### 2ac

#### This is a description of the status quo—no reason putting women into combat would increase sexual assault

LaBossiere 13 Mike, Professor of Philosophy, Florida A&M; “Women in Combat” *Talking Philosophy* February 1, 2013; http://blog.talkingphilosophy.com/?p=6725

A second stock argument is based on the claim that women soldiers will be subject to sexual assault (either by enemy forces or by fellow Americans). Given the amount of sexual assault that occurs within the American military, this is a matter of concern. However, allowing women in combat roles would not seem to increase the chances of their being assaulted by American soldiers. There is still, however, the concern that sexual assault will be inflicted by enemy forces—after all, rape has often been employed as a tool of war against civilian women, so it makes sense that it could also be employed against female soldiers.

#### Lifting the combat exclusion decreases sexual assault—the highest ranking officer in the military agrees

Baldor 13 LOLITA C. BALDOR, Associated Press 01/24/13 Huffington Post Women In Combat Will Strengthen U.S. Military, Leon Panetta Says <http://www.huffingtonpost.com/2013/01/24/women-in-combat_n_2543276.html>

[Gen. Martin Dempsey, chairman of the Joint Chiefs] Dempsey suggested that eliminating the ban on women in some combat roles could help with the ongoing sexual assault and harassment problems in the military.

"When you have one part of the population that is designated as warriors and another part that's designated as something else, I think that disparity begins to establish a psychology that in some cases led to that environment." said Dempsey. "I have to believe, the more we can treat people equally, the more likely they are to treat each other equally."

#### Plan solves sexual assault increasing female leadership creates policy changes

Garcia 13 Saudi, “Women in Combat: Military Must Prioritize Sexual Assault Prevention” *PolicyMic*; March 10, 2013; http://www.policymic.com/articles/29128/women-in-combat-military-must-prioritize-sexual-assault-prevention

The problem of rape in the military remains an issue that is entrenched in the misogynistic, hierarchical nature of the establishment. A positive effect of the lift in active duty combat roles is that the opportunity for more women to serve in the higher leadership and command positions will decrease the number of assaults that occur each year.¶ Despite policies indicating that expedited transfers and external mental health counseling are available, the reality of intimidation and punitive actions by the assailant (who are sometimes supervisors or higher ranking soldiers) results in low reporting rates. The cases that are reported can be easily ignored by higher command, who often side with the assailant. ¶ The legislative steps issued by Secretary Panetta will ensure that claims of sexual assault are handled by senior officers, but substantive change remains to be seen. Despite the legislature, women serving active duty tours will still be vulnerable in the battlefield if they are raped, coerced into silence, and threatened to be discharged once they break it. Without access to resources and unable to transfer, their mental health might deteriorate while serving long and difficult tours.¶ The mental health of the survivors of military sexual assault should not be an issue that is relegated to outside organizations, such as SWAN and the Military Rape Crisis Center. A step in this direction is the Ruth Moore Act of 2013. The Act was introduced in Congress this past February by Congresswoman Chellie Pingree (D-Maine) and Senator Jon Tester (D-Mont.) to ensure that service women are able to receive disability ratings from the Veteran Affairs Department. The Act would expedite military sexual assault survivor’s access to mental health resources.¶ A paradigm shift in the U.S. military would ensure that female combat soldiers are respected and allowed to perform their duties. A change in attitude about the value of the work of female soldiers, more women in higher command positions, and sweeping changes in the structure of basic military training can combat the sexist organizational. In the long run, this may lead to dramatic changes in the number of military sexual assault cases.

#### **They presume that only women can get sexually assaulted—ignores the epidemic of male sexual assaults in the military and insures the silencing of victims—their arg is the product of sexist ideology**

Rosenthal & Miller 13 Lindsay, Research Assistant for Women’s Health and Rights and Health Policy, Center for American Progress; & Katie, Researcher, Research Assistant at the LGBT Research and Communications Project at the Center; “5 Myths About Military Sexual Assault” *Center for American Progress*; June 6, 2013; http://www.americanprogress.org/issues/military/news/2013/06/06/65602/5-myths-about-military-sexual-assault/

Another reason why allowing women into combat positions is an insufficient explanation of rising rates of sexual assault is because it ignores the fact that more than half—53 percent—of victims of sexual assault in the military are men. In 2012 of the 26,000 military personnel estimated to have experienced sexual assault, 14,000 were men and 12,000 were women. Because of this, it is even more important that military leaders and members of Congress do not conflate sexual assault with their personal opinions on women serving in the military and in combat zones.

It is similarly incorrect to believe that the higher number of male victims of sexual assault is a result of the repeal of “Don’t Ask, Don’t Tell,” the law that prohibited gay and lesbian military members from serving openly. The data show that repeal of “Don’t Ask, Don’t Tell” has not contributed to an increase of sexual assaults committed against men. Furthermore, the military has reported time and again that repeal of the law has had no negative impact on military readiness or national security.

Men are not often considered in the context of military sexual assault because they are far less likely to report attacks than their female counterparts. A mere 1 in 10 victims of sexual assault who filed unrestricted reports in 2012 were male, and only 2 out of every 10 victims who filed restricted reports were men. If the data suggest anything, it is that the high rate of sexual assault is a military issue, not a women’s issue.

### T-hostilities

#### WPR not define hostilities—but best is that it’s combat

Holan 11 Angie Drobnic Holan. Deputy PolitiFact editor; and Louis Jacobson. PolitiFact Senior Writer June 22nd, 2011.

