# 1ac

### 1AC – No DA’s

#### Contention 1- No Da’s

#### DOD complies with NEPA

**Baldwin 12** (Charlotte Fay Baldwin, US Department of the Army Fort Hood, Texas, “The National Environmental Policy Act (NEPA) Process with Military Projects By October 2012,” <http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/6030/C.%20Baldwin_Capstone%20Paper%20Oct%20%209%202012_FINAL.pdf?sequence=1>)

The Department of Defense (DoD) follows the rigorous requirements outlined in NEPA, the National Historic Preservation Act of 1966 (NHPA), and all other statutes that involve protecting the environment and vital land resources under DoD stewardship. The DoD has a long and successful program to comply with NEPA. DoD’s policy is in DoD Instruction 4715.9, Environmental Planning and Analysis. Each of the military Departments and Defense Agencies are required to demonstrate how they will comply with NEPA prior to selection of each military construction project using Recovery Act funds. In addition, the Department is tracking compliance with NEPA for every project and reporting its status, as required, to the Council on Environmental Quality. The Department is using the full range of actions available under NEPA.8 To adhere and comply with NEPA, the Department of the Army engaged in three major efforts that benefited from the NEPA analysis process: Army Transformation, the Installation Sustainability Program and the Sustainable Range Program. All contributed to the long-term reduction of environmental impacts associated with Army programs and projects. The Army Transformation process is extensive, including the expansion and upgrading of installation training ranges, or the development of new ranges. As training requirements become more collaborative and sophisticated, training ranges may require different land areas, airspace, and support facilities. As this complex Army Transformation process proceeds, **NEPA planning** is **increasingly integrated into Army policies**. The planning process associated with the Army’s Installation Sustainability Program to address installation encroachment issues integrates the NEPA analysis process and is similar to CEQ’s cumulative effects analysis process. The installation and community jointly identify affected resources within the region in both processes. Once the resources have been identified and evaluated a **collaborative management plan** is developed that will provide solutions for all stakeholders. The Army’s Sustainable Range Program incorporates the same principles of these processes into its planning procedures. Site selection and range design for training facilities begin with a design “charrette” to insure stakeholder collaboration. This effort ensures a design that will satisfy training requirements and environmental issues.9 The Army NEPA implementation regulation provides the following **broad policy** statement**s**10: “NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; **comprehensively integrating** environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality. The Army will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.”

#### Court controversies now

Ziskind 13

[Jeremy, Master's Degree in Public Policy (MPP) from the UCLA School of Public Affairs, ProCon.Org, Controversial Issues Fill US Supreme Court Docket, 10/10/13, <http://www.procon.org/headline.php?headlineID=005182>]

The new US Supreme Court term, which began on Oct(ober). 7, 2013, is expected to decide many controversial issues including cases on abortion, gay marriage, Obamacare, affirmative action, public prayer, free speech, religious liberty, property rights, and campaign finance reform. Justices began hearing oral arguments on Oct. 8 with an examination of campaign finance laws in McCutcheon v. Federal Election Commission. The case will determine the constitutionality of aggregate caps on direct contributions from individuals to candidates and political parties in federal campaigns. The plaintiffs, an Alabama citizen and the Republican National Committee, argue that two-year contribution limits to candidates ($46,200) and groups ($70,800) violate freedom of speech protections. Two cases will touch on abortion. McCullen v. Coakley challenges a Massachusetts law that restricts protests near reproductive health care facilities. Another, Cline v. Oklahoma Coalition for Reproductive Justice, questions whether or not states may limit the use of abortion-inducing drugs. The case could potentially modify the Supreme Court's 1973 ruling in Roe v. Wade prohibiting laws that place an "undue burden" on access to abortion. Justices are also expected to decide whether to hear cases challenging an Obamacare requirement that employers provide insurance coverage for contraception. Some corporations have stated that the requirement violates their right to religious freedom, and cite the Supreme Court's decision in Citizens United v. Federal Election Commission as the basis for a corporation's right to free speech. On the topic of affirmative action, the court will hear Schuette v. Coalition to Defend Affirmative Action. The case asks whether voters in the state of Michigan were allowed to pass a law in 2006 banning the use of race as a criteria for college admissions. The court will potentially take up cases on cell phones and privacy rights. The cases, US v. Wurie and Riley v. California, question whether or not police must obtain a warrant to search data on the cell phone of a person under arrest.

#### Political question doctrine is dead

Stras 08

[David, associate justice of the Minnesota Supreme Court , The Decline of the Political Question Doctrine, 12/29/08, <http://balkin.blogspot.com/2008/12/decline-of-political-question-doctrine.html>]

Not surprisingly, the Court has limited the application of the political question doctrine to thorny areas that are at the intersection of law and public policy, such as Congress's ability to regulate its own internal processes and matters of foreign affairs. With respect to the latter category, the Court has long declined to interfere with sensitive questions of foreign policy, holding at various points in history that such questions of when a war begins and ends and whether to recognize a foreign government and grant diplomatic immunity to its officials are all nonjusticiable political questions. In fact, some scholars have recognized that the area of foreign affairs was the last bastion where the political question doctrine had "real bite." The question I pose is what is left of the political question doctrine after Boumediene v. Bush? The answer, I believe, is not very much. As an initial matter, a majority of the Court has only employed the political question doctrine twice since 1964 (the year Baker v. Carr was decided) to dismiss a case, though various Justices have endorsed its use in a variety of contexts (e.g., treaty interpretation, political gerrymandering cases, etc.). Second, in Boumediene, the Court quickly dismissed the Government's argument that questions of sovereignty are matters for the political branches to conclusively decide. As the Court stated, "our cases do not hold it is improper for us to inquire into the objective degree of control the Nation asserts over foreign territory . . . . When we have stated that sovereignty is a political question, we have referred not to sovereignty in the general, colloquial sense, meaning the exercise of dominion or power, but sovereignty in the narrow, legal sense of the term, meaning a claim of right." The Court went on to conclude essentially that questions of de jure sovereignty (or a claim of right) are matters for the political branches to decide, but that questions of de facto sovereignty (or practical control over a territory) can be examined by the judicial branch. Given that de jure sovereignty is the clearer purely legal question and that one of the lynchpins of the political question doctrine is the presence or absence of judicially manageable standards, I find the Court's abbreviated discussion of the political question doctrine quite significant, even astonishing. Questions of de facto sovereignty tend to be difficult to determine because of competing indicia of control and, as a result, judicially manageable standards seem to be fairly elusive. (However, I would freely admit that the United States' near-total control of Guantanamo Bay made the question of de facto sovereignty by the United States in Boumediene pretty clear.) I also find the Court's discussion of the political question doctrine to be in stark contrast to its prior case law, which is quite deferential to the political branches on foreign policy questions. For instance, in Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., 383 U.S. 103 (1948), the Court held that it could not review decisions of the President to grant or deny certificates of necessity to air carriers wishing to establish air travel routes to foreign countries. As the Court stated: [t]he very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of the kind for which the Judiciary has neither aptitude, facilities, nor responsibility, and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. In the past, the Court has held that questions relating to sovereignty, such as whether to recognize a foreign government and grant diplomatic immunity to government officials, were among the "delicate" and "complex" matters that were better left to the "political departments." And as the Court freely concedes in Boumediene, it would have at least deferred to the Executive Branch if the outcome of the case depended on which country possessed de jure sovereignty over Guantanamo Bay. I am surprised, therefore, that not a single Justice on the Court would have dismissed this case on political question grounds, at least as the majority framed the case. (Perhaps the majority opinion could have taken sovereignty off the table by expanding its discussion of extraterritorial application of the Constitution and further distinguishing Eisentrager.)

### Plan

#### Plan: The United States Federal Judiciary should substantially increase National Environmental Policy Act restrictions on the President’s authority to introduce Armed Forces into hostilities.

### 1AC – Warming

#### Contention 2 is Warming

#### Scenario 1 is Diplomacy

#### Warming agreements are failing in the status quo – U.S. leadership is key to jumpstart negotiations and lead to a grand bargain

Taylor 12

[Lenore, The Age (Melbourne, Australia), Earth summit revisited: is the movement doomed to be an endless talkfest? 6/16/12, l/n]

\*Professor Stephen Howes is the Director of the Development Policy Centre at the Australian National University

The meeting will seek to agree to start talks on a set of "sustainable development goals" - targets for rich and poor countries alike to take effect in 2015 when the "millennium goals" announced in 2000 reach their expiry date. Sustainable development goals sound pretty waffly, but according to Professor Stephen Howes, of the Australian National University's Crawford School, the millennium goals were at least useful in holding governments to account on promises such as levels of spending on overseas aid - and sustainable development goals could serve a similar purpose. But even an agreement to try to reach an agreement on such goals could founder on the perennial north-south divide. According to The Hindu newspaper, the Indian government's strategy for the Rio summit is to "prevent any attempt to pin down specific goals or targets regarding sustainable development". Indian Prime Minister Manmohan Singh will reportedly oppose even a decision on what "themes" any goals might cover. At the first Rio meeting, the gap between developed and developing countries was recognised in the climate change convention, which effectively promised that rich countries would act first, and when poor countries did do something, the rich countries would pay. It is a principle that has gridlocked climate talks for decades, and to which the developing world remains wedded despite huge geopolitical shifts over the past two decades. And at this meeting the developing countries will also have greater numbers and clout. George Bush senior attended last time as the US president, but President Barack Obama is sending Secretary of State Hillary Clinton to lead the American team. Deeply mired in Europe's financial woes, neither British Prime Minister David Cameron nor German Chancellor Angela Merkel is going either. But the leaders of India, Russia, China and, of course, host nation Brazil are all going to be there. Professor Howes says part of the reason multilateral decision-making is at such a low point is that in this era of global political transition there is no superpower to take the lead. "For most environmental problems that have been successfully tackled, the United States played a leading role, for example on ozone. Now we don't get a lot of US leadership on environmental problems and we have China emerging as the world's largest emitter. They are starting to take the problem more seriously but are unwilling to take the lead," he says. "It is symptomatic of the geopolitical transition. You have a once dominant superpower being challenged and an emerging superpower that is not willing to take on a global leadership role." In such a situation, grand legally binding deals become impossible. Messy "bottom up" pacts on goals or targets or unilateral pledges that taken together might add up to something are the best negotiators can hope for, and even they are difficult to achieve. Which might be why another objective of the Rio Summit is to reform the bodies through which the United Nations makes decisions on the environment, institutions that frequently end up mired in endless talkfests, in part because they require complete consensus to act on anything.

#### Court action to undo the harmful judicially created national security exemption in NEPA is crucial to solving global climate change – through transnational legal norms, and credibility in climate negotiations

**Gormley 10** (Neil Gormley, J.D., 2009, Harvard Law School, “Standing in the Way of Cooperation: Citizen Standing and Compliance with Environmental Agreements,” Summer 2010, West Northwest Journal of Environmental Law & Policy, 16 Hastings W.-N.W. J. Env. L. & Pol'y 397)

