarcity." Those days are coming to an end.

### 2NC Sustainability

#### Prices will stay high enough to sustain regime control – only risk is a major collapse of prices

Mark Adomanis, 5-8-2012; analyst for Forbes, Russia and Oil: A Likely Source of Future Stability <http://www.forbes.com/sites/markadomanis/2012/05/08/russia-and-oil-a-likely-source-of-future-stability/>

The “reference case” is basically the most realistic, middle-of-the-road assessment. It assumes that a lot of conditions that characterize the current oil market, i.e. inconsistent and irregular access to new oil deposits in non-OPEC countries like Russia and OPEC’s interest in sustaining high prices, will remain fundamentally the same. There is also a highly optimistic estimate that sees the real price of oil shrinking to around $60-70 dollars a barrel and staying there through 2035. However there is also a decidedly pessimistic estimate which sees the price of oil rapidly spiking to around $170 dollars and the slowly increasing to $200 over the next two decades. The point is not to predict exactly what oil will cost in 2015, 2020, or 2035: that’s a fool’s errand. The point that I’m trying to make is that one can very easily find eminently mainstream institutions, indeed the EIA is about as mainstream as it gets, which produce forecasts that suggest the Kremlin will, in fact, be able to count on a steadily, if slowly, rising oil price. If the price of oil does, in fact, slowly ratchet up to around $150 a barrel over the next seven or eight years, I would expect that Putin’s hold on power will remain strong since the state will have enough resources to co-opt and/or repress the opposition. It seems to me that analyses of Russia’s economic future are overly focused on oil’s downside risks. These risks are both real and severe and I fully agree with those who argue that a rapid plunge in the oil price will have extremely deleterious consequences for Putin’s hold on power. But what seems important to me is that the people responsible for forecasting the future price of oil seem decidedly more bullish on its future course. The EIA is not some fringe outlet trying to get people to invest their savings in madcap commodities schemes, it’s a sober, boring, piece of the Federal bureaucracy. It would thus appear that the most likely outcome is for an oil price that is not supportive of revolutionary upheaval or economic chaos similar to that which consumed the 1980′s Soviet Union, but a high and slowly rising price that is broadly supportive of Russia’s current political arrangements.