Are U.S. actions in Libya subject to the War Powers Resolution? A review of the evidence

http://www.politifact.com/truth-o-meter/article/2011/jun/22/are-us-actions-libya-subject-war-powers-resolution/

To research the administration's claim, we first turned to the law itself. The War Powers Resolution, passed in 1973, is not long; you can read it here. The resolution doesn't define "hostilities," but it does say that the president must go to Congress under three possible conditions if there is no formal declaration of war:

"In any case in which United States Armed Forces are introduced—

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation."

By our reading, dropping bombs on a country would fall under the second point. We then turned to a range of experts on military affairs, international relations and the law to see what the consensus was.

### T Not War Powers Authority

#### INTRODUCTION OF US ARMED FORCES is the assignment of forces to participate or engage in hostilities

WAR POWERS RESOLUTION 73 [50 USC Chapter 33 - WAR POWERS RESOLUTION, § 1547 - Interpretation of joint resolution, http://www.law.cornell.edu/uscode/text/50/1541]

(c) Introduction of United States Armed Forces

#### For purposes of this chapter, the term “introduction of United States Armed Forces” includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become

#### We reduce the president’s authority – we eliminate the president’s authority to introduce forces composed only of men.

#### Presidential authority stems from the constitution or statutory delegation.

Gaziano, 2001 (Todd, senior fellow in Legal Studies and Director of the Center for Legal Judicial Studies at the Heritage Foundation, 5 Texas Review of Law & Politics 267, Spring, lexis)

Although President Washington's Thanksgiving Proclamation was hortatory, other proclamations or orders that communicate presidential decisions may be legally binding. n31 Ultimately the authority for all presidential orders or directives must come from either the Constitution or from statutory delegations. n32 The source of authority (constitutional versus statutory) carries important implications for the extent to which that authority may be legitimately exercised or circumscribed. Regardless of the source of substantive power, however, the authority to use written directives in the exercise of that power need not be set forth in express terms in the Constitution or federal statutes. As is explained further below, the authority to issue directives may be express, implied, or inherent in the substantive power granted to the President. n33 The Constitution expressly mentions certain functions that are to be performed by the President. Congress has augmented the President's power by delegating additional authority within these areas of responsibility. The following are among the more important grants of authority under which the President may issue at least some directives in the exercise of his constitutional and statutorily delegated powers: Commander in Chief, Head of State, Chief Law Enforcement Officer, and Head of the Executive Branch.

#### **Extend the 1ac Urias evidence—congress delegated authority over women in combat to the executive branch in 1994.**

#### Limits – including delegated powers is key to congress affs because only the supreme court can reinterpret the president’s constitutional powers.

#### Force composition is key aff ground --- every time an authorization of force is passed, it involves discussions of what sort of limits should be placed on that intervention.

#### Aff Ground – they only allow 6 affs because they prevent the aff specifying what forms of war powers authority they limit.

#### Reasonability – competing interpretations causes a race to the bottom, crowds out substantive debate.

### T Restrict

#### Restrict means to restrain.

Words and Phrases 04 (Volume 37A, p. 406)

Miss. 1927. To “restrict” is to restrain within bounds; to limit; to confine; and does not mean to destroy or prohibit**.** Dart v. City of Gulfport, 113 So. 441, 147 Miss. 534.

#### They overlimit—only ban plans

### 2ac Courts

#### Perm do both

#### Courts don’t solve—a. doesn’t solve perception b. deference doctrine means that they don’t set an enforceable precedent

Yoshino 11 Kenji, Professor of Law, NYU; “The Military in the Constitution” *New York Times*; June 28, 2011; http://www.nytimes.com/roomfordebate/2010/10/13/the-future-of-dont-ask-dont-tell/the-military-in-the-constitution

I would have preferred it if the military's "don't ask, don't tell" policy had been repealed by Congress rather than struck down by a federal court. At the same time, I believe that Judge Virginia Phillips's decision to invalidate the policy and then to enjoin its enforcement was justified. Both positions are consistent with each other and our constitutional traditions.¶ The courts have historically given the military great deference, but there is no military exception to the Constitution.¶ I have a general and a specific reason for favoring legislative action over judicial action here. The general reason is that any time over 70 percent of the nation opposes a policy, as is the case with "don't ask, don't tell," that opposition is presumptively best expressed through our elected representatives. Such action gives more legitimacy to the ultimate decision because it more clearly hews to the democratic process.¶ The specific reason for preferring a legislative repeal of the policy is that the Constitution explicitly gives the legislative and executive branches control over the military. Article I of our Constitution grants Congress the power to regulate the military, while Article II makes the president the commander in chief of the armed forces.¶ Historically, these grants of authority have led the courts to accord extreme deference to the elected branches of government with respect to military issues. In the 1981 case of Rostker v. Goldberg, the Supreme Court rejected a sex-discrimination challenge to the male-only draft by observing that "judicial deference . . . is at its apogee when legislative action under the congressional authority to raise and support armies and make rules and regulations for their governance is challenged."¶

#### Empirically proven, courts do not promote social change

Boger 97 John Charles Boger, Professor of Law, University of North Carolina at Chapel Hill. Seton Hall Law Review 1997 27 Seton Hall L. Rev. 1450 ARTICLE: PANEL THREE -- LESSONS LEARNED FROM MOUNT LAUREL: MOUNT LAUREL AT 21 YEARS: REFLECTIONS ON THE POWER OF COURTS AND LEGISLATURES TO SHAPE SOCIAL CHANGE

Professor Rosenberg sets out to assess empirically these alternative models by measuring judicial capacity to achieve what he calls "significant social change:"