The Supreme Court's approach to standing, therefore, raises serious questions about the viability of a bedrock of U.S. environmental law - the citizen suit. Cass Sunstein concluded in the wake of Lujan that "it is now [\*405] apparently the law that Article III forbids Congress from granting standing to "citizens' to bring suit." n48 At the very least, as we have seen, these developments in standing doctrine will make the burdens on citizens and environmental groups more onerous. I will argue in Part II that standing doctrine may someday present insuperable obstacles to citizen suit enforcement with respect to international environmental problems that are yet to be comprehensively addressed under U.S. law. The growing doctrinal obstacles to the enforcement of federal environmental law via citizen suit are not, of course, strictly confined to Article III standing. A wide range of justiciability doctrines deter and weaken environmental citizen suits, including the Administrative Procedure Act's bar on "programmatic" challenges to agency action, announced in Lujan v. National Wildlife Federation, n49 and the arcane distinctions in Norton v. SUWA between agency "action" and agency "inaction" for purposes of determining whether the APA permits suit. n50 Perhaps the most prominent of these developments is the Court's 2008 decision in Winter v. NRDC, which raised the bar for even successful environmental plaintiffs to obtain injunctive relief. n51 In Winter, the Court decided that the balance of the equities and the public interest weighed against granting a preliminary injunction to environmental groups seeking to force the Navy to comply with the National Environmental Policy Act. n52 Particularly in the way it characterized the harms to be balanced in that inquiry - considering the risk of a national security incident but holding the environmental plaintiffs to a standard of actual, documented, past harm to wildlife - the Court took an approach to balancing that seemed systematically to disadvantage environmental plaintiffs. Interestingly, there were echoes of the Court's environmental standing jurisprudence in its balancing-of-the-harms analysis in Winter. Though NEPA is a procedural statute, the court did not consider or weigh any procedural harms on the side of the environmental plaintiffs, focusing instead on the types of harms that environmental plaintiffs traditionally have had to rely on to establish standing - individualized scientific, recreational and aesthetic harms. n53 At oral argument, Justice Scalia went so far as to evoke explicitly the requirements of Article III standing in the [\*406] discussion of what harms count for purposes of equitable injunctions. n54 Thus Winter may yet provide a new opening for reinserting common law conceptions of injury into these complex regulatory disputes. n55 Perhaps most significantly, Winter also announced that a district court would abuse its discretion in granting an injunction to the environmental groups even if they ultimately prevailed on the merits. n56 Winter thus appears to represent another significant obstacle in the path of environmental groups trying to force executive compliance with the law. Importantly, however, the decisions in National Wildlife Federation, Norton v. SUWA and Winters are not constitutional. Given sufficient political will, Congress can smooth those obstacles to environmental citizen suits by amending the Administrative Procedure Act and Federal Rule of Civil Procedure 65(a), governing preliminary injunctions. Because the core of Article III standing doctrine is, by contrast, beyond the capacity of Congress to alter by statute, standing decisions are likely to impose the steepest costs in enforcement of environmental law in the future. This cost to effective enforcement should be borne in mind as courts decide whether to embark down any of the several avenues that exist for reconciling Article III standing and environmental citizen suits. First, courts can opt to extend the Massachusetts approach to causation and redressability to all plaintiffs, rather than confining it to states. They also might accommodate citizen suits by indulging in some slight of hand concerning the nature of the injury that is required. Courts have shown themselves willing, in the past, to sidestep standing difficulties by simply redefining the injury. n57 Thus, in Laidlaw, a "reasonable fear" of illness stemming from toxic emissions was enough to confer standing. n58 A generous application of the "reasonable fear" approach could go a long way towards getting [\*407] environmental groups into court. Finally, the most accommodating way forward, by far, would be to recognize the power of Congress to define injuries and articulate chains of causation free from the constraints of the common law. III. The Problem of Compliance The ability of citizens to access courts in order to compel executive compliance with environmental laws may have important repercussions on the international plane, because domestic enforcement bears on one of the most fundamental questions in the design of international environmental agreements - why do states comply with their commitments? International environmental problems require deep cooperation among states. Given the prevalence of physical, economic, and psychological externalities associated with environmentally harmful practices, cooperation is necessary to the realization of the mutual benefits of common solutions. n59 Negotiated agreements, of course, only facilitate cooperation if states comply with them. Furthermore, expectations about compliance will often constrain the depth of the commitments that states are willing to make - that is, the extent to which they are willing to depart from the course that they would have taken in the absence of cooperation. Just as in private contract situations, states need to be able to rely on credible commitments by other states, especially when the contemplated activities are highly reciprocal. A state party may not be willing to embark on a path of costly pollution control, for example, without highly credible commitments from peer states that they will make the same sacrifices. David Victor blames the shallowness of international environmental law generally on the failure of efforts to develop effective compliance mechanisms. n60 The risk of defection in the environmental context is generally quite high. Because of scientific and economic uncertainty, the costs and benefits of cooperation are difficult to predict and assess ex ante. Moreover, this uncertainty is magnified by the long duration of cooperation that is often necessary to deal effectively with serious environmental problems. Similarly, political economy models predict that compliance with environmental commitments will be inconsistent. n61 The costs of [\*408] environmental regulation are typically highly concentrated, so that regulated sectors - industry groups in particular - have strong incentives to oppose compliance over time. The benefits of regulation, by contrast, are typically diffuse. Beneficiaries face higher transaction costs in organizing in favor of compliance, and high levels of political mobilization may be unsustainable over the long term. As Sunstein argues, the fact that environmental commitments are concluded at all often has to do with the "availability heuristic." n62 By this reasoning, environmental regulation has more widespread appeal when environmental harms are more "cognitively available" - when vivid and salient examples are present in the popular consciousness. As the cognitive availability of environmental harms fades, popular support for costly regulatory measures - and thus for compliance with environmental agreements that compel such measures - tends to fade as well. Given these challenges, how can the advocates of international environmental cooperation ensure compliance with negotiated agreements? A wide variety of explanations have been advanced to explain observed compliance. They need not be viewed as mutually exclusive; more likely, each of these mechanisms contributes in some respect to state compliance. The leading explanations include the reputational costs of defection, n63 the perceived fairness and legitimacy of negotiated agreements, n64 social learning, n65 and administrative capacity-building, both bilateral and multilateral. n66 Transnational legal process theorists, such as Harold Koh and Anne Marie Slaughter, predict greater compliance stemming from interactions - direct and indirect - between the legal institutions, broadly understood, of different countries. n67 Other theorists are far less sanguine about the prospects for compliance with international agreements in the face of changing conditions. Goldsmith and Posner have famously argued that the discipline [\*409] of international law mistakes correlation for causation. n68 They argue that the behaviors that international lawyers take to be manifestations of opinio juris are actually no more than states acting in their own interests. Pursuit of the national interest, they suggest, happens to produce consistent behaviors, at most times and in most places, which are mistaken for legal norms. Relatedly, David Victor and Kal Raustiala have questioned whether international law - as opposed to international political processes, culminating in so-called "soft law" - contributes meaningfully to compliance. n69 They point to several instances of highly effective environmental cooperation among states on the basis of non-legally binding agreements, and reason that nations may be more likely to agree to robust monitoring regimes when the commitments at stake are not legally binding. The accounts of compliance with international law that accord the most weight to direct enforceability of commitments in domestic legal systems are liberal theories, which focus on the distinctive domestic institutions of so-called "liberal states." Thus, according to David Victor, there are certain states - liberal democracies - "in which internal public pressure [and] robust legal systems make it possible to enforce international commitments from the inside (ground-up) rather than the outside (top-down)." n70 None of these, however, pays much heed to the potential for domestic courts to play a role in escaping the compliance dilemma. Even liberal theories tend to focus instead on interest groups and on the operations of the political branches. n71 Victor identified the existence of independent judiciaries as one of three factors explaining heightened compliance with international obligations by liberal states, but left the idea unexplored. He emphasized that "more work is needed to unravel [the] conditions under which they are most effective." n72 [\*410] Oona Hathaway offers empirical support for the hypothesis that domestic legal enforcement contributes meaningfully to compliance with international obligations. n73 After reviewing a range of studies, both qualitative and quantitative, that assess compliance with human rights law, she reaches two conclusions that are relevant here. First, states that boast independent judiciaries, media, and political parties are more likely to join treaties when their human rights practices are good, and are more likely to improve their practices upon joining. n74 In other words, they take their international legal obligations seriously. Second, just as domestic enforcement contributes to international compliance, the existence of "robust domestic rule-of-law institutions" tends to strengthen domestic enforcement. n75 Hathaway concludes, therefore, that work to strengthen local rule of law serves the ultimate goal of compliance with international human rights agreements. n76 In the environmental context, the compliance-reinforcing potential of domestic enforcement mechanisms is particularly pronounced. In the United States, citizen suits have been tremendously effective at forcing executive compliance, at both the federal and state levels, with the major federal environmental statutes. James May offers this assessment: Citizen suits work; they have transformed the environmental movement, and with it, society. Citizen suits have secured compliance by myriad agencies and thousands of polluting facilities, diminished pounds of pollution produced by the billions, and protected hundreds of rare species and thousands of acres of ecologically important land. The foregone monetary value of citizen enforcement has conserved innumerable agency resources and saved taxpayers billions. n77 Citizen suits are a staple of federal environmental law: nearly every major environmental statute imparts a private right of action to citizens. n78 And nearly 75 percent of all actions to enforce domestic environmental laws take the form of citizen suits. n79 Steps to make the environmental treaty obligations of the executive branch enforceable by citizen suit, therefore, may be expected to improve compliance. [\*411] Two overarching approaches to enforcement of international commitments by citizen suit are possible. First, environmental agreements could be made to include more specific, self-executing obligations, from the outset. n80 Alternatively, international agreements could continue to adhere to the model common to the Montreal and Kyoto protocols, whereby states commit to broad quantitative reductions, only now with an additional treaty obligation to provide for private enforcement of subsequent implementing legislation in the domestic legal system. Although this latter option would leave some margin for noncompliance, that margin would be highly circumscribed. Most noncompliance with environmental obligations is not through overt repudiation at the level of the executive or national legislature, but through non-enforcement. n81 Thus, whether international environmental agreements themselves create privately enforceable rights or those provisions are instead inserted later at the time of passage of implementing legislation by the legislature, the availability of citizen suits will greatly diminish the opportunity for states subsequently to renege through inaction on their commitments. n82 The key is to harness the enforcement potential of citizen suits in service of international compliance. This strategy is further recommended by the fact that domestic courts may be particularly well-suited, in institutional terms, to the task of long-term enforcement in the environmental context. Independent judiciaries are, in part by definition, more insulated from politics than the executive and the legislature, which means that they are also insulated from some of the most dangerous biases of political actors: short-termism, tendency to undervalue low-risk events, and unwillingness to face up to catastrophic risk. n83 Yet, generally speaking, domestic courts are not so insulated from the political tenor of a country so as to fail to perceive the costs of compliance. n84 Hence, they offer a solution to the vexing trade-off between credibility and [\*412] flexibility faced by the framers of international agreements in which environmental commitments - with their uncertain long-term costs - are at issue. What a country wants is to be bound when the question is close - so as to be able to make a credible commitment - but not when, from their perspective, circumstances have changed so much as to excuse noncompliance. n85 States are understandably wary of trusting foreign or international authorities to recognize and accommodate such instances of changed circumstances. A domestic institution is more likely to do so, even in cases of true judicial independence, simply by virtue of shared background assumptions that inhere in national identity and culture. Maximizing the extent to which international environmental commitments can make use of domestic legal institutions, therefore, may allow for optimal pre-commitment strategies. In addition to being highly effective, domestic enforcement of international environmental commitments is likely to be more politically palatable, at the stage of institutional design and ratification, than the alternatives. n86 Existing international agreements in this area are notable for their lack of monitoring, sanctions, and other international oversight mechanisms. n87 In the United States, at least, concerns about loss of national sovereignty to international institutions are highly politically salient, and often carried to irrational, even paranoid, extremes. n88 Thus, political resistance to foreign and international monitoring and sanctions regimes often goes far beyond what one would expect given the simple risk that those institutions will be insufficiently attentive to national interests in hard cases. This resistance means that any achievements in international oversight often come at the expense of the depth of the commitments made. n89 In the environmental context, therefore, provision for domestic judicial enforcement of international commitments may be a Goldilocks solution: just enough precommitment, without the steep political price upfront. Such a strategy, however, is closely bound up with the difficult questions about standing doctrine that were discussed in Part I. A [\*413] hospitable doctrine of standing is among the conditions necessary for making domestic courts an effective tool in ensuring compliance with international environmental agreements. If, instead, standing doctrine continues to constrict the environmental citizen suits that make it into court, these compliance benefits will be commensurately foregone. Ironically, standing doctrine will sweep most broadly in excluding citizen enforcement in a substantive area such as environmental law where the achievement of international cooperation was already highly challenging. In a further irony, the imminence and causation requirements of restrictive standing doctrine will make domestic enforcement most difficult to attain precisely when international institutions are most in need of support from domestic sources of compliance pressure: at the early stages of cooperation to address an incipient environmental problem. Climate change is the prime example of these risks, but the mismatch between standing doctrine and the substance of international environmental cooperation is institutional; it has the potential to extend far beyond the particular problem of climate change. Other environmental regimes promise even less concrete, more diffuse, and longer-term benefits from regulation. For example, failure of states to heed commitments directed towards preserving biodiversity will often fail to implicate any plaintiffs in particular. n90 What American has an "injury-in-fact," as interpreted by Justice Scalia, when an agency fails to take action to preserve the genetic diversity of obscure insects, plant species, or microorganisms, the use value of which to humans is almost nonexistent in the short or medium term? n91 Another highly problematic example is explored by Paul Hawken, Amory Lovins and L. Hunter Lovins in Natural Capitalism. n92 Several European countries have made great strides in reducing demand for natural resources and supply of solid waste by imposing responsibility for disposal and other "full life-cycle costs" on the manufacturers of consumer durables and industrial products. But when the environmental goods and services conserved by European states are freely traded, other economies can free-ride off of their efforts. If the United States agreed by treaty to impose similar requirements on manufacturers, what citizens would have standing to challenge executive noncompliance with resulting legislation? The doctrine of Article III standing has profound and far-reaching consequences for United States participation in international regimes to address the pressing environmental problems of today and tomorrow. If standing doctrine remains restrictive, unpredictable, and immune to [\*414] alteration by Congress, the international environment will pay part of the price. IV. Credibility as Negotiating Advantage The course of United States standing doctrine, of course, will not directly influence the enforceability of internationally agreed-upon environmental rules within other countries. Therefore, one might legitimately question the extent to which a change in the domestic law of one state - even that of a hegemonic power - will meaningfully affect the prospects for effective international coordination. n93 One response to such criticism is that removing one obstacle to greater reliance on domestic enforceability in international environmental regimes is a step in the right direction. As Justice Stevens reasoned in Massachusetts v. EPA, that a step is incremental does not defeat its utility. n94 But there also is a separate, stronger response: More robust domestic enforcement will strengthen the hand of the United States in international negotiations, whether or not other countries move in the same direction. The academic literature surrounding negotiation has a tendency to analyze the concept of credibility in the context of threats. That is, in bargaining over the spoils within a zone of possible agreement, the party that is able to tie its own hands or burn its bridges (or create the credible impression of having done so), alters (or obscures) its true bottom line. By threatening to walk away from the table, that party captures a greater share of the mutual benefits from agreement. n95 But as I explain, the capacity to make credible promises is also an asset in negotiation. The weakening of domestic enforcement of environmental law renders less valuable the promises made by U.S. negotiators, n96 by the following chain of causation: More restrictive environmental standing hinders domestic judicial enforcement, which in turn makes defection by the executive more likely, which drives negotiating partners to discount the value of promised actions by the (increased) likelihood of defection, thereby [\*415] rendering U.S. promises less valuable. As a result, the U.S. is able to get less in exchange for its promises in international environmental negotiations. Many scholars, however, emphasize the value of flexibility in international agreements, particularly in situations of uncertainty. n97 An advocate of restrictive standing might, in reliance on these analyses, argue that the gain in flexibility to the United States is worth the cost in terms of lost credibility. But the hypothesized Lujan apologist would be wrong. Weakened enforcement by the domestic courts serves only to narrow the range of options available to the political branches in the international arena. Whereas a state that is able to make credible promises can calibrate the value of a promise by varying its substantive content as it wishes, a state lacking credibility is limited in what it can (effectively, credibly) promise. In other words, a state in possession of credibility can still enjoy the benefits of flexibility, but the reverse is not true. Strategies of pre-commitment like domestic enforceability may be particularly useful to hegemonic powers like the United States. Hegemons of course, have a strong interest in preservation of the status quo. While ascendant political forces in the United States have, up to the present, identified the interests of the status quo as in conflict with concerted global action to deal with environmental problems, that position may no longer be tenable. Climate change and other looming ecological crises - not the efforts to deal with them - in fact pose the greater existential threat to the current global order, and American political elites are beginning to understand the need to address them. Thus, the nominees of both major American political parties expressed strong rhetorical support for efforts to deal with climate change in 2008, and a comprehensive cap-and-trade bill passed the House, but not the Senate, in 2009. n98 For a hegemonic power to convince other states to cooperate on its terms, however, it must be able to make credible commitments. Otherwise, the world will remain all too aware of the power of the hegemon to renege after the fact. n99 The U.S.'s need for credibility on the world stage derives not only from [\*416] structural factors. Though America's image in the world has rebounded substantially since the election of President Obama, n100 it was held in much lower esteem just one year ago. n101 And its perceived flouting of international norms was an important contributor to that decline. n102 The Bush administration's salient decisions to opt out of multilateral efforts, including "unsigning" the Rome Statute of the International Criminal Court, withdrawal from the Anti-Ballistic Missile Treaty, and non-participation in the Kyoto process are unlikely to be completely overlooked by global leaders considering long-term reciprocal cooperation with the United States, Obama's recent charm offensives notwithstanding. The international community is painfully aware of the periodic willingness of the political branches - particularly the executive - in the United States to spurn international obligations when interests so dictate. Many point out, however, that these manifestations of United States "exceptionalism" consisted not in noncompliance - violation of a binding legal norm - but rather in perfectly legal decisions to opt out of international processes. n103 The point is true for what it is worth, but prominent instances of U.S. noncompliance with binding legal norms are, nonetheless, fairly easy to identify. One of these instances of noncompliance is the requirement of consular notification in the Vienna Convention on Consular Relations. n104 In Medellin v. Texas, n105 the Supreme Court held that the state of Texas was not bound to refrain from executing Ernesto Medellin, even though the United States was indisputably in breach of its obligations under that treaty. n106 Domestic considerations of federalism and procedural default, therefore, trumped international compliance, much to the dismay of Mexico and many others in the international community. n107 Domestic procedural law also, [\*417] arguably, trumped international obligations for some time in the case of the prisoners of the war on terror held at Guantanamo. With respect to those individuals, the protections of the Geneva Conventions were undone - or at least very significantly delayed - by the jurisdictional requirements of U.S. law. n108 Comprehensive treatment of these controversies is beyond the scope of this paper, but the basic point is clear: the U.S.'s prospective negotiating partners are likely to be attentive to the risk that procedural hurdles - like strict standing - will undermine U.S. compliance in the environmental arena as well. V. Conclusion Several unresolved questions about Article III standing have important implications for the viability and effectiveness of citizen suits in environmental cases. If courts continue the recent trend of allowing procedural doctrines to restrict these suits, the shift may have important international repercussions which have not yet been fully reckoned with. Most important among these is that the unavailability of domestic enforcement of environmental laws through citizen suits will tend to undermine compliance with international environmental obligations. Both the negotiating position of the United States and the prospects for effective cooperation on the most pressing environmental issues facing humanity will suffer accordingly.

#### Courts action key to international agreements – key to international norms and cooperation

Long 8 – Professor of Law @ Florida Coastal School of Law [Andrew Long, “International Consensus and U.S. Climate Change Litigation,” 33 Wm. & Mary Envtl. L. & Pol'y Rev. 177, Volume 33 | Issue 1 Article 4 (2008)

1. Enhancing U.S. International Leadership In a time of unfavorable global opinion toward the United States, explicit judicial involvement with international norms will move the United States **closer to the international community** by acknowledging the relevance of international environmental norms for our legal system. As in other contexts, explicit **judicial internalization of climate change norms would "build**[ ] **U.S. 'soft power,**' [enhance] its moral authority, and strengthen[ ] U.S. capacity for global leadership"2 °3 on climate change, and other global issues. More specifically, domestic judicial consideration of the global climate regime would reaffirm that although the United States has rejected Kyoto, we take the obligation to respect the global commons seriously by recognizing that obligation as a facet of the domestic legal system. U.S. courts' overall failure to interact with the international climate regime, as in other issue areas, has "serious consequences for their roles in international norm creation."2" As judicial understandings of climate change law converge, the early and consistent contributors to the transnational judicial dialogue will likely play the strongest role in shaping the emerging international normative consensus.2"' As Justice L'Heureux- Dube of the Canadian Supreme Court noted in an article describing the decline of the U.S. Supreme Court's global influence, "[decisions which look only inward ... have less relevance to those outside that jurisdiction." °6 Thus, if U.S. courts hope to participate in shaping the normative position on climate change adopted by judiciaries throughout the world, explicit recognition of the relationship between domestic and international law is vital. With climate change in particular, norm development through domestic application should be an important aspect of global learning. The problem requires a global solution beyond the scope of any prior multilateral environmental agreements. This provides a situation in which U.S. judicial reasoning in applying aspects of climate regime thinking to concrete problems will fall into fertile international policy soil. Accordingly, the recognition of international norms in **domestic climate change litigation may play a strengthening role in the perception of U.S. leadership**, encourage U.S. development and exportation of effective domestic climate strategies, and promote international agreements that will enhance consistency with such approaches. In short, explicit judicial discussion of international climate change norms as harmonious with U.S. law can **enhance U.S. ability to regain** a **global leadership** position on the issue and, thereby, more significantly shape the future of the international climate regime. 2. Promoting the Effectiveness of the International Response Along with promoting U.S. interests and standing in the international community, climate change litigation has a direct role to play in developing the international regime if courts directly engage that regime." 7 Just as the United States as an actor may benefit from acknowledging and applying international norms, the regime in which the actions occur will benefit through application and acceptance. Indeed, a case such as Massachusetts v. EPA that directly engages only domestic law can nonetheless be understood to impact international lawmaking by considering its actors."' More important, however, will be cases in which the domestic judiciary gives life to international agreements through direct engagement-a "role [that] is particularly important as a check on the delegitimization of international legal rules that are not enforced."" 9 Assuming, as we must in the arena of climate change, that international law can only effect significant changes in behavior through penetration of the domestic sphere, domestic litigation that employs international law not only provides an instance in which the international appears effective but, more importantly, molds it into a shape that will enable further use in domestic cases or suggest necessary changes internationally. By engaging the international, domestic cases can also provide articulation for the norms that have emerged. The precise meaning of the UNFCCC obligation that nations take measures must be hammered out on the ground. In the United States, if Congress has not acted, it is appropriate for the courts to begin this process by measuring particular actions against the standard. 3. Encouraging Consistency in Domestic Law and Policy In the absence of national climate change law and policy, explicit discussion of international sources and norms in litigation will provide a well-developed baseline for a uniform judicial approach in the domestic realm. This could occur both within and beyond the United States. Within the United States, bringing international environmental law into the mix of judicial reasoning would provide common grounding that unifies the decisions and begins to construct a more systematic preference for development of an effective legal response to international threats. Specifically, if an international climate change norm is found relevant to interpretation of a domestic statute, reference will be appropriate to that norm when future questions of interpretation of the domestic statute arise.210 Thus, to the extent that climate change cases rely upon consensus concerning the scientific evidence of climate change, future cases should use that consensus as a measuring stick for claims of scientific uncertainty.2n The same can occur with norm development. For example, had the Court in Massachusetts tied its jurisdictional or substantive holding to an identifiable norm, the opinion would have greater clarity and value as a precedent in other contexts within the United States. Outside the United States, this approach would provide value to other, more transnationally oriented domestic courts.212 This would serve a norm entrepreneurship function and likely increase agreement among domestic courts on how to approach climate change issues raised under statutes designed for other purposes. 4. Enabling a Check at the Domestic-International Interface Finally, climate change litigation has something to offer for the growth of administrative law at the interface of domestic and international law. At least two points are noteworthy. First, U.S. courts can serve a unique function of providing legal accountability for U.S. failure to honor its UNFCCC commitments.213 Although this might be achieved implicitly, arguably the approach of Massachusetts, doing so explicitly would provide a check of a different magnitude. An explicit check here would serve the purposes identified above, as well as offering the practical benefit of increasing compliance. The dualist tradition, and perhaps concerns of domestic political backlash, weigh against grounding a decision solely in the UNFCC. However, looking to it as a major point in a narrative defining the development of a partly domestic obligation to take national action for the redress of climate change would serve the same beneficial purpose. This approach has the advantage of building a significant bridge over the dualist divide between domestic and international law without ripping the Court's analysis from traditional, dualist moorings. Pg. 212-216

#### Warming causes extinction

Mazo 10 (Jeffrey Mazo – PhD in Paleoclimatology from UCLA, Managing Editor, Survival and Research Fellow for Environmental Security and Science Policy at the International Institute for Strategic Studies in London, 3-2010, “Climate Conflict: How global warming threatens security and what to do about it,” pg. 122)

The best estimates for global warming to the end of the century range from 2.5-4.~C above pre-industrial levels, depending on the scenario. Even in the best-case scenario, the low end of the likely range is 1.goC, and in the worst 'business as usual' projections, which actual emissions have been matching, the range of likely warming runs from 3.1--7.1°C. Even keeping emissions at constant 2000 levels (which have already been exceeded), global temperature would still be expected to reach 1.2°C (O'9""1.5°C)above pre-industrial levels by the end of the century." Without early and severe reductions in emissions, the effects of climate change in the second half of the twenty-first century are likely to be catastrophic for the stability and security of countries in the developing world - not to mention the associated human tragedy. Climate change could even undermine the strength and stability of emerging and advanced economies, beyond the knock-on effects on security of widespread state failure and collapse in developing countries.' And although they have been condemned as melodramatic and alarmist, many informed observers believe that unmitigated climate change beyond the end of the century could pose an existential threat to civilisation." What is certain is that there is no precedent in human experience for such rapid change or such climatic conditions, and even in the best case adaptation to these extremes would mean profound social, cultural and political changes

#### No adaptation – causes all impacts

Roberts 13—citing the World Bank Review’s compilation of climate studies

David, “If you aren’t alarmed about climate, you aren’t paying attention” [http://grist.org/climate-energy/climate-alarmism-the-idea-is-surreal/] January 10 //mtc

We know we’ve raised global average temperatures around 0.8 degrees C so far. We know that 2 degrees C is where most scientists predict catastrophic and irreversible impacts. And we know that we are currently on a trajectory that will push temperatures up 4 degrees or more by the end of the century. What would 4 degrees look like? A recent World Bank review of the science reminds us. First, it’ll get hot: Projections for a 4°C world show a dramatic increase in the intensity and frequency of high-temperature extremes. Recent extreme heat waves such as in Russia in 2010 are likely to become the new normal summer in a 4°C world. Tropical South America, central Africa, and all tropical islands in the Pacific are likely to regularly experience heat waves of unprecedented magnitude and duration. In this new high-temperature climate regime, the coolest months are likely to be substantially warmer than the warmest months at the end of the 20th century. In regions such as the Mediterranean, North Africa, the Middle East, and the Tibetan plateau, almost all summer months are likely to be warmer than the most extreme heat waves presently experienced. For example, the warmest July in the Mediterranean region could be 9°C warmer than today’s warmest July. Extreme heat waves in recent years have had severe impacts, causing heat-related deaths, forest fires, and harvest losses. The impacts of the extreme heat waves projected for a 4°C world have not been evaluated, but they could be expected to vastly exceed the consequences experienced to date and potentially exceed the adaptive capacities of many societies and natural systems. [my emphasis] Warming to 4 degrees would also lead to “an increase of about 150 percent in acidity of the ocean,” leading to levels of acidity “unparalleled in Earth’s history.” That’s bad news for, say, coral reefs: The combination of thermally induced bleaching events, ocean acidification, and sea-level rise threatens large fractions of coral reefs even at 1.5°C global warming. The regional extinction of entire coral reef ecosystems, which could occur well before 4°C is reached, would have profound consequences for their dependent species and for the people who depend on them for food, income, tourism, and shoreline protection. It will also “likely lead to a sea-level rise of 0.5 to 1 meter, and possibly more, by 2100, with several meters more to be realized in the coming centuries.” That rise won’t be spread evenly, even within regions and countries — regions close to the equator will see even higher seas. There are also indications that it would “significantly exacerbate existing water scarcity in many regions, particularly northern and eastern Africa, the Middle East, and South Asia, while additional countries in Africa would be newly confronted with water scarcity on a national scale due to population growth.” Also, more extreme weather events: Ecosystems will be affected by more frequent extreme weather events, such as forest loss due to droughts and wildfire exacerbated by land use and agricultural expansion. In Amazonia, forest fires could as much as double by 2050 with warming of approximately 1.5°C to 2°C above preindustrial levels. Changes would be expected to be even more severe in a 4°C world. Also loss of biodiversity and ecosystem services: In a 4°C world, climate change seems likely to become the dominant driver of ecosystem shifts, surpassing habitat destruction as the greatest threat to biodiversity. Recent research suggests that large-scale loss of biodiversity is likely to occur in a 4°C world, with climate change and high CO2 concentration driving a transition of the Earth’s ecosystems into a state unknown in human experience. Ecosystem damage would be expected to dramatically reduce the provision of ecosystem services on which society depends (for example, fisheries and protection of coastline afforded by coral reefs and mangroves.) New research also indicates a “rapidly rising risk of crop yield reductions as the world warms.” So food will be tough. All this will add up to “large-scale displacement of populations and have adverse consequences for human security and economic and trade systems.” Given the uncertainties and long-tail risks involved, “there is no certainty that adaptation to a 4°C world is possible.” There’s a small but non-trivial chance of advanced civilization breaking down entirely. Now ponder the fact that some scenarios show us going up to 6 degrees by the end of the century, a level of devastation we have not studied and barely know how to conceive. Ponder the fact that somewhere along the line, though we don’t know exactly where, enough self-reinforcing feedback loops will be running to make climate change unstoppable and irreversible for centuries to come. That would mean handing our grandchildren and their grandchildren not only a burned, chaotic, denuded world, but a world that is inexorably more inhospitable with every passing decade.