[T]he most interesting and relevant cases, such as Brown and Roe [v. Wade], occur when activist courts overrule and invalidate the actions of elected officials, or order actions beyond what elected officials are willing to do. What happens then? Are courts effective producers of change, as the Dynamic Court view suggests, or do their decisions do little more than point the way to a brighter, but perhaps unobtainable future? Once again, the conflict between two deeply held views about the role of the courts in the American political system has an obvious normative dimension that is worth debating. But this book has a different aim. Relying heavily on empirical data, I ask under what conditions can courts produce political and social change? When does it make sense for individuals and groups pressing for such change to litigate? What do the answers mean about the nature of the American regime? n69

**[\*1468]** Professor Rosenberg's empirical investigation of civil rights activity in the decades following the Brown decision has led him to defy conventional wisdom by doubting the practical impact of Brown:

In sum, the Dynamic Court view's claim that a major contribution of courts in civil rights was to give the issue salience, press political elites to act, prick the consciences of whites, legitimate the grievances of blacks, and fire blacks up to act is not substantiated. In all the places examined, wherever evidence supportive of the claim should exist, it does not... The evidence suggests that Brown's major positive impact was limited to reinforcing the belief in a legal strategy for change of those already committed to it. The burden of showing that Brown accomplished more now rests squarely on those who for years have written and spoken of its immeasurable importance. n70

Although some critics have questioned his methods and measurement tools, n71 Professor Rosenberg's most telling examination is quite persuasive on its own terms. He explores the well-known 15-year delay that occurred between the Court's 1954 decision in Brown and the effective desegregation of most Southern schools, which did not begin until the late 1960s. Professor Rosenberg's tables and graphs effectively demonstrate that, until Congress was moved to enact the Civil Rights Act of 1964 n72 and the Elementary and Secondary Education Act of 1965, n73 thereby giving the Department of Health, Education and Welfare both financial carrots and administrative sticks to wield against recalcitrant Southern school districts, forward progress against public school segregation was brought to a virtual standstill by open defiance from many Southern governors and legislators and by the more genteel defiance reflected in endless rear-guard actions waged by Southern school boards in federal courts. n74

Concluding from this evidence that Brown had no direct effects, Professor Rosenberg charitably searched for evidence that Brown exercised substantial indirect influence by forcing civil rights issues into national prominence, by prompting political elites to embrace a broader vision of civil rights, by inspiring African Americans to pursue mass **[\*1469]** political action, or by changing the hearts of America's white majority. His examination of contemporary national opinion polls, news coverage, biographies of black and white leaders of the Civil Rights era, and other plausible sources, however, failed to uncover evidence that Brown itself had been deeply influential in any of these areas. n75 Rosenberg ultimately identified other, non-judicial forces that could, in his view, sufficiently account for the desegregation that eventually did occur in public life. n76

#### \*\*Unpopular decisions create political backlash in Congress

Bradley Canon, professor of political science at the University of Kentucky, and Charles Johnson, professor of political science and head of the Department of Political Science at Texas A&M University, Judicial Policies: Implementation and Impact, 1999, p. 116-117

More than any other public agency, Congress tends to be the focal point for public reaction to judicial policies. As a political body, Congress cannot ignore any sizable or prominent group of constituents. Some groups become especially agitated when they are unhappy with some judicial decision or doctrine, and they make their dissatisfaction known to members of Congress. If the pressure is great enough and is not counterbalanced by pressure from groups that support the judicial policy, Congress will, if feasible, take action. At the very least, numerous members of Congress will score political points by showing righteous indignation on behalf of the disaffected groups.

#### Implementation ensures link to politics

Bradley Canon, professor of political science at the University of Kentucky, and Charles Johnson, professor of political science and head of the Department of Political Science at Texas A&M University, Judicial Policies: Implementation and Impact, 1999, p. 1

President Andrew Jackson, unhappy with a Supreme Court decision, is said to have retorted: "John Marshall has made his decision, now let him enforce it." His remark reminds us of a central fact of American democracy: judicial policies do not implement themselves. In virtually all instances, courts that formulate policies must rely on other courts or on nonjudicial actors to translate those policies into action. Inevitably, just as making judicial policies is a political process, so too is the implementation of the policies-the issues are essentially political, and the actors are subject to political pressures.

### 2ac XO

#### **Perm do both**

#### Article 3 of the constitution give Congress sole control of court jurisdiction. This means that ONLY Congress can create a cause of action

Key 96 Lisa E. Key, Associate Professor of Law, University of Missouri - Columbia. U.C. Davis Law Review Winter, 1996 29 U.C. Davis L. Rev. 283 ARTICLE: Private Enforcement of Federal Funding Conditions Under section 1983: The Supreme Court's Failure to Adhere to the Doctrine of Separation of Powers

There are, in fact, two distinct separation of powers concerns that potentially arise in the context of implied causes of action. The first concern relates to the exclusivity of Congress's power to determine federal court jurisdiction. Article III of the Constitution limits the cases that lower federal courts may hear to those matters for which there is a congressional statutory grant of jurisdiction. n95 Determining whether federal courts have jurisdiction to hear a private cause of action under a federal statute is thus solely the function of Congress, not the federal courts. Courts arguably usurp Congress's authority in this area whenever they rely on an implied cause of action for their source of jurisdiction because Congress, if it had wanted to create jurisdiction, certainly could have done so explicitly.