#### Best science proves warming is real and anthropogenic

Muller 12 (Richard A., professor of physics at the University of California, Berkeley, and a former MacArthur Foundation fellow, “The Conversion of a Climate-Change Skeptic,” 7-28-12, <http://www.nytimes.com/2012/07/30/opinion/the-conversion-of-a-climate-change-skeptic.html?_r=2&pagewanted=all>)

CALL me a converted skeptic. Three years ago I identified problems in previous climate studies that, in my mind, threw doubt on the very existence of global warming. Last year, following an intensive research effort involving a dozen scientists, I concluded that global warming was real and that the prior estimates of the rate of warming were correct. I’m now going a step further: Humans are almost entirely the cause. My total turnaround, in such a short time, is the result of careful and objective analysis by the Berkeley Earth Surface Temperature project, which I founded with my daughter Elizabeth. Our results show that the average temperature of the earth’s land has risen by two and a half degrees Fahrenheit over the past 250 years, including an increase of one and a half degrees over the most recent 50 years. Moreover, it appears likely that essentially all of this increase results from the human emission of greenhouse gases. These findings are stronger than those of the Intergovernmental Panel on Climate Change, the United Nations group that defines the scientific and diplomatic consensus on global warming. In its 2007 report, the I.P.C.C. concluded only that most of the warming of the prior 50 years could be attributed to humans. It was possible, according to the I.P.C.C. consensus statement, that the warming before 1956 could be because of changes in solar activity, and that even a substantial part of the more recent warming could be natural. Our Berkeley Earth approach used sophisticated statistical methods developed largely by our lead scientist, Robert Rohde, which allowed us to determine earth land temperature much further back in time. We carefully studied issues raised by skeptics: biases from urban heating (we duplicated our results using rural data alone), from data selection (prior groups selected fewer than 20 percent of the available temperature stations; we used virtually 100 percent), from poor station quality (we separately analyzed good stations and poor ones) and from human intervention and data adjustment (our work is completely automated and hands-off). In our papers we demonstrate that none of these potentially troublesome effects unduly biased our conclusions. The historic temperature pattern we observed has abrupt dips that match the emissions of known explosive volcanic eruptions; the particulates from such events reflect sunlight, make for beautiful sunsets and cool the earth’s surface for a few years. There are small, rapid variations attributable to El Niño and other ocean currents such as the Gulf Stream; because of such oscillations, the “flattening” of the recent temperature rise that some people claim is not, in our view, statistically significant. What has caused the gradual but systematic rise of two and a half degrees? We tried fitting the shape to simple math functions (exponentials, polynomials), to solar activity and even to rising functions like world population. By far the best match was to the record of atmospheric carbon dioxide, measured from atmospheric samples and air trapped in polar ice. Just as important, our record is long enough that we could search for the fingerprint of solar variability, based on the historical record of sunspots. That fingerprint is absent. Although the I.P.C.C. allowed for the possibility that variations in sunlight could have ended the “Little Ice Age,” a period of cooling from the 14th century to about 1850, our data argues strongly that the temperature rise of the past 250 years cannot be attributed to solar changes. This conclusion is, in retrospect, not too surprising; we’ve learned from satellite measurements that solar activity changes the brightness of the sun very little.

#### **Independently, international cooperation solves extinction**

Ikenberry 11 (G. John Ikenberry – Professor of Politics and International Affairs at Princeton University , Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order, 2011)

Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics— these and other dangers loom on the horizon. **Any of these** threats **could** endanger Americans' lives and way of life either directly or indirectly by **destabiliz**ing **the global system** upon which American security and prosperity depends. Pandemics and global warming are not threats wielded by human hands, but their consequences could be equally devastating. Highly infectious disease has the potential to kill millions of people. Global warming threatens to trigger waves of environmental migration and food shortages and may further destabilize weak and poor states around the world. The world is also on the cusp of a new round of nuclear proliferation, putting mankinds deadliest weapons in the hands of unstable and hostile states. Terrorist networks offer a new specter of nonstate transnational violence. Yet none of these threats is, in itself, so singularly preeminent that it deserves to be the centerpiece of American grand strategy in the way that antifascism and anticommunism did in an earlier era.15 What is more, these various threats are interconnected—and it is their interactive effects that represent the most acute danger. This point is stressed by Thomas Homer-Dixon: "Its the convergence of stresses that's especially treacherous and makes synchronous failure a possibility as never before. In coming years, our societies won't face one or two major challenges at once, as usually happened in the past. Instead, they will face an alarming variety of problems—likely including oil shortages**, climate change,** economic instability**, and** mega-terrorism—all at the same time." The danger is that several of these threats will materialize at the same time and interact to generate greater violence and instability "What happens, for example, if together or in quick succession the world has to deal with a sudden shift in climate that sharply cuts food production in Europe and Asia, a severe oil price increase that sends economies tumbling around the world, and a string of major terrorist attacks on several Western capital cities?"16 The global order itself would be put at risk, as well as the foundations of American national security. What unites these threats and challenges, as I noted in chapter 7, is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence— stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States cannot hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action. If the world of the twenty-first century were a town, the security threats faced by its leading citizens would not be organized crime or a violent assault by a radical mob on city hall. It would be a breakdown of law enforcement and social services in the face of constantly changing and ultimately uncertain vagaries of criminality, nature, and circumstance. The neighborhoods where the leading citizens live can only be made safe if the security and well-being of the beaten-down and troubled neighborhoods were also improved. No neighborhood can be left: behind. At the same time, the town will need to build new capacities for social and economic protection. People and groups will need to cooperate in new and far-reaching ways. But the larger point is that today the United States confronts an unusually diverse and diffuse array of threats and challenges. When we try to imagine what the premier threat to the United States will be in 2020 or 2025, it is impossible to say with any confidence that it will be X, Y, or Z. Moreover, even if we could identify X, Y, or Z as the premier threat around which all others turn, it is likely to be complex and interlinked with lots of other international moving parts. Global pandemics are connected to failed states, homeland security, international public health capacities, et cetera. Terrorism is related to the Middle East peace process, economic and political development, nonproliferation, intelligence cooperation, European social and immigration policy, et cetera. The rise of China is related to alliance cooperation, energy security, democracy promotion, the WTO, management of the world economy, et cetera. So again, we are back to renewing and rebuilding the architecture of global governance and frameworks of cooperation to allow the United States to marshal resources and tackle problems along a wide and shifting spectrum of possibilities. Pg. 350-353

#### Scenario 2 is Markets

#### DOD compliance is perceived as ad hoc and self-interested – Court action is necessary to signal to the market a long-term commitment to energy efficiency

**Horton 11** [Laura, Doctor of Jurisprudence Candidate 2012, Golden Gate University School of Law, FUTURE FORCE SUSTAINABILITY: DEPARTMENT OF DEFENSE AND ENERGY EFFICIENCY IN A CHANGING CLIMATE, 2011 Golden Gate University Golden Gate University Environmental Law Journal Spring, 2011, L/N]

Immediately following the events of September 11, the political climate was not conducive to preserving environmental health when it would interfere with readiness training for troops **during wartime**. n130 During this time, the DOD made multiple attempts to escape from the purview of federal environmental regulations. n131 These attempts were explained in 2003 by former Defense Secretary Donald Rumsfeld as simply a way to "clarify environmental statutes which restrict access to, and sustainment of, training and test ranges essential for the readiness of our troops and the effectiveness of our weapons systems in the global war on terror." n132 Many, **even the Supreme Court**, shared the position that **national security** trumps environmental protection. n133 However, as the high-profile wars in Iraq and Afghanistan began to fade from mainstream attention, the DOD began contributing more to a public discussion on energy efficiency and various environmental problems such as climate change. Journalists, politicians, and people within the military structure itself, such as the Military Advisory Board in the CNA report, started discussing major changes in the DOD's current energy policies. n134 Mainstream media have started to pick up on the transition, [\*319] particularly in light of insurgent attacks on fuel-supply convoys in Afghanistan, where fuel is the number one DOD import. n135 Companies in the United States are being contracted to supply the troops with solar power equipment, including portable solar panels, solar chargers for electronic equipment, and other renewable technology. n136 Members of the military are hopeful that less dependence on fossil fuels will provide a safer atmosphere for soldiers by reducing the number of truck convoys that haul fuel to bases, thus reducing the number of attacks. n137 Besides providing assistance with alternative-energy projects for troops, the DOD's newfound interest in better funding for energy research and development is evident through solar installations, electric-vehicle purchases, and development of renewable fuel. n138 For example, the Army recently announced plans to develop smart microgrid technology, n139 which "can draw energy interchangeably from solar arrays and other sources to cut costs, improve logistics, and reduce troop safety risks involved in fossil fuel convoys." n140 These microgrids could potentially cut fuel consumption at an Army base by up to sixty percent. n141 The Air Force is also pursuing energy efficiency through the development of jet biofuel and has plans to certify its entire fleet to run on biofuels by 2011. n142 It is already running test flights with 50% biofuel [\*320] mixtures. n143 Since a majority of the fuel used by the DOD goes to military aircraft, n144 this could have an enormous impact on fossil-fuel use and total carbon dioxide emissions. Although there is conflicting evidence on whether biofuel production results in higher or lower total emissions, there are other studies that show the use of biofuels could reduce GHG emissions overall, since they burn cleaner and the amount of energy needed in production is decreasing. n145 Similarly, the Navy, which set a goal to have 50% of its power come from renewable sources by 2020, has been exploring the use of natural biocides to keep the hulls of ships clean. n146 Barnacles, algae and other marine biofilm, which cling to the hulls, can reduce a ship's fuel efficiency by up to 40%; therefore, keeping the hulls clean cuts down on the amount of operational fuel used in the military. n147 Not only does this particular project benefit the Navy in fuel and economic efficiency since other biocides are expensive, but it also protects sensitive marine life from the harmful chemical biocides that are normally used. n148 Small, individualized projects have also proven extremely effective. According to Dan Nolan, author of the DOD Energy Blog, the single most effective program for reducing energy consumption has been spray foam insulation of temporary structures in Iraq and Afghanistan. n149 The spray foam project has proven to be not only energy efficient but financially beneficial as well, saving the military over 100 million dollars per year. n150 In addition to seeking reduction in fossil-fuel use generally, the military is also actively reducing GHG emissions through "contracted landfill disposal, increased teleworking and less air travel." n151 Government contractors have also developed web-based GHG [\*321] inventories for Army installations that can be used to identify, quantify, and report emissions including carbon dioxide, nitrous oxide, methane, sulfur hexafluoride, hydro fluorocarbons, and per fluorocarbons. n152 C. An Ultimate Paradox As the world's largest consumer of energy, the military has a long way to go if it intends to achieve energy efficiency goals set by the government and the DOD itself. However, not everyone is convinced that the military will **follow through**, considering its **past environmental record.** n153 This skepticism is valid in light of the growing impact climate change has had on the planet and the extent to which the military has contributed to GHG emissions. n154 In addition, mistrust of the DOD's environmental record is warranted, since environmental damage from military activities still exists all over the United States n155 The suspect attitude toward military greening is akin to an attitude held by many concerning corporate "environmentalism" in the form of "**greenwashing**." n156 The military is **claiming to go "green**," and is indeed making strides in energy efficiency, while simultaneously **increasing oil** use by 1.5% annually through 2017. n157 Also, efficiency programs are limited to base installations and are not applied to **tactical** **fleets**, where much of the DOD's **fuel consumption occurs**. n158 Furthermore, little is said in any of the aforementioned reports about the many exemptions the DOD sought from numerous environmental laws over the past eight years. n159 The military is accustomed to approaching environmental protection on its own terms and is giving **mixed signals** about how [\*322] important energy efficiency will be in the near future. Consequently, there is a question as to how **self-imposed standards** such as voluntary compliance with federal energy efficiency standards, from which the DOD is otherwise exempt, will play out. n160 One example of the uncertainty of these programs can be found in a recent article in ClimateWire. n161 According to the article, the aforementioned spray foam insulation program has now been halted in the absence of advocacy for such programs. n162 The difficulty of relocating the foam tents and high disposal costs have led to the demise of spray foam use, and supporters are calling for a mandate to move forward with the project. n163 It is unclear whether the DOD will resume the program at all. The need for advocacy is especially important for the public to understand, because of the potential for **new energy technology** to transform the **civilian marketplace** as military technology finds its way into the public domain. n164 The military has begun to take the lead in energy efficiency, **drive the civilian sector** toward sustainable energy use, and push for "policy change to help make the necessary cultural shifts in how its people think about energy use and the decisions they make in all settings." n165 The more seriously the military takes energy efficiency, **the faster sustainable technology will reach the public**. For that reason, **progress on these efforts should be monitored** and documented for the public to review. A history of military brush-offs of the importance of environmental protection does not lend itself to a campaign of global stewardship. In order to win the confidence of the public, the military must demonstrate a willingness to follow through with the programs it has set in place **to lead alternative-energy development in the United States and the world.**

**U.S. leadership on the broader green tech transition is critical to solve warming and key to economic power**

**Klarevas 9** –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will **save the planet from global warming** will allow the U.S. to **outmaneuver potential great power rivals** seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the **greatest challenge ever faced by (hu)mankind**. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a **nasty zero-sum contest could be looming** on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and **global stability**. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not **undermine international security**, **global warming will**. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a **tremendous economic boom**, while simultaneously providing it with means of leverage that can be employed to **keep potential foes in check**. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent.

**Goes nuclear**

**Khalilzad** **11**

[Zalmay Khalilzad, United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992. 2/8/11, <http://www.nationalreview.com/articles/259024/economy-and-national-security-zalmay-khalilzad>]

We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the higher risk of escalation. The stakes are high. In modern history, the longest period of peace among the great powers has been the era of U.S. leadership. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars. American retrenchment could have devastating consequences. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions. As rival powers rise, Asia in particular is likely to emerge as a zone of great-power competition. Beijing’s economic rise has enabled a dramatic military buildup focused on acquisitions of naval, cruise, and ballistic missiles, long-range stealth aircraft, and anti-satellite capabilities. China’s strategic modernization is aimed, ultimately, at denying the United States access to the seas around China. Even as cooperative economic ties in the region have grown, China’s expansive territorial claims — and provocative statements and actions following crises in Korea and incidents at sea — have roiled its relations with South Korea, Japan, India, and Southeast Asian states. Still, the United States is the most significant barrier facing Chinese hegemony and aggression.

### 1AC – No Looking

#### Contention 3 is THE LAW

The Court has ended broad deference to the executive but maintains environmental deference through a “national security” exemption to NEPA during wartime – court action key to reverse it

**Donovan 11** (Emily Donovan, J.D., 2010, Albany Law School, Albany, New York, “Deferring to the Assertion of National Security: The Creation of a National Security Exemption Under the National Environmental Policy Act of 1969,” Winter 2011, West Northwest Journal of Environmental Law and Policy, 17 Hastings W.-N.W. J. Env. L. & Pol'y 3)

Furthermore, it is the **Court's responsibility** to ensure that the Executive is abiding by such laws, rather than creating its own. To do so, the Court must review the actions of agencies when challenged rather than simply **defer** to the judgments of such agencies, even in times of war. If the Court fails to do so, there is no check on the Executive's power; the Executive is free to disregard the limits that Congress has placed on it. n137 In **Hamdan** v. Rumsfeld, the U.S. Supreme Court properly refused to allow the Executive to ignore the limits on its power. n138 The Court held that "whether or not the President has independent power, absent congressional authorization, ... he **may not disregard limitations** that Congress has, in proper exercise of its own war powers, placed on his powers." n139 The Executive cannot use war as a justification for any and all action it desires to take. The Executive has certain powers while Congress has certain others, with a strict separation between the powers of each, as ""the power to make the necessary laws is in Congress; the power to execute in the President... . But neither can the President, in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President.'" n140 Each branch of government must stay within the bounds of its power and must not usurp the powers of the other branches. If the Executive is allowed to do whatever it pleases in times of war, the notion of separation of powers, upon which this nation was founded, is destroyed. n141 In Hamdan, the Court would not allow this. At issue was the Executive's use of a military commission to try Hamdan, a Yemeni national captured by [\*25] militia forces in Afghanistan and then turned over to the U.S., for then-unspecified crimes, later designated as conspiracy "to commit ... offenses triable by military commission." n142 The Court found that no congressional act authorized the Executive to convene a military commission to try Hamdan, and "absent a more specific congressional authorization, the task of this Court is ... to decide whether Hamdan's military commission is so justified." n143 If the Executive's power to take action is not specifically authorized by Congress, the Court has a duty to examine the action to see if it is justified. **If the Court** instead simply **defers**, it allows the Executive **too much authority**, authority in excess of what was intended for it. In the absence of congressional authorization, the Executive must show that the act is necessary in order for the Court to permit it; the Executive failed to do so in Hamdan. n144 Because there was no congressional authorization for the Executive's action establishing a military commission and because the Executive failed to show necessity, the Court would not permit the action. The Court refused to simply defer to the Executive's judgment merely because it was during a **time of war**. Instead, the Court conducted the proper analysis and concluded that the Executive was overstepping its bounds; the fact that it was a time of war did not authorize the Executive to exceed its authority. n145 The U.S. Supreme Court also **refused to defer** to the Executive in Hamdi v. Rumsfeld, where it made clear its role in reviewing challenges. n146 The Court declared that it will give weight to the Executive's judgments during times of war, stating that "we accord the greatest respect and consideration to the judgments of military authorities in matters relating to the actual prosecution of a war ... ." n147 However, it explained that this does not mean that it will simply defer to the Executive. n148 Instead, it will review the Executive's actions. As the Court noted, "it does not infringe on the core role of the military for the courts to exercise their own time-honored and [\*26] constitutionally mandated roles of reviewing and resolving claims like those presented here." n149 The Court reviewed the Executive's decision to detain Hamdi, an American citizen classified as an "enemy combatant," indefinitely during the war with Afghanistan, without allowing him to challenge the basis for his detention. n150 The Court stated that "the threats to military operations posed by a basic system of independent review are not so weighty as to trump a **citizen's core rights to challenge** meaningfully the Government's case and to be heard by an impartial adjudicator." n151 In other words, the Court held that it would not refrain from reviewing the Executive's action merely because the Executive claimed that doing so would be a threat to its military operations; the threat to such operations does not trump a citizen's right to review. The Court stressed the importance of the doctrine of separation of powers and declared that "we have long since made clear that a state of war is **not a blank check** for the President when it comes to the rights of the Nation's citizens." n152 A state of war does not mean that the Executive can do whatever it pleases. And if it tries to do so, judicial review is the mechanism to stop it as "the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." n153 If the Court defers to the Executive's decisions rather than engaging in the appropriate review, it allows the Executive's power to go unchecked, permitting the Executive to take actions that are not authorized by the Legislature. It is up to the Court to ensure that the Executive Branch is not creating its own laws, but rather is abiding by the laws as created by the Legislative Branch. IV. Congress Did Not Intend to Add a National Security Exemption to NEPA The Legislative Branch did not include a national security exemption under NEPA. n154 It did, on the other hand, create exemptions for national security under other environmental laws, including the Clean Air Act, n155 the [\*27] Clean Water Act, n156 the Coastal Zone Management Act ("CZMA"), n157 the Endangered Species Act, n158 and the Marine Mammal Protection Act ("MMPA"). n159 Therefore, if Congress intended a national security exemption to NEPA, it would have included it in the statute as it did with all of the other environmental statutes. Because the scope of NEPA is broad, it may overlap with these other statutes at times, as it did in Winter, where the MMPA and the CZMA were also at issue. However, when an agency is granted a national security exemption under a different statute that explicitly allows for it, as was the Navy in Winter, its duties under NEPA should not be affected. An agency that is exempted, for example, from a rule that says it cannot take a marine mammal (MMPA), does not necessarily have to be exempted from a rule that says it must prepare an EIS before engaging in an activity that will result in the taking of a marine mammal (NEPA). It is one thing to be allowed to take a marine mammal and another to have to consider the environmental impacts of taking the mammal before doing so. In fact, this is **the essence of NEPA**: agencies must consider the environmental impacts of their actions **before engaging in them**, allowing them to discover and take steps to lessen the impacts if they so choose, but will not be required to effect any substantive result. Therefore, the grant of an exemption to a substantive statute, like the MMPA, should not affect an agency's duty to comply with the procedural statute, NEPA. The goal is that, after considering the impacts of the proposed action under NEPA, the agency will either decide not to take the action or to implement mitigation measures to lessen the environmental impacts of the action, even though it is permitted to take the action under the national security exemption to the substantive statute. Because Congress did not include a national security exemption under NEPA, the agencies of the Executive Branch must abide by it, even in times of war, and the courts cannot take it upon themselves to except these agencies from doing so. n160 Instead, the courts must give effect to what Congress enacted. As the Maryland Court of Appeals stated, "we are obliged to ascertain and carry out the legislative intent; to consider the language of the enactment in its natural and ordinary signification; to not insert or omit words to make a statute express an intention not evidenced in [\*28] its original form." n161 Courts cannot substitute their own opinions of what the law should be for what the law says; they must apply the law as it is stated. And, as stated, NEPA does not include a national security exemption. If Congress does intend a national security exemption to exist in NEPA, it must write this into the statute, but until then it is not within the Court's authority to create such an exemption. n162 V. Conclusion By deferring to the agencies of the Executive Branch in determining whether to grant injunctive relief in NEPA noncompliance cases, the Court ignores its duty to act as a check on the Executive's power and instead grants the Executive an exemption from NEPA. When injunctive relief is requested, the **Court is required to give due weight** to each competing harm and grant relief to the party toward whom equity tips. This means that, in NEPA noncompliance cases where national security is asserted as a defense, courts must balance the harm to the environment against the harm to national security. When courts ignore their duty to conduct this balancing and instead defer to the assertion of national security, they create a national security exemption to NEPA, one which the legislature did not include or intend. The agencies of the Executive Branch serve an important role and the preservation of national security is of extreme importance, but environmental impacts from the actions of these agencies can be just as significant; the effects of agency action on our health and safety can be just as damning as the absence of action on the preservation of national security. **Courts must not**, without first examining the environmental effects, deny **injunctive relief** any time an agency claims that an injunction will prevent it from protecting **national security**. When an agency's proposed action is in the interest of national security and compliance with NEPA would truly cause a delay that would impede the agency's ability to protect and preserve national security, an exception to NEPA compliance may be justified. But a court cannot decide if this is true without first weighing the competing harms. Courts must explore the truth of the national security [\*29] assertion to ensure that it is not being used merely as a pretext to avoid complying with NEPA. NEPA serves as an important check on agency action. It forces agencies to consider the consequences of and alternatives to their actions, in turn leading to substantive changes in decision-making. NEPA's EIS requirements also serve to **inform the public** and to **create records** which courts can review in determining challenges for noncompliance. While the agencies of the Executive Branch may play a crucial role in the protection and preservation of our national security, this should not give them a free pass to escape NEPA compliance; it is important for them to consider the environmental impacts of their proposed actions. The Legislature did not intend to exempt agencies in the business of protecting national security from NEPA. If it did, it would have written a national security exemption into the statute, just as it wrote one into other major environmental statutes. If a national security exemption to NEPA is the Legislature's intent, the Legislature should write it into the statute. But unless and until Congress writes a national security exemption into NEPA, courts have a duty to conduct the **appropriate balancing** in determining whether to grant **injunctive relief** in NEPA **noncompliance cases** rather than merely giving it lip service in order to refrain from creating an exemption which Congress did not intend.

National security exemptions to NEPA guts enforcement and signals the court apathy - the impact biodiversity

**Krueger 9** (William, J.D., University of North Carolina School of Law, Legal Aid of North Carolina, Department of Environment & Natural Resources, North Carolina Journal Of Law &Technology Volume 10,Issue 2: Spring 2009 “In The Navy: The Future Strength Of Preliminary Injunctions Under NEPA In Light Of NRDC v. Winter”)

Since the 1970s, many laws have been passed with the overarching goal of protecting the environment.2 Without **proper enforcement** of environmental protection laws, the environment will likely suffer from increased **pollution** levels and less **biological diversity**. Therefore, it is critical to ensure that these laws are enforced. A person or agency with proper standing can bring a citizen suit to enforce environmental protection laws against alleged perpetrators.3 To ensure that the perpetrator does not continue to harm the environment while the action is pending in court, the plaintiff will often seek a preliminary injunction4 to force the perpetrator to stop or alter his environmentally detrimental practices.5 Without the **preliminary injunction**, enforcement of environmental statutes would be much more difficult. On November 12, 2008, the Supreme Court handed down its decision in Winter v. Natural Resources Defense Council. 6 The Court’s primary concern in this case was whether a preliminary injunction which forbade the Navy’s use of mid-frequency active (“MFA”) sonar7 during certain portions of its submarine training exercises off the coast of southern California was properly issued.8 The injunction was sought by the National Resources Defense Council (NRDC),9 a handful of other environmental interest groups, and several concerned citizens. The injunction was granted by the United States District Court for the Central District of California on January 3, 2008,10 and upheld by the Court of Appeals for the Ninth Circuit on February 29, 2008.11 The district court granted the injunction because the Navy failed to comply with the requirements of the National Environmental Policy Act (NEPA).12 Specifically, the Navy failed to prepare an adequate Environmental Assessment (EA)13 or a subsequent Environmental Impact Statement (EIS),14 both of which must be prepared for proposed “major Federal actions significantly affecting the human environment.”15 The injunction imposed several restrictions on the Navy’s ability to use its MFA sonar in training exercises.16 The Navy eventually appealed to the Supreme Court, which published three very divided opinions.17 The Roberts majority opined that the environmentalists’ interests were “plainly outweighed by the Navy’s need to conduct realistic training exercises.”18 The majority focused on two primary factors before holding that the district court had abused its discretion by granting a preliminary injunction.19 First, the Court challenged the level of probability that the district court assigned to the likelihood of the plaintiffs’ success at trial.20 Second, the Court felt that neither the district court nor the Ninth Circuit adequately considered the balance of equities between the plaintiffs and the Navy.21 For these two reasons, the Court held that the district court abused its discretion by imposing the injunctive measures challenged here by the Navy.22 Therefore, the Court vacated the portion of the district court’s injunction that the Navy challenged.23 There were two other opinions which differed from the majority. Justice Bryer, concurring in part and dissenting in part, believed that the proper solution was an injunction restricting the Navy’s use of MFA. However, the injunction should not be as stringent as the district court’s original injunction.24 On the other hand, Justice Ginsburg, who dissented, would have affirmed the lower courts’ decisions and upheld the district court’s injunction.25 Her dissent focused on the “central question” of “whether the Navy must prepare an [EIS].”26 Justice Ginsburg believed that by attempting to circumvent the NEPA process, the Navy’s actions in this case **“undermined NEPA”** by appealing to the Council on Environmental Quality (CEQ), a division of **the White House**.27 The outcome of this case is both unfortunate and improper. Its result is a signal that **the Court** is likely to continue to give **extraordinary deference** to the military in **environmental cases** which may involve matters of national security, without any attempt to look into the circumstances of the military’s assertions of national security interests. This case also shows how easy it has become for agencies, particularly military branches, to avoid adhering to laws like NEPA. Courts should be more willing to grant preliminary injunctions when it comes to NEPA enforcement actions, lest agencies be allowed to do as they will without any regard to the **rule of law.** Without more **stringent NEPA enforcement** by the courts, the Act’s purposes of “sensitiz[ing] … federal agencies to the environment” and “foster[ing] precious **resource preservation**” will be thwarted.28

Biodiversity decline causes extinction

**Mmom 8** (Dr. Prince Chinedu, University of Port Harcourt (Nigeria), “Rapid Decline in Biodiversity: A Threat to Survival of Humankind”, Earthwork Times, 12-8, http://www.environmental-expert.com/resultEachArticle.aspx?ci d=0&codi=51543)

From the foregoing, it becomes obvious that the **survival** of Humankind **depends on** the continuous existence and conservation of **biodiversity**. In other words, a threat to biodiversity is a serious threat to the survival of Human Race. To this end, biological diversity must be treated more seriously as a **global resource**, to be indexed, used, and above all, preserved. Three circumstances conspire to give this matter an unprecedented urgency. First, exploding human populations are degrading the environment at an accelerating rate, especially in tropical countries. Second, science is discovering new uses for biological diversity in ways that can relieve both human suffering and environmental destruction. Third, much of the diversity is being irreversibly lost through extinction caused by the destruction of natural habitats due to development pressure and oil spillage, especially in the Niger Delta. In fact, Loss of biodiversity is significant in several respects. First, breaking of **critical links** in the biological chain can disrupt the functioning of an **entire ecosystem** and its **biogeochemical cycles**. This disruption may have significant effects on larger scale processes. Second, loss of species can have impacts on the organism pool from which medicines and pharmaceuticals can be derived. Third, loss of species can result in loss of genetic material, which is needed to replenish the genetic diversity of domesticated plants that are the **basis of world agriculture** (Convention on Biological Diversity). Overall, we are locked into a race. We must hurry to acquire the knowledge on which a wise policy of conservation and development can be based for centuries to come.