#### **This means only statute can create a cause of action**

Konnoth 11 CRAIG KONNOTH, The Yale Law Journal March, 2011 120 Yale L.J. 1263 COMMENT: Section 5 Constraints on Congress Through the Lens of Article III and the Constitutionality of the Employment Non-Discrimination Act

ENDA raises exactly these concerns, as the remedies that states currently provide are anemic, and indeed, are subject to repeal. The Williams Institute notes that of the few cities and counties that responded to its survey, two incorrectly referred employee complaints regarding discrimination to the  [\*1275]  EEOC (which has no federal mandate to address them). [n60](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true" \l "n60) One respondent was unaware of its own antidiscrimination provisions, another did not know what enforcement mechanisms were in place, and several lacked the resources to provide data or handle complaints. [n61](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true" \l "n61) Similarly, local provisions often have lower caps on damages, lack compensation for attorney's fees, or fail to protect discrimination based on perceived orientation. [n62](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true" \l "n62) Executive orders prohibiting discrimination fail to create a private cause of action and are not always backed up by investigative mechanisms. [n63](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true" \l "n63) Courts have also found that some localities' provisions are preempted by federal law. [n64](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.834391.4260498759&target=results_DocumentContent&returnToKey=20_T18281063812&parent=docview&rand=1380689849090&reloadEntirePage=true" \l "n64) Thus, only Congress can pass a bill that would definitively prevent localities' discrimination.

#### Enforcement is key – action in statute is key to culture-shifting

Stoddard 97Thomas B. Stoddard, attorney and adjunct professor at the New York University School of Law

New York University Law Review November, 1997 72 N.Y.U.L. Rev. 967 ESSAY: BLEEDING HEART: REFLECTIONS ON USING THE LAW TO MAKE SOCIAL CHANGE

D. Enforcing Change

The fourth prerequisite for legal change that accomplishes "culture-shifting" as well as "rule-shifting" is overall and continuous enforcement of the new rule by the government. Rules that are not enforced, particularly if they are dramatic or controversial, will simply be disregarded by all or part of the public.

I use the word "enforcement" in its broadest possible sense. "Enforcement" to me is not simply the imposition of penalties, civil or criminal. It is also the systematic notification - or lack of notification - of the new rule, and the provision of civil remedies to aggrieved individuals. Effective enforcement of a new law ought to incorporate mechanisms to promote public awareness and adherence as well as provide appropriate punishment; "culture-shifting" may be impossible without multiple systems of enforcement.

Consider again the New York City Clean Indoor Air Act of 1988. The drafters of the Act recognized that their ordinance would never accomplish its purpose without the dissemination throughout New York City of the news of the new law, and some opportunity for ordinary New Yorkers to understand its precise provisions. The ordinance therefore incorporated a range of methods of enforcement, some punitive and some merely instructive or informative; it provided for penalties and for a special "administrative tribunal" to consider alleged violations, but it did much more, in recognition of the reality that penalties by themselves do not assure compliance. The ordinance required each employer with more than fifteen workers to adopt and "make known" a written smoking policy implementing the new ordinance, a policy that was then to be posted in a prominent place and distributed within three weeks to all employees. It directed the "prominent" and "conspicuous" posting of "no smoking" signs in public places where smoking was now prohibited. And it instructed the city's department of health to engage in a "continuing program" of public education on the new law and, more broadly, on the dangers of smoking generally, and also to report back to the City Council within twelve months on the effectiveness of the new law.

These nontraditional methods of enforcement made more likely the "culture-shifting" impact of the New York City Clean Indoor Air Act. The Act became more than a set of new rules, obeyed on most occasions by well mannered citizens but ignored at other times by the ignorant or recalcitrant. The Act not only established a new standard **[\*987]** of conduct for New Yorkers, it also put in place mechanisms to make the change genuine as well as universal.

"Culture-shifting" cannot come about without enforcement - enforcement that is multifaceted, realistic, and continuous. Enforcement does not ensure "culture-shifting," of course, but it greatly enhances the likelihood.

#### Legislation action is key to social change—debate is the only way to generate public perception

Stoddard 97Thomas B. Stoddard, attorney and adjunct professor at the New York University School of Law

New York University Law Review November, 1997 72 N.Y.U.L. Rev. 967 ESSAY: BLEEDING HEART: REFLECTIONS ON USING THE LAW TO MAKE SOCIAL CHANGE

"Rule-shifting" cannot possibly become "culture-shifting" without public awareness both that a change has taken place, and that that change will affect daily life. Ordinary citizens must know that a shift has taken place for that shift to have cultural resonance. Most lawmaking - legislative, judicial, or administrative - takes place quietly, influencing a limited universe of the interested and connected. In order for "rule-shifting" to become "culture-shifting," however, a change must be generally discerned and then absorbed by the society as a whole.

Even many obviously important changes in law lack this element of public knowledge. In 1983 the New York State Board of Regents, which has legislative power over all the schools, public and private, in the state, promulgated a new regulation forbidding corporal punishment in schools. The change had potential for "culture-shifting." It made a fundamental - indeed, daring - change in rules that affected (at least hypothetically) all families in the state with children of school age, and it dealt with a subject of universal concern - whether children should be disciplined by bodily force, or not. Yet the new regulation received little attention, perhaps because it came through the speedy and quiet deliberations of a body that is itself little known or understood. A measure with "culture-shifting" potential became a mere shift in rules. Teachers and administrators took note of it, as did some interested parents, but the public by and large overlooked the change. What might have been the occasion for a statewide discussion of child-rearing was lost.

Changes that occur through legislative deliberation generally entail greater public awareness than judicial or administrative changes do. Public awareness is, indeed, a natural concomitant of the legislative process. A legislature - any legislature - purports to be a representative collection of public delegates engaged in the people's business; its work has inherent public significance. Judicial and administrative proceedings, by contrast, involve private actors in private disputes. Those disputes may or may not have implications for others, and they are often subject to the principle of stare decisis, but they are not public by their very nature. (Administrative rulemaking is a diff- **[\*981]** erent animal, akin - at least in theory - to legislative activity, but it is still typically accorded less attention than the business of legislatures.)