The national security exemption guts preliminary injunctions against the military – the legal language creates a higher threshold for court enforcement

**Wolf 13** (Arthur D., Professor of Law and Director, Institute for Legislative & Governmental Affairs, Western New England University School of Law, “Preliminary Injunction Standards In Massachusetts State And Federal Courts,” Western New England Law Review, 35 W. New Eng. L. Rev. 1)

In Winter v. Natural Resources Defense Council, Inc., the Court finally focused on the criteria for the grant or denial of preliminary injunctions. n153 There, the Natural Resources Defense Council sued to enjoin the United States Navy from using "mid-frequency active sonar" in the waters off Southern California. n154 It alleged that such sonar caused serious harm to some species of marine mammals. n155 Using a "sliding scale" approach it had used for many years, the Ninth Circuit Court of Appeals affirmed the grant of preliminary relief, ruling that the plaintiff had made a strong showing on the likelihood of prevailing on the merits and a "possibility" of irreparable harm. n156 [\*24] The Supreme Court reversed the ruling of the Court of Appeals. n157 First, it noted that a temporary injunction is "an extraordinary remedy never awarded as of right." n158 Second, the Court added that a trial court should grant preliminary relief only upon a "clear showing" that the moving party is entitled to it. n159 Third, the Court identified the four factors the trial court must consider in evaluating requests for temporary injunctions. n160 It ruled that the moving party "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." n161 Although the Court cited prior decisions n162 for this four-factor test, in fact it had never expressly and clearly so ruled in unmistakable language prior to its decision in Winter. At least the lower federal courts did not think so. n163 The Court then addressed the question whether it should affirm the issuance of the preliminary injunction. First, it noted that the appellate court had incorrectly required only a showing of "possible" irreparable injury, which the Court noted is "too lenient." n164 The correct standard is "likelihood" of irreparable injury. It then ruled that the plaintiff had not demonstrated the public interest would not be adversely affected. n165 In fact, the Court observed, the national defense would be seriously impaired, and courts should **defer to the military's** assessment of the dangers to the public interest if the injunction is granted. n166 When the non-moving party defendant is a government, the inquiry into the harm to that party and the harm to the public interest is the same inquiry because the government represents the public interest. n167 Finally, the Court declined to rule on the likelihood of success factor as [\*25] unnecessary because the plaintiff had failed to satisfy the other factors. Whether the Court will apply this four-factor analysis, including the **public interest criterion**, when **none of the parties** to the **litigation** is a **governmental entity** remains to be seen, although the **lower federal courts** have done so in the wake of Winter. n168 The Winter decision has already impacted the standards for granting preliminary injunctions applied in the lower federal courts, unlike prior Supreme Court decisions which seemed to have had little effect on the development of the standards for temporary relief. For example, the Ninth Circuit Court of Appeals began applying Winter immediately, notwithstanding its prior criteria. "To the extent that our cases have suggested a lesser standard, they are no longer controlling, or even viable." n169 Prior to Winter, the Ninth Circuit allowed the grant of a preliminary injunction if the plaintiff demonstrated either: (1) [A] likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor. These two alternatives represent extremes of a single continuum, rather than two separate tests. Thus, the greater the relative hardship to the party seeking the preliminary injunction, the less probability of success must be shown. n170 Winter **dramatically altered** these **previous standards** in the Ninth Circuit and elsewhere. n171 Its full impact on the standards for granting or denying preliminary injunctions is not yet fully known, but the handwriting is clearly on the wall. Finally, the Supreme Court in Winter suggested that a moving party may have to make a **heightened showing** if that party is seeking an [\*26] affirmative (or mandatory) preliminary injunction as compared to a prohibitory injunction. n172 Federal courts of appeals have read the decision in that fashion. n173 In 2000, the Second Circuit Court of Appeals had ruled that the test is "more vigorous" for an affirmative injunction, requiring the moving party to demonstrate "a clear and substantial" likelihood of succeeding on the merits. n174 Although the First Circuit has not yet, in the wake of Winter, addressed the question whether heightened standards apply to affirmative preliminary injunctions, it has ruled that temporary mandatory relief may be necessary to protect the status quo and prevent irreparable injury until a trial on the merits. n175 The affirmative injunction is usually in the form of "thou shalt," while the prohibitory injunction takes the form of "thou shalt not." The line is not always clear between the two forms of injunctions. Through the use of the "double negative" order, a court will sometimes enter an injunction that looks like a prohibitory injunction but in fact is an affirmative (or mandatory) injunction: "The defendant is hereby enjoined from failing or refusing to remove the tool shed that trespasses upon plaintiff's property," or "the defendant is hereby enjoined from failing or refusing to sell its product to the plaintiff on the same terms and conditions as it sells that product to plaintiff's competitors."

Providing ex ante injunctive relief based on the possibility of irreparable harm is crucial to prevent catastrophic tech failures in the future

Johnson 8 (Eric E. Johnson, Associate Professor of Law, University of North Dakota School of Law

Affiliate Scholar, Stanford Law School Center for Internet and Society, “Culture and Inscrutable Science: An Analytical Method for Preliminary Injunctions in Extreme Cases,” 10-24-8, <http://prawfsblawg.blogs.com/prawfsblawg/2008/10/culture-and-ins.html>)

If the judiciary surrenders to these difficulties and refuses to involve itself in the dispute, the judiciary is then rendering consensus judgments within scientific communities effectively injudicable – even where those judgments are disputed, and even where the alleged harm is destruction of the Earth. That seems unacceptable. Yet if the judiciary plows ahead and issues an injunction in such cases – despite not having a principled way of evaluating the merits of the plaintiffs’ arguments – the courts are then transformed into a marionette – manipulable by frivolous objectors into halting any scientific undertaking that is sufficiently complicated so as to be opaque to the layperson. That seems unacceptable as well. Either way, we lose the benefits of fair judicial review. Is there any way out? I believe there is. And the Columbia accident points the way. The Columbia Accident Investigation Board concluded that several aspects of the culture of NASA’s human spaceflight program led to the disaster, including, among other things, political considerations and “stifled professional differences of opinion.” While courts are not well equipped to evaluate theoretical science, they certainly are adequate to the task to investigating social dynamics, psychological factors, political influences, and organizational cultures. In evaluating a preliminary injunction request regarding the Large Hadron Collider, a court should scrutinize the culture of CERN and the particle-physics community, as well the political, social, and psychological context in which their decisions are made. Having done so, the court should then determine, with reference to those gathered facts, whether “serious questions” exist, and, thus, whether the case for a preliminary injunction has been made. An honest appraisal of the situation reveals that there are many apparently plausible reasons why the culture at CERN and within the particle-physics community could lead to flawed risk analysis. I will list several: To begin with, it seems highly plausible that particle physicists might fear serious reprisals and negative repercussions for their careers if they were to speak out about perceived dangers of the LHC. Denial of tenure, unaccepted manuscripts, and ostracism by peers are among the penalties an academic in such a situation might plausibly face. Such an apprehension would appear to be all the more acute because the LHC is the crown jewel of particle-physics experimentation. It dwarfs all predecessors in size and power, and represents a leap forward that could radically advance fundamental theory, possibly answering some of the most basic questions about our universe. To say that the LHC is important to the particle-physics community seems to be an understatement. Further, in mulling over whether to speak out, particle physicists with private doubts might well resign themselves to a fatalistic assessment. They might plausibly figure that they, as individuals, are powerless to overcome the momentum of a multinational multi-billion-dollar project. If that is their appraisal, then such individuals have nothing to gain, but much to lose, by making a public objection. Consider the possible outcomes: If a scientist speaks out and nothing bad happens, the scientist is a laughingstock. If a scientist speaks out and disaster does come to pass, professional vindication will be fleeting and bittersweet. If a scientist keeps mum or even extols the safety of the project, in a disaster scenario, embarrassment will be short-lived. But let's suppose particle physicists with private doubts reach the opposite conclusion about the likely impact of their public dissent. Suppose a private doubter predicts that his or her voice could be the tipping point that leads to widespread public concern and a permanent shutdown of the LHC. In such a case, whether the objecting scientist is right or wrong, he or she can anticipate being blamed for ruining the most exciting opportunity for advancing scientific understanding in this generation. And there’s no hope of vindication in such an event – naysayers cannot be proved right if the experiments are never run. The math-oriented are often fond of using matrices to elucidate decision-making. A physicist creating such a matrix, using the logic detailed above, would be faced with a series of boxes in which all outcomes are quite bad, except one: to be a supporter of the LHC in the event that it turns out to be a benign scientific triumph. Additional pressure on scientists not to question the LHC may also come from the fact that the LHC appears increasingly to be the only game in town for particle physicists wanting to work at the leading edge of discovery. In fact, the world’s largest particle collider currently in operation, Fermilab’s Tevatron outside of Chicago, Illinois, is slated for shutdown in 2010, apparently in large part because the LHC will render it obsolete. Other particle accelerators planned for the future have had their funding suspended or cutoff.1 A psychological or sociological explanation for how particle physicists could reach a consensus on safety, despite the existence of real danger, is the phenomenon William H. Whyte, Jr. called “groupthink.” This process allows individuals to maintain a worry-free outlook that is not justified by the facts. In such a dynamic, the existence of group consensus causes individuals to forego or dismiss their own independent thinking. A circularity develops: Group consensus justifies individual confidence, and individual confidence justifies group consensus. The result is flawed decision-making. Groupthink has been offered as an explanation for both the Challenger and Columbia space-shuttle disasters. Another set of concerns arises from the question of how political realities might have affected the decision-making environment at CERN. As a consortium run by 20 member states, it is plausible that politics plays a significant role in the CERN milieu. Still another point of worry is the independence, or lack thereof, of the safety reviews that have been advanced as evidence that the LHC is safe. While an independent report was completed in 2003, more current documents said to confirm the safety of the LHC, which were issued in response to recent criticism, are the product of CERN itself, and are not independent. Other factors are worthy of investigation as well. It may be, for instance, that the timeline of infrastructure construction and critical theorizing is such that LHC interests were thoroughly vested by the time potentially convincing theoretical work on safety concerns surfaced. That is, the late hour at which objections were made could well have prevented their open-minded consideration, regardless of merit. Some elements of the broad timeline of the LHC endeavor suggests this: The LHC was approved in 1994, and construction began in 1998. Construction was nearing completion in September 2007 when Otto Rössler released a paper explaining his new mathematical work, which, according to Rössler, demonstrates the LHC’s grave danger. Rainer Plaga’s article making a negative assessment of the risk at the LHC was published in August 2008, a month before operational testing began. At the point these papers were advanced, it is plausible that the LHC project had already reached the point where halting it was politically unthinkable. Supporters of the LHC have argued that Dr. Plaga and Dr. Rossler are not career-dedicated particle physicists, and, therefore, their theoretical work should not be taken seriously. As discussed above, it seems plausible that the cultural environment in which particle physicists operate is such that public objection to the LHC is discouraged and stifled to the point where it is non-existent. Given such a state, we would expect public objection to come from outside the particle-physics community. Thus, rather than being a reason for discounting such theoretical work, the outsider nature of such work might be a reason to embrace it. Even putting aside the social and cultural pressure on particle physicists to conform, it is a well-talked about phenomenon, famously advanced by Thomas S. Kuhn, that paradigm-shifting revolutions in scientific thought often come from individuals who are new to a field of study, and thus not entrenched in its conventional modes of thinking. (Jim Chen wrote about the virtues of juniority in the legal academy on MoneyLaw.) Thus we might expect that career particle physicists would be slow to accept paradigm-shifting theoretical work that undermines confidence in the safety of the LHC. As a corollary, the lack of particle-physics bona fides among LHC critics, especially ones who are serious and respected scientists, should not be relied upon as a way to dismiss their concerns. There may be several other sociological, psychological, political, and cultural factors, in addition to those I’ve listed above, that would be relevant. The matter requires some deeper thought. Nonetheless, I believe this list of considerations shows that questions about the reliability of LHC safety assessments are not specious. Let me be clear: I am not accusing CERN or the particle-physics community of incompetence or malfeasance. The above points are not set forth as factual contentions demonstrating the case for a preliminary injunction. Rather, I posit them as realistic possibilities that raise non-trivial questions, the answers to which could seriously undermine the consensus view that the LHC is safe. I should also emphasize that I am not arguing in favor of a preliminary injunction against the LHC. Whether one should be granted is, to me, an open question. What I am arguing is that there is an analytical way for a court to reach a well-reasoned decision in cases such as this, even where the merits of the scientific controversy itself are opaque to judges lacking specialized scientific training, and where expert testimony is of dubious use in adjudicating the matter. In considering a preliminary injunction, the court should investigate the cultural, organizational, political, psychological, and sociological context in which safety determinations were made, and then ask whether the results of that inquiry raise serious questions on the merits. If serious questions are raised, and if the balance of hardships tips strongly in the plaintiffs’ favor (as it clearly does with a black hole destroying the Earth), then an injunction should issue.