Legislative lawmaking is, by its nature, open, tumultuous, and prolonged. It encourages scrutiny and evaluation. Thus, it is much more likely than other forms of lawmaking to promote public discussion and knowledge. For that reason alone, such lawmaking possesses a special power beyond that of mere rulemaking. Indeed, the real significance of some forms of legislative lawmaking lies in the debate they engender rather than the formal consequences of their enactment.

#### The next president could repeal an xo and the military would just ignore it.

Pope 11 [Robert S. Pope, Lieutenant Colonel, USAF, Former Research Fellow, Belfer International Security Program, 2009–2010 Interagency Task Forces The Right Tools for the Job Strategic Studies Quarterly ♦ Summer 2011]

Large changes to the national security system above the single agency or department level would most certainly require action by the president and Congress. Some have argued that a presidential executive order would be sufficient to enact the proposed reforms.93 While an executive order might change the interagency system during the current administration, **history indicates it would be unlikely to remain under the next president.94** For example, President Clinton’s new process for interagency reconstruction and stabilization operations, described in Presidential Decision Directive-56 (PDD-56), did not outlast his presidency, nor was it generally followed while he was in office.95 Nor does an executive order presuppose any support from Congress, which funds the executive branch agencies. Because political power in Congress is often strongly tied to the large sums of money associated with the defense budget, Congress will certainly want to be involved in any reforms that change the national security structure. The CSIS “Beyond Goldwater-Nichols” study team noted: “The role of Congress in the process is the most crucial determinant of the prospects for a reform effort. The recommendations that flow from congressionally mandated groups, commissions, or blue ribbon panels are more likely to lead to lasting changes than efforts launched exclusively at the executive branch level.”96 **Enduring change comes from legislation.** Examples include the 1947 National Security Act which created, among other things, the National Security Council and the Department of Defense; the 1986 GoldwaterNichols Act which created the joint military team; the 2002 act which created the Department of Homeland Security; and the 2004 act which created the office of the Director of National Intelligence.

#### Object fiat bad – moots the 1ac since we can’t generate offense against the aff’s action. Produces a chilling effect that means we don’t discuss the core of the topic.

#### Xo links to politics – congress backlashes on other agenda items.

Clay Risen, assistant editor of *The New Republic*, 8.4.**10**

[http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=8140]

Congress provides an additional, if somewhat less effective, check on executive orders. In theory, any executive order can be later annulled by Congress. But in the last 34 years, during which presidents have issued some 1,400 orders, it has defeated just three. More often, Congress will counter executive orders by indirect means, holding up nominations or bills until the president relents. “There’s always the potential that a Congress angry about one issue will respond by limiting other things you want,” says Mayer.

#### In the context of women in combat, executive action causes congressional fights

Burrelli 13 David F., Specialist in Military [Wo]Manpower Policy, Congressional Research Service; “Women in Combat: Issues for Congress” *Congressional Research Service*; May 9, 2013; http://www.fas.org/sgp/crs/natsec/R42075.pdf

Any changes proposed by the Services will likely be subjected to congressional scrutiny. ¶ Congress may accept any proposed changes or seek to subject such changes to certain ¶ modifications. Among the additional issues Congress may consider are equal opportunity, equal ¶ responsibility (such as draft registration), readiness and cohesion, manpower needs of the ¶ military, and training standards.

### 2ac Immigration

#### Obama not key – he can’t paper over Republican internal divisions.

Chait 12/20 [Jonathan, New York Magazine, 12/20/2013 at 5:24 AM 305Comments Barack Obama Is Not George W. Bush]

Almost one year later, the prospects appear about the same. Immigration reform is weaker, but not yet dead. And its weakness has nothing to do with Obama’s popularity — its fate rests on the internal calculus of the House leadership weighing the risks of long-term demographic decline against an immediate conservative revolt. Obama’s prospects for executive action are actually stronger now. The main impediments to an aggressive regulatory agenda were twofold. First, Republicans could stop regulations by blocking nominees for major agencies. Second, they held a functional majority on the D.C. Circuit Court, and stood poised to block Obama’s environmental and financial reforms. Republicans understood full well the importance of that court to Obama’s second term. (McConnell, again, identified the crucial dynamic: Obama’s second-term agenda, he said, “runs straight through the D.C. Circuit.”) That’s why Republicans took the extraordinary step of declaring a full blockade on any nominee for the court’s three vacancies, however ideologically moderate. And it’s why the Senate Democrats’ decision to abolish the judicial filibuster looms so large. With a stroke, they eliminated the strongest leverage Republicans have to gum up the president’s second term. Obama has managed to seat nominees to the Federal Housing Authority and the Consumer Financial Protection Bureau. And the odds that the court will overturn new regulations have diminished sharply. Additionally, Obama has neutralized the most aggressive, confrontational Republican tactics in Congress. In my column from last January, I wrote that Republicans could, through sheer nihilistic confrontation, sow destruction: “They can shut down the government, they can block administrators, they can begin impeachment — to create the kind of political and economic chaos that would make any progress vastly more complicated.” Almost as important as changes in the Senate is Obama’s success at defeating those tactics. In a series of confrontations, he turned Republican threats to shut down the government and default on the national debt against the GOP, persuading its leadership that over-the-top confrontation was self-defeating. The conventional wisdom – propounded by many of the same pundits now equating Obama with Bush – held that Obama’s hardball tactics would backfire. Obama needed to negotiate over the debt ceiling, and didn’t dare change the Senate’s rules\*, argued, to take one example, Ron Fournier. To fail to placate conservatives would only enrage them more. This analysis turned out to have it backward. Congress managed to pass a budget for the first time in three years precisely because Obama defeated the GOP’s extortion tactics, forcing Republicans to actually trade policy concessions rather than demand a ransom. The prospects for Obama’s second term remain constricted. Not many deals beckon in Congress. The Obamacare rollout was surely a political disaster, but the administration has three more years to get the law up and running. By the end of 2005, George W. Bush had seen the promise of his presidency collapse from justifiably lofty heights. At the end of 2013, Obama stands at just about the same place he began his term.

#### Obama supports the plan

AP 2/4

AP 2/4/13, “Obama Says He Won't Hesitate on Women in Combat”, http://www.military.com/daily-news/2013/02/04/obama-says-he-wont-hesitate-on-women-in-combat.html //jchen

WASHINGTON -- President Barack Obama says he would have no hesitation ordering women into combat and explained that, as a practical matter, they're already serving that role.

Obama, who spoke with CBS television shortly before Sunday's Super Bowl game, was asked about the recent order ending the Pentagon's ban on women serving in combat.

Obama said female troops are already vulnerable to attack and they've been wounded and killed carrying out their jobs. He said they are taking great risks and should not be prevented from advancing in their careers.

The change overturns a 1994 rule prohibiting women from being assigned to smaller ground combat units, and is expected to open up more than 230,000 combat positions that have been off limits to women.

#### Obama can’t oppose Women in Combat—he doesn’t want to look sexist

Boykin 13 Jerry, executive vice president, Family Research Council; Retired Lt. General; “Women in combat a dangerous experiment” *CNN*; January 26, 2013; http://www.cnn.com/2013/01/25/opinion/boykin-women-in-combat/

On Thursday, Secretary of Defense Leon Panetta announced that the Obama administration would allow women to be placed in positions that will expose them more directly to fighting with enemy ground forces. It is said that this will allow women to fill hundreds of thousands of combat roles from which they are currently excluded. Substantively, this is a poor idea. Furthermore, the decision-making process used to bring this change about is deeply flawed.¶ America's ongoing war against terror-supporting states and terror networks, commenced after 9/11, has seen an increased combat role for women in the U.S. armed forces. According to recent news accounts, more than 800 have been wounded and more than 130 have died. Clearly, women have fought honorably, bravely and with great distinction.¶ The greater inclusion of women has allowed our armed forces to tap into an enormous pool of talent and character. And as the casualty figures above indicate, the current posture of the U.S. armed forces is not one in which women are leading cloistered, sheltered lives. They are often exposed to great danger. So, what is it then that President Obama and Panetta are doing?¶ Under the policy, women may end up being placed in infantry and Special Forces battalions and other front line combat units. To doubt the wisdom of this action does not reflect on the courage or abilities of female service members. But the step crosses a line worthy of greater deliberation and public debate.¶ The proof that this decision is ideologically and not militarily based is its very sweeping nature. It appears that the people who did this are engaged in a vast social experiment in which hundreds of thousands of men and women will be the guinea pigs. We are now testing a hypothesis that may impair the military effectiveness of our ground forces.¶ The slots that may be opened are in our infantry and Special Forces units. The purpose of such units is to directly and physically engage enemy forces. This can often involve personal, hand-to-hand combat in which women will now have to fight men.¶ These units can often be deployed in prolonged operations that can last for months. The physical toll is constant and wearing. During operations of this kind there is typically no access to a base of operations or facilities. Consequently, living conditions can be abysmal and base.¶ There is routinely no privacy or ability to maintain personal hygiene for extended periods. Soldiers and Marines have to relieve themselves within sight of others. Think back to those scenes of combat in Vietnam, the Pacific in World War II, or the frozen mountains of Korea. It isn't pretty, and the same is happening now in Afghanistan.¶ Rangel: A more equal military? Bring back draft¶ Debating women in combat roles Veterans debate women in combat roles¶ This combat environment -- now containing males and females -- will place a tremendous burden on combat commanders. Not only will they have to maintain their focus on defeating the enemy in battle, they will have to do so in an environment that combines life-threatening danger with underlying sexual tensions. This is a lot to ask of the young leaders, both men and women, who will have to juggle the need to join and separate the sexes within the context of quickly developing and deadly situations.¶ Is the experiment worth placing this burden on small unit leaders? I think it is asking too much.¶ Something as momentous as this should be endorsed by the Congress of the United States. Ideas like these have been percolating within corners of the Defense Department for years waiting to be unleashed. One study by the Congressional Research Service recommended that "women should be excluded from direct land combat units and positions." Now, ideologues within the bureaucracy have prevailed, but a volunteer force has to maintain its legitimacy with the wider public. That is why the Constitution gives the Congress the power to shape and structure the military.¶ I worry about the women who are currently in the military. They have to know that the lines keeping them from infantry and Special Forces battalions will get blurrier and blurrier. What protections will they have against being thrown into front-line infantry units as organizational dividers soften and expectations change? Very little protection, I am afraid. Will they leave the military? This policy change may have the ironic effect of forcing women to reconsider their place in the armed services. If true, that would be tragic.¶ By the numbers: Women in the U.S. military¶ Congress should examine what the Department of Defense is doing here -- really. The Congress must do some hard, nonideological work and assess job categories and physical requirements. Perhaps a special committee could be formed whose members actually served in the infantry and Special Forces. If it will not reverse the policy, then Congress needs to put in place a comprehensive, nonpoliticized system that will track the physical effects of these changes on women. The data needs to be made public, so there can be a fair, scientific assessment of this great experiment.¶ President Obama and Panetta have their agenda of change and transformation. The American public, however, should not sit back and leave the brave members of our armed forces susceptible to the whims of ideology. Men and women can serve together in the armed forces productively, but that service needs to be prudently structured in a manner that reflects the differences between the sexes and the power of their attractions.