Try or die - Regulated technologies are beneficial, but failure to provide prior precautionary measures ensures eventual extinction

Wilson 13 (Grant Wilson, Deputy Director, Global Catastrophic Risk Institute. J.D. from Lewis & Clark Law School, “Minimizing Global Catastrophic and Existential Risks from Emerging Technologies through International Law,” Virginia Environmental Law Journal, 31 Va. Envtl. L.J. 307, 2013)

The world is currently undergoing a remarkable revolution in science and technology that will seemingly allow us to engineer synthetic life of any imaginable variety, build swarms of robots so small that they are [\*309] invisible to the human eye, and, perhaps, create an intelligence far superior to the collective brainpower of every human. Much of this "emerging technology" either already exists in rudimentary form or may be developed in the coming decades, n1 including the three technologies covered by this paper: nanotechnology, bioengineering, and artificial intelligence ("AI"). While many scientists point to these developments as a panacea for disease, pollution, and even mortality, n2 these emerging technologies also risk massive human death and environmental harm. Nanotechnology consists of "materials, devices, and systems" created at the scale of one to one hundred nanometers n3 --a nanometer being one billionth of a meter in size (10<-9> m) or approximately one hundred-thousandth the width of a human hair n4 --including nano-sized machines ("nanorobots"). Bioengineering is the "engineering of living organisms" and can also operate on a tremendously small scale. n5 Specific types of bioengineering include genetic engineering, or altering the genetic makeup of an organism's cells, n6 and synthetic biology, in which scientists develop "new biological parts, devices and systems that do not exist in the natural world and also the redesign of existing biological systems to perform specific tasks." n7 Finally, A1, meaning intelligent computers, is a pathway to "the Singularity," the concept that manmade greater-than-human intelligence could improve upon its own design, thus beginning an intelligence feedback mechanism or "explosion" that would culminate in a godlike intelligence with the potential to operate at one million times the speed of the human brain. n8 These and other threats from emerging technologies may pose a "global catastrophic risk" ("GCR"), which is a risk that could cause [\*310] serious global damage to human well-being, or an "existential risk" ("ER"), which is a risk that could cause human extinction or the severe and permanent reduction of the quality of human life on Earth. n9 Currently, the main risks from emerging technologies involve the accidental release or intentional misuse of bioengineered organisms, such as the airborne highly pathogenic avian influenza A ("H5N1") virus, commonly known as "bird flu," that scientists genetically engineered in 2011. However, with emerging technologies developing at a rapid pace, experts predict that perils such as dangerous self-replicating nanotechnology, n10 deadly synthetic viruses available to amateur scientists, and unpredictable super-intelligent AI n11 may materialize in the coming few decades. Society should take great care to prevent a GCR or ER ("GCR/ER") from materializing, yet GCRs/ERs arising out of nanotechnology, bioengineering, and AI are almost entirely unregulated at the international level. n12 One possible way to mitigate the chances of a GCR/ER ever materializing is for the international community to establish an international convention tailored to emerging technologies based on the following three principles: first, that nanotechnology, bioengineering, and AI pose a GCR/ER; second, that existing international regulatory mechanisms either do not include emerging technologies within their scope or else insufficiently mitigate the risks arising from emerging technologies; and third, that a international convention based on the precautionary principle could reduce GCRs/ERs to an acceptable level.

Specifically - Military nanotech development occurring in the status quo – causes extinction

Haque 12

[Anamul, Stony Brook University, Nano-Tech Weapon- Introduction, 12/30/12, <https://stonybrook.digication.com/esm_213_studies_in_nanotechnology/Report>]

Most technological advances throughout history impact countries and societies by creating a dominant empire or country in the world. 4000 years ago the invention of steel was a pinnacle point in the world but it was not used for creating weaponry until the Chinese and Japanese blacksmiths used this new found material to forge weapons that were more lighter than iron weapons and much more durable. With this new weapons technology came an age where the army with the better technology defeated the army without it. The later inventions like the gun showed how a smaller force of armed soldiers can easily destroy a greater force with just bows and arrows. This can be observed as the Spanish conquistadors defeated the Native American armies easily and conquered South America. As technology advanced the invention of the nuclear bomb followed. This invention changed global politics and society all together. The devastation caused the world to understand the power and animosity that a technologically advanced weapon can do. The countries that had a nuclear bomb had a lot of leeway in the world. As such, they are the Security Council in the United Nations and can veto any world based decision. It is imperative to understand weapons technology because with the creation of nanotechnology came the question of the creation of nano-weapons of mass destruction. Eric Drexler, an MIT professor, was one of the first to discuss the impacts of nano-weapons systems. In his book Engines of Creation, Drexler specifically states a future weapon of mass destruction that can create global devastation and if unchecked can ultimately destroy the world(ref). He portrayed the creation of a nanoscale system that can self-replicate and disassemble materials around it to do so. He called it a “molecular assembler”, these nano-factories if left uncheck can disassemble everything in the living world and ultimately turn it all into grey goo. The importance of his work can shed some light into the nano-weapons system that the world is developing today. In a way Drexler was right in his hypothesis and we aren’t that far off into the creation of this type of technology. This idea altered the understanding of nanotechnology as a decisive and dangerous new technology that can change the fate of the world. Most new technological advances in nanotechnology such as nanowires, nano-sensors, nanostructures, and nanomaterial’s have been used in key components or replaced all components of weapons system already in place. Just like the analogy of steel making a sword better, nanotechnology has created better weapons systems or created a new weapon on its own. Most military projects on weapons systems are highly classified and some are run by DARPA. The very few weapons that use nano-technology are rare and can help change the economy, politics, and society. The systems that are being discussed include the micro fusion bomb, , nano-unmanned aerial vehicles, nano-armor, and nano-thermite. There are many more new weapons coming out every day that uses the components mentioned earlier but again most of these devices are highly classified .The weapons systems that are discussed have various levels of funding and implementation. All these weapons will be implemented within the field and are used for different reasons. Each device represents the nation’s power and portrays the brute force behind the military of the United States. Having state of the art weapons and weapons support systems can help the economy as well as create social acceptance for their use. The United States sanctions the use of nano-tech weapons systems because of domestic defense. This policy of offense for defense has been the publicly accepted notion for the research and creation of these weapons systems.

Biggest impact in the round

Lin-Easton 1 (Paul C. – University of Hawai'i, William S. Richardson School of Law, “It's Time for Environmentalists to Think Small--Real Small: A Call for the Involvement of Environmental Lawyers in Developing Precautionary Policies for Molecular Nanotechnology”, Georgetown International Environmental Law Review, , 14 Geo. Int'l Envtl. L. Rev. 107, lexis) MNT = Molecular Nano Technology

MNT research could provide radical solutions to environmental problems. Enthusiasts claim that, because it would involve very little waste or by-products, n32 MNT would provide a sustainable basis for global wealth. n33 As it would be far more efficient than the macro-technologies of today, MNT promises to drastically reduce resource consumption and chemical pollution. n34 In addition, through MNT, scientists may be able to inexpensively fabricate alternative manufacturing and building materials, reducing the demand for natural resources. n35 Drexler claims that MNT will allow the construction of solar cells that would be so efficient, cheap, and tough that they could be used to resurface roads and provide affordable solar energy. n36 Water could be synthesized, purified, and recycled in household nanofactories, providing clean, affordable water without depleting natural aquifers. n37 The broad ability to rearrange atoms would enable the recycling of almost any material n38 and make it possible to cheaply clean the soil, n39 water, and air n40 of pollutants by designing nanorobots that search out toxic substances and break them down into harmless substances. n41 These claims have led some environmentalists to express optimism over the possible environmental benefits of MNT. Mitch Friedman, founder of the Greater Ecosystem Alliance, has said that MNT provides perhaps the most hopeful [\*113] scenario he has seen for the environment. n42 Terrance McKenna, writing in the Whole Earth Review, called nanotechnology "the most radical of the green visions." n43 Lester Milbrath n44 points out that because MNT "emulates nature [it] could be deployed much more harmoniously with it [than our modern bulk technologies]." n45 Recently the U.S. Environmental Protection Agency's National Center for Environmental Research announced a grant for exploratory research on the application of nanoscale science, engineering, and technology to environmental problems. n46 Noting that "any revolutionary science and engineering approach to the existing infrastructure of consumer goods, manufacturing methods, and materials usage is sure to have major consequences on the environment," and recognizing the many potential positive environmental applications and greener technologies that nanoscience may help develop, the announcement calls for "interdisciplinary research on molecular and nanoscale processes that take place at one or more of the interfaces within nanoscale structures in natural systems" to anticipate the consequences of nanotechnology on the environment. n47 Many, however, are skeptical of the optimism of those pushing for MNT development, comparing these eco-utopian claims to the false promise of nuclear energy. n48 Like nuclear power, MNT also raises the specter of "extraordinary" [\*114] accidents. n49 A common MNT disaster scenario involves runaway self-replicating nanomachines, fueled by elements common in the natural environment, which convert biomass into replicas of themselves ("nanomass") on a global basis. n50 This scenario, referred to as "global ecophagy," n51 could destroy the biosphere as we know it. n52 MNT researchers, however, claim that it is extremely unlikely that global ecophagy would happen by accident. n53 More likely, such biovorous nanorobots would have to be malevolently created as military weapons or acts of terrorism. n54 Whether by accident or by abuse, however, the result is equally unpleasant. The incredible possibilities for both saving and destroying the environment has been referred to as the "green double-edge of the MNT knife." n55 In a provocative article published in the April 2000 issue of Wired magazine, Sun Microsystem's CEO, Bill Joy, called for the relinquishment of MNT. He argued that nanotechnology presents hazards so dangerous that the only safe course of action for society to take is to limit the pursuit of knowledge in this area. n56 Joy points to biological weapons treaties as a precedent for the relinquishment of MNT. n57 He also cites missed opportunities for banning the further [\*115] development and proliferation of nuclear weapons after World War II. n58 Joy warns that MNT is potentially much more dangerous, and its potential for disaster more likely, than the threat of nuclear accidents or war. Unlike nuclear technology, nanotechnology can be developed by small-scale activities, using common and inexpensive raw materials. Nanotechnology, writes Joy, gives the "ability to cause great damage . . . to individuals and small groups in ways never before possible."

Environmentalism deters harmful uses of nanotech and promotes its positive potential

Lin-Easton 1 (Paul C. – University of Hawai'i, William S. Richardson School of Law, “It's Time for Environmentalists to Think Small--Real Small: A Call for the Involvement of Environmental Lawyers in Developing Precautionary Policies for Molecular Nanotechnology”, Georgetown International Environmental Law Review, , 14 Geo. Int'l Envtl. L. Rev. 107, lexis) MNT = Molecular Nano Technology

Perhaps the greatest short-term risks from nanotechnology could arise from the military application of nanotechnology. While it is difficult to ascertain the current levels of military research spending on nanotechnology in the United States, as much of it is classified, the U.S. Department of Defense is a major sponsor of nanotechnology research. n69 Nanotechnology could be used to perform similar military functions that biological, chemical, and conventional weapons play today, yet there are no treaties currently in force that would clearly regulate their use. n70 The development of nanotechnology for military purposes also raises the specter of abuse by terrorists and rogue states. n71 While the implications of nanotechnology in general, and MNT specifically, [\*117] cry out for the development of new legal regimes to guide these technologies towards their most positive uses and away from potentially harmful uses, there is a conspicuous lack of involvement by lawyers and environmentalists in these discussions. n72 For the most part, environmentalists seem to be unaware of nanotechnology. n73 Pat Roy Mooney, Executive Director of the Rural Advancement Foundation International, one of the few environmental organizations that has voiced concerns about nanotechnology, complains, "It's like talking about bio-technology in the 70s--people . . . say we're crazy." n74 Nanoscientists, however, have been writing about the potential dangers of MNT for nearly two decades. Numerous scientists and some policy makers--but only a few lawyers or environmentalists--have argued for years that discussion of nanotechnology, with global participation, needs to begin as soon as possible to avoid potential hazards to world peace and the environment. n75

# 2ac

### Military Training DA – 2AC

#### 2. Environmental regulations prevent kickout but don’t affect training

Lindemann 03

[Ingrid, Councilmember, Aurora, Colorado on behalf of National League of Cities Advisory Council Impact of military training on the environment, 4/2/03, <http://www.epw.senate.gov/hearing_statements.cfm?id=213705>]

Exclusion of military facilities and contractors from the requirements of RCRA and CERCLA will negate the positive economic impact of hosting a military installation. No community would welcome even the short-term economic benefit of having a military facility knowing that the military has carte blanche to contaminate and pollute and no responsibility - now, or in the future – for mitigating, remediating or even controlling such activities. We also believe the amendments proposed by the Department of Defense to the federal environmental statutes in question are unnecessary. As Assistant Secretary of Defense Paul Wolfowitz indicated in a March 7, 2003 memorandum to the Secretaries of the Army, Navy and Air Force, “In the vast majority of cases, we have demonstrated that we are able both to comply with environmental requirements and to conduct necessary military training and testing.” Exemptions are broadly available - and have been granted - when the president determines such exemptions to be in the “paramount interest of the United States.” Furthermore, in recent testimony before this committee, EPA Administrator Christine Todd Whitman said she was unaware of any military training program that was held up because of environmental statutes. To the best of our knowledge, the Defense Department has provided no examples where environmental requirements have impeded its activities. There appears to be no demonstrable problem with environmental laws adversely affecting military training and testing activities and if there is, the statutes provide adequate and prompt relief. If the issue is that the process for obtaining exemptions is cumbersome - and there appears to be no evidence that this is the case either - then the appropriate response would be to amend or adjust the process. We concur with the March 19 statement of the Attorneys General before the House Armed Service Committee that a case-by-case approach to resolving any future potential conflicts between readiness and the requirements of RCRA, CERCLA and the Clean Air Act is preferable to sweeping statutory exemptions because the case-by-case approach provides accountability.

### Navy DA – 2AC

#### Navy decline inevitable- Rising powers and budget cuts

Gibbons-Neff 13

[Thomas, Free Beacon, Expert: U.S. Naval Supremacy Is in Trouble, 8/1/13, <http://freebeacon.com/expert-u-s-naval-supremacy-is-in-trouble/>]

Former U.S. Deputy Undersecretary of the Navy Seth Cropsey told an audience at the Heritage Foundation Thursday afternoon that American sea power and global projection is “in trouble.” Cropsey appeared at Heritage to highlight the release of his new book Mayday: The Decline of American Naval Supremacy. Michaela Dodge, policy analyst of defense and strategic policy at the Heritage Foundation, highlighted the current plight of U.S. naval forces before Cropsey’s speech. Under current sequestration cuts, the Navy will be reduced from approximately 285 ships to 195 in the next thirty years, Dodge said. While Cropsey was quick to criticize sequestration’s effects on U.S. Naval power, his main focus was the looming threat posed by China. Cropsey highlighted the fact that the last Maritime strategic review was conducted over six years ago and did not mention China at all. “The 2007 strategy did not mention China, not once.” Cropsey said. “The Chinese have made it clear that its policy is to deny the United States access to the Western Pacific.” “China’s military budget continues to grow … in double percentage points each year,” Cropsey added. With countries in various stages of unrest, Cropsey pointed to the fact that countries **like** Iran, China, and Russia have already begun projecting naval power in various parts of the globe. Cropsey pointed to the fact that Russia is in the process of having a permanent twelve-ship presence in the Mediterranean Sea. With rival countries encroaching on American sea power Cropsey lamented the state of the U.S. 6th fleet—the group of ships responsible for Mediterranean operations. “The Eastern Med has reverted back to instability… and the U.S. 6th Fleet … that once composed of two carrier battle groups, today consists of a command ship based in Italy and three [surface ships],” Cropsey said. Cropsey also stressed the threat of the recently tested DF-21D a Chinese anti-ship ballistic missile designed to destroy large surface ships from over 1,200 miles away.