#### Your generic “restriction” link is non-unique – the defense bill just handcuffed the DoD.

GSN 12/17 [Congress Moves to Solidify Pentagon Oversight of Nuclear Communications Dec. 17, 2013 By Rachel Oswald]

Congress is getting set to tell the Pentagon to create a new body to oversee technologies that facilitate U.S. leaders' communications during nuclear crises. A provision in the House-Senate compromise on an annual military authorization bill would require the Defense Department to establish a special council with responsibility for "nuclear command, control, and communications," also known as the NC3 system. This is a "collection of activities, processes, and procedures performed by appropriate military commanders and support personnel that … allow for senior-level decisions on nuclear weapons employment to be made … and subsequently allow for those decisions to be communicated to forces for execution," according to The Nuclear Matters Handbook. The special council envisioned by the fiscal 2014 defense policy-setting bill would be responsible for identifying and mitigating any potential vulnerabilities in NC3 technology, providing oversight of system-performance assessments, developing the overall system architecture, and ensuring that the program has the resources it needs. The nuclear network's ongoing development projects include the Family of Advanced Beyond Line-of-Sight Terminals, designed to ensure that senior civilian and military officials have the ability to communicate securely with one another via military satellites. As this kind of cutting-edge technology can take years to develop, House and Senate Armed Service Committee members felt it was important to "institutional the whole process of acquisition and policy," said a Senate staffer, who was not authorized to speak on the record. This would mean establishing a new Defense body with an explicit mandate to manage the project, the aide said.

### 2ac Warfighting

#### No spill over

Bradley, 13 (Curtis, the William Van Alstyne Professor of Law, Professor of Public Policy Studies, and Senior Associate Dean for Academic Affairs. He joined the Duke law faculty in 2005, after teaching at the University of Virginia and University of Colorado law schools.

As an initial matter, we need to bracket the issue of whether Obama’s action will weaken his own power as a political matter. This is a complicated issue: on the one hand, it may signal weakness both to Congress and to other nations; on the other hand, if he obtains congressional authorization, he may be in an ultimately stronger political position, as Jack Goldsmith has [pointed out](http://www.lawfareblog.com/2013/08/congratulations-president-obama/). As I understand it, the claim being made by Spiro, Rothkopf, and others is that the power of the presidency more generally is being weakened. How might this happen? Not through an influence on judicial doctrine: Although courts sometimes take account of historic governmental practices when assessing the scope of presidential authority, they have consistently invoked limitations on standing and ripeness, as well as the political question doctrine, to avoid addressing constitutional issues relating to war powers.¶ In the absence of judicial review, what is the causal mechanism by which the “precedent” of Obama seeking congressional authorization for the action in Syria could constrain future presidential action? When judicial review is unavailable, the most obvious way in which the President is constrained is through the political process—pressure from Congress, the public, his party, etc. In an extreme case, this pressure could take the form of impeachment proceedings, but it does not take such an extreme case for the pressure to have a significant effect on presidential decisionmaking. Indeed, it is easy to think of political considerations that might have motivated Obama to go to Congress with respect to Syria.¶ That’s all fairly clear, but what is unclear is how a non-judicial precedent, such as Obama’s decision to seek congressional authorization for Syria, will have an effect on later decisions with respect to the use of force. The intuition, I think, is that Obama’s action will strengthen the hand of critics of later efforts by presidents to act unilaterally. It will give the critics more “ammunition,” so to speak. But why is this so, and what is meant, specifically, by “ammunition”? Obama claims that he is seeking congressional authorization for policy reasons, not because he is required to do so, and a later president is likely to reiterate that explanation. Moreover, if Obama is seeking congressional authorization for Syria because of political considerations (weak international and domestic support, public weariness about war, etc.), why would a later president feel compelled to follow that precedent when those political considerations do not apply?

### 1ar AT: Posner/Vermeule

#### Posner and Vermeule concede that political interests keep the president out of showdowns

Mansfield 11 Harry, professor of government, Harvard; senior fellow, Hoover Institution at Stanford; “Is the Imperial Presidency Inevitable?” review of “The Executive Unbound” by Eric Posner and Adrian Vermeule; *New York Times Sunday Book Review*; March 11, 2011; http://www.nytimes.com/2011/03/13/books/review/book-review-the-executive-unbound-by-eric-a-posner-and-adrian-vermeule.html?pagewanted=all

According to Posner and Vermeule, we now live under an administrative state providing welfare and national security through a gradual accretion of power in executive agencies to the point of dominance. This has happened regardless of the separation of powers. The Constitution, they insist, no longer corresponds to “reality.” Congress has assumed a secondary role to the executive, and the Supreme Court is “a marginal player.” In all “constitutional showdowns,” as they put it, the powers that make and judge law have to defer to the power that administers the law.¶ Carl Schmitt enters as the one who best understood the inevitability of unchecked executive power in the modern administrative state. He saw that law, which always looks to the past, had lost out to the executive decree, which looks to resolve present crises and ignores or circumvents legal constraints.¶ But as Posner and Vermeule develop their argument, Schmitt fades away, and is replaced by an incongruous reliance on the rational actors of game theory. The two authors mean to show that although the formal separation of powers no longer has effect, the president as a rational actor is still constrained through public opinion and politics; even a strong executive needs to appear bipartisan and to worry about popularity ratings. So there is no solid reason to fear executive tyranny, and we should feel free to enjoy the benefits of the administrative state.

### 1ar Cause of Action

#### Executive orders create a cause of action only if they are based on statutes

Ostrow 87 Steven Ostrow, The George Washington Law Review MARCH, 1987 55 Geo. Wash. L. Rev. 659 NOTE: ENFORCING EXECUTIVE ORDERS: JUDICIAL REVIEW OF AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT. \*

Professor Noyes has proposed a similar analysis of congressional intent in the context of inferring rights of action against private defendants. Noyes, supra note 4, at 862-78. He suggests that the courts, in deciding whether an executive order creates a private right of action, should rarely rely on presidential intent alone. Id. at 838, 876-77. Rather, they should examine the language and legislative history of any statute(s) upon which an executive order is based for evidence of congressional intent to provide a private remedy for violation of an order. Id. at 838, 863-75. Noyes posits that presidential intent is relevant only when Congress has delegated to the President the authority to create a right of action. Id. at 864-65, 876-77. Interestingly, he also suggests that the President has the power, at least theoretically, to create private rights of action for violations of constitutionally authorized executive orders. Id. at 860-62. The inquiry into presidential intent may be justified for such constitutionally based executive orders.

### 1ar Warfighting DA

#### **Presidential war powers inevitable – the president enjoys institutional advantages.**

Howell and Pevehouse, 07 (Willam G. Howell, Prof @ U Chicago, Jon C. Pevehouse, Prof @ U Chicago. While Dangers Gather: Congressional Checks on Presidential War Powers. 7-8)

There is, at present, a burgeoning body of work within the American politics that documents the strategic advatnages presidents enjoy when they exercise unilateral powers, or what we have called “power without persuasion,” which very much much embodies the deployment of troops abroad. Two features of this unilateral politics literature are worth noting. The first concerns sequence. When presidents act unilaterally, they stand at the front end of the policy-making process and thereby place on congress and the courts the burden of revising a new political landscape. If adjoining branches of government choose not to retaliate, either bv passing a law or ruling against the president then the president's order stands. Only by taking (or credibly threatening to take) positive action can either adjoining institution limit the president's unilateral powers. "Members of congress often do confront presidents when their military order prove misguided or ill-informed. They do so, however, under less than circum-stances. For starters, when debating the merits of an ongoing military venture, members of congress are vulnerable to the accusation that they are undermining troop morale and catering to the enemy. As James Lindsay recognizes, members often avoid putting themselves in the politically and morally difficult position of allowing funds to be cut off to troops who may be fighting for their lives." BY way of example, recall Clinton's deployment of troops to Haiti in 1994. Before the action a majority of senators opposed the plan, but once troops were deployed, Congress-did not attempt to force their immediate return. One political commentator surmised, "There's bipartisan criticism of going into Haiti. There's also bipartisan support, at least, in supporting the troops now that they're there."15 Though members can, and do, take on the president during the ongoing course of a military venture, they do so under condi- tions that hardly foster open and critical debate.17 Instead, members pro- ceed cautiously ever aware of how their actions and words are likely to be interpreted by a public wary of any criticism directed at troops who have willingly placed their lives on the line. . Some military actions, meanwhile, are sufficiently limited in scope and duration that Congress has little if any opportunity to coordinate an ef- fective response, either before or during the actual intervention. In the spring of "1986 for instance, Reagan "consulted" with congressional party leaders on planned air strikes against Libya while U.S. planes were en route to Northern Africa. Obviously there was little that the members could do to curb these attacks. As one Democrat attending the meeting noted, what could we have done? . . . Told [the president] to turn the planes oround?"18 The military completed its bombing campaign long before members of Congress could possibly have enacted authorizing legislation. Though Congress might have passed legislation either supporting or condemning the president's action after the fact, its members could do precious little to redirect the course of this particular targeted military strike. By seizing the initiative and unilaterally deploying the military to perform short and small attacks, presidents often elude the checks that Congress might otherwise place on them. The second feature of unilateral powers that deserves attention is that when the president acts, he acts alone. Of course, he relies on numerous advisors to formulate the policy, to devise ways of protecting it against congressional or judicial encroachment, and to oversee its implementation. But to issue the actual policy, as either an executive order or memorandum or any other kind of directive, the president need not rally majorities, compromise with adversaries, or wait for some interest group to bring a case to court. The president, instead, can strike out on his own, placing on others the onus of coordinating an effective response. Doing so, the modern president is in a unique position to lead, break through the stasis that pervades the federal government, and impose his will in more and more areas of governance. In foreign policy making generally, and on issues involving the use of force in particular, this feature of unilateral powers reaps special rewards. If presidents had to build broad-based consensus behind every deployment before any military planning could be executed, most ventures would never get off the ground. Imagine having to explain to members of Congress why events in Liberia this month or Ethiopia the next demand military action, and then having to secure the formal consent of a supermajority before any action could be taken. The federal government could not possibly keep pace with an increasingly interdependent world in which every region holds strategic interests for the United States. Because presidents, as a practical matter, can unilaterally launch ventures into distant locales without ever having to guide a proposal through a circuitous and uncertain legislative process, they can more effectively manage these responsibilities and take action when congressional deliberations often result in gridlock. It is no wonder, then, that in virtually every system of governance, executives (not legislatures or courts) mobilize their nations through wars and for- eign crises. Ultimately, it is their ability to act unilaterally that enables them to do so. In sum, the advantages of unilateral action are significant: they allow the president to move first and move alone. All of the institutional features of Congress that impede consensus building around a military venture ex ante also make it equally if not more difficult, later, to dismantle an operation that is up and running' This is what makes the president's unilateral powers ,so potent. Multiple veto points, high transaction costs, and collective action problems regularly conspire against the president when he tries to guide his legislative agenda through Congress. Each, though, works to his advantage when he issue a unilateral directive, as each cripples Congress’s capacity to muster an effective response. To be sure, congressional checks on war powers do not disappear entirely – this book is based on the premise that under well specified conditions (see chapter 2) they remain operative. But in an era when presidents unilaterally deploy troops with greater and greater frequency, Congress often trips over the same institutional features that undermine its capacity to govern more generally.