#### 3. Environmental restrictions don’t hurt the Navy – their impacts are overblown

London 9 -- J.D. Candidate, 2011 @ Denver Univ Law School (Ian K, 2009, "Comment: Winter v. National Resources Defense Council: Enabling the Military's Ongoing Rollback of Environmental Legislation," 87 Denv. U.L. Rev. 197, L/N)

First, the Court deferred to the Navy's claim that no evidence connected the forty years of SOCAL exercises with a single sonar-related injury to a marine mammal. n94 Yet, the Navy itself admitted that the exercises would affect approximately 80,000 marine mammals, some of which would be severely injured or killed. n95 In fact, in 2000, the Navy and NOAA Fisheries conducted an investigation into a mass marine mammal stranding event in the Bahamas. n96 The report concluded that the seventeen marine mammals were driven onto shore by injuries from underwater acoustic sources. n97 The report connected those injuries to a series of contemporaneous Navy MFA sonar exercises, and the Navy pledged to be more careful in the future. n98 The evidence that the use of MFA sonar causes mass marine mammal strandings and deaths is "overwhelming," and the Navy was well aware of it. n99 It is surprising, then, that the Court deferred to the Navy's assertion that there would be no irremediable damage to the environment. It is difficult to think of an injury less remediable than the death of any number of marine mammals. By contrast, the Navy's probable injuries in the case of a mid-training sonar shutdown are quite remediable. A mid-exercise MFA sonar shutdown would delay the completion of the exercise, and would undoubtedly raise costs, but it would not make completion of the exercise impossible. n100 The Navy mischaracterized this inconvenience as an irremediable injury, and the effect on marine mammals as negligible. The majority accepted this mischaracterization at face value. Second, the Court observed that the injunction's shutdown provision would amount to a hundredfold increase in the surface area of the shutdown zone. n101 However, at the Navy's urging, the Court disregarded the observation that this MFA sonar shutdown zone is roughly the same size as the Navy's existing long-frequency active ("LFA") sonar shutdown zone. n102 The Court, perhaps humbled by the Navy's chastisement [\*207] of the Ninth Circuit, declined to explore the effect on the training exercises of congruent MFA/LFA shutdown zones. n103 By deferring to the Navy's unsubstantiated claim that MFA sonar and LFA sonar are irreconcilably dissimilar in terms of the effect of the technology on marine mammals, n104 the Court failed to consider a range of factors that could have shown the burden to be smaller than the Navy asserted it to be. Third, the Court deferred to the Navy regarding the power-down provision. The Court correctly recognized the Navy's important interest in training under surface ducting conditions when they exist. n105 Presumably, however, the conditions that conceal enemy submarines also conceal marine mammals. In other words, when surface ducting conditions exist, the Navy must be just as vigilant in avoiding marine mammals as it is in looking for enemy submarines. As Justice Breyer argued, the Court could have imposed the Ninth Circuit's provisional injunction, requiring the Navy to power down the sonar in proportion to the proximity of marine mammals to the vessel. n106 Justice Breyer's compromise would allow the Navy to continue training, while mitigating the injury to nearby marine mammals. Fourth, the Court deferred to the Navy regarding the connection between the SOCAL training exercises and national security. The Navy asserted that the injunctions would jeopardize national security. n107 This conclusion was an exaggeration. The injunctions issued by the district court would not make training exercises impossible; they would merely cause delay and disruption. n108 Also, the injunctions applied to training exercises in SOCAL waters, and not to Navy actions generally. n109 The Navy also argued the injunction would create "an unacceptable risk to the Navy's ability to train for essential overseas operations at a time when the United States is engaged in war in two countries." n110 This assertion was also an exaggeration. While the United States was indeed at war in Iraq and in Afghanistan, none of the United States' adversaries in those countries fielded a naval force--let alone the advanced "silent submarines" that MFA sonar was designed to detect. The Navy failed to explain the connection between adequate sonar training and combat readiness against these land-based, non-state forces. The Navy failed to explain how a delay in sonar training presented an "unacceptable risk" to [\*208] ground forces in Iraq and Afghanistan. n111 The Navy also failed to explain how the injunction affected the combat readiness of already-deployed forces, other than underlining the importance of fleet-wide integration. n112 Professor Burke refers to such unsubstantiated claims as "thought-terminating cliches." n113

### Nuclear Deterrence NEW DA – 2AC

#### Obama cuts now

Mazza 12

[Michael, research fellow in foreign and defense policy at the American Enterprise Institute, Obama Lets America's Nuclear Guard Down, 5/27/12, <http://online.wsj.com/news/articles/SB10001424052702303816504577307232047308926>]

It's unclear if the U.S. is prepared to deal with such an opponent. Has Washington made it similarly apparent to China that it will pay a price for its use of nukes? Of course, Washington itself may not know what that price is—i.e. what it is willing to inflict upon Beijing. The U.S. needs an effective deterrent strategy, one that will maintain its dominance and provide for defense from nuclear attack. America's nuclear arsenal and triad—the ability to deliver nuclear weapons via submarine, bomber and land-based missile—are already superior to Chinese forces in quality and quantity. But those advantages are diminishing as China's military modernization continues apace, U.S. defense spending contracts and Washington pursues continuing bilateral nuclear force reductions with Russia. This trend has to be reversed. Nuclear deterrence should also rely more heavily on missile defenses that can protect the U.S. homeland. American vulnerability here leaves the extended deterrence for Asian allies looking less credible. This only makes Chinese aggression and regional nuclear proliferation more likely, and tempts Chinese escalation during a conflict. These challenges are big, but the real worry is that President Obama seems uninterested in them. He is so set on his "global zero" vision that the administration is now talking openly about possible unilateral reductions to the American arsenal. But as long as nuclear weapons do exist, and as long as potential adversaries rely on those weapons for their self defense, no U.S. president can shy away from this challenge.

#### The plan’s mandated court application of NEPA to military matters does not cause a spillover to state secrets

Gillespie 12 -- Prof @ Univ of Waikato, has advised the Ministry of Foreign Affairs and Trade and the Department of Conservation, provides commissioned work for the United Nations and the Commonwealth Secretariat, has been awarded a Rotary International Scholarship, a Fulbright Fellowship, a Rockefeller Fellowship (Alexander, Winter 2012, "ARTICLE: The Limits of International Environmental Law: Military Necessity v. Conservation," 23 COLO. J. INT'L ENVTL. L. & POL'Y 1, L/N)

Although the environmental progress between 1991 and 2001 was slow, at least it was slow progress, opposed to the regression post September 11, 2001, when environmental laws within the United States were quickly restricted.69 This occurred because Congress granted a series of new exemptions or widening of rights within the existing laws because the military argued that it was unable to train correctly because its training areas (which have been expanded greatly since the middle of the twentieth century)70 were being increasingly encroached upon,71 thus causing it to lose its military edge. Following an overt push back authorizing the Secretary of Defense “to address training constraints caused by limitation on the use of military lands, marine areas and airspace that are available in the United States and overseas for training of the Armed Forces,”72 the Readiness and Range Preservation Initiative emerged as a tool to counter what was perceived as environmental laws that were preventing the military from being fully prepared.73 Although remaining committed to “environmental stewardship,” a number of exemptions were subsequently created for the laws pertaining to endangered species,74 coastal zone management75 and marine mammals.76 Moreover, the courts have consistently taken a hard line in limiting the application of the National Environmental Policy Act when conservation priorities have conflicted with military priorities. In particular, the underlying theme that the National Environmental Policy Act (“NEPA”) “is a procedural statute . . . [that] does not force an agency to reach substantive, environment-friendly outcomes” is never far from the surface.77 Courts have also been clear that they will not “flyspeck” an agency’s environmental analysis, looking for any deficiency, no matter how minor,78 and therefore, transgressions must be substantive for them to get involved.79 Finally, and most substantively, when dealing with certain issues of high military importance, the courts will not demand that the military reveal its secrets in order to show compliance with the requirements of environmental impact assessments. In such instances, “ultimately, whether or not the navy has complied with the NEPA to the fullest extent possible is beyond judicial scrutiny.”80

#### Real talk: they won’t disclose – have to have some sort of standing, not top of agenda, only ev is from like ‘nam

### Vagueness

Lol aight

### T – Armed Forces – 2AC

#### 1. We meet- plan text says introduction of armed forced into hostilities- we are whatever they define it as

#### 2. We meet – plan prevents introduction of humans into conflict

#### At worst – the plan is topical but indirectly solves – restricting armed forces also restricts their weapons use

Jensen 3 (Major Eric Talbot – Professor, International and Operational Law Department, The Judge Advocate General's School, U.S. Army, “Unexpected Consequences From Knock-On Effects: A Different Standard for Computer Network Operations?”, 2003, 18 Am. U. Int'l L. Rev. 1145, lexis)

n30. See id. art. 52, para. 2, 1125 U.N.T.S. at 27 (explaining in the Commentary that the "nature" aspect of the test is defined as "all objects directly used by the armed forces: weapons, equipment, transports, fortifications, depots, buildings occupied by armed forces, staff headquarters, communications centers etc"); Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 1949, para. 2020 (Y. Sandoz, et al. eds., 1998) [hereinafter GPI Commentary]. "Location" may turn a civilian object into a military object if, for example, it is a bridge or other construction, or ... a site which is of special importance for military operations in view of its location, either because it is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of forcing the enemy to retreat from it. Id. para. 2021. "The criterion of "purpose' is concerned with the intended future use of an object, while that of "use' is concerned with its present function. Id. para. 2022.

#### 3. C/I Armed forces includes all components of the military – it’s their definition

DLA 13 (Defense Logistics Agency Manual – US Military, “Defense Logistics Agency

MANUAL”, 1/4, http://www.dla.mil/issuances/Documents\_1/m5025%2001%20DLA\_Writing\_Style\_Guide.pdf)

Armed Forces ; Armed Forces of the United States Use “ Military Services ” for consistency throughout DLA issuances . All three terms denote collectively all components of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

#### 4. Especially in the context of hostilities

Phelps 96 (Lieutenant Colonel Richard – Chief, Environmental Law, Headquarters United States Air Forces in Europe, Ramstein Air Base, J.D., Oklahoma City University School of Law, “Environmental Law for Overseas Installations”, 1996, 40 A.F. L. Rev. 49, lexis)

[Comments]

n98 Id. at encl. 2, para. C.3.a.(3). The term armed conflict refers to: hostilities for which Congress has declared war or enacted a specific authorization for the use of armed forces; hostilities or situations for which a report is prescribed by section 4(a)(1) of the War Powers Resolution, 50 U.S.C.A. Section 1543(a)(1) (Supp. 1978); and other actions by the armed forces that involve defensive use or introduction of weapons in situations where hostilities occur or are expected. This exemption applies as long as the armed conflict continues.

#### 5. Prefer our interpretation

#### A. Overlimits – no part of limiting armed forces just limits humans – they exclude things guns that the humans use

#### B. Ground –weapons aff are critical to aff flexibility that prevents a stale topic

#### C. Education – weapons are a core part of the literature

#### 6. Their Lorber card is in the context of nuclear weapons and cyber operations – not weapons humans use

#### 7. Function limits check – Agent cp’s solve their runaway weapons claims

#### 8. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

### T- Restrinction=Prohibit -2AC NEPA

#### 1. We meet – plan prevents the use of armed forces if their use violates NEPA – that’s a restriction

Lobel 8 (Jules – Professor of Law, University of Pittsburgh Law School, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, 2008, Ohio State Law Journal, 69 Ohio St. L.J. 391, lexis)

More generally, the Court held that Congress has the power to authorize limited, undeclared war in which the President's power as Commander in Chief would be restricted. In such wars, the Commander in Chief's power would extend no further than Congress had authorized. As President Adams recognized, Congress had as a functional matter "declared war within the meaning of the Constitution" against France, but "under certain restrictions and limitations." n123 Under this generally accepted principle in our early constitutional history, Congress could limit the type of armed forces used, the number of such forces available, the weapons that could be utilized, the theaters of actions, and the rules of combat. In short, it could dramatically restrict the President's power to conduct the war.

#### We meet – NEPA is a restriction

Abby 09

[Robert, Director of the Bureau of Land Management, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders , 12/11/09 , <http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-028.html>]

National Environmental Policy Act (NEPA) analysis is required prior to the BLM closing the public lands to certain uses or restricting specific uses of the public lands under the authorities of 43 CFR § 8364.1, 8351.2-1, and 6302.19. Most closures and restrictions implemented by the BLM fall into these categories. Adequate NEPA analysis and documentation for temporary closures and restrictions may include: Categorical Exclusions (CX) Environmental Assessments (EA) Environmental Impact Statements (EIS) (i.e., specific closure decisions adopted in a completed Resource Management Plan)

#### 2. Judicial restriction means regulation

**Kerrigan** **73** (Frank, Judge @ Court of Appeal of California, Fourth Appellate District, Division Two, 29 Cal. App. 3d 815; 105 Cal. Rptr. 873; 1973 Cal. App. LEXIS 1235, SUN COMPANY OF SAN BERNARDINO, CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. PROGRESS-BULLETIN PUBLISHING COMPANY, Petitioner, v. THE SUPERIOR COURT OF SAN BERNARDINO COUNTY, Respondent; THE PEOPLE et al., Real Parties in Interest. (Consolidated Cases.), lexis)

While the studies were in progress, the United States Supreme Court found the impact of television cameras and lights in a courtroom setting prejudicial to the conduct of a fair trial. ( Estes v. Texas (1965) 381 U.S. 532 [14 L.Ed.2d 543, 85 S.Ct. 1628].) Shortly thereafter, in Sheppard v. Maxwell (1966) 384 U.S. 333, 358 [16 L.Ed.2d 600, 618, 86 S.Ct. 1507], the defendant's conviction of his wife's murder [\*\*879] was reversed because of "[the] carnival atmosphere at trial" and pervasive publicity affecting the fairness of the hearing. In reversing Dr. Sheppard's conviction, the court stated [\*\*\*15] that: (1) the publicity surrounding a trial may become so extensive and prejudicial in nature that unless neutralized by appropriate judicial procedures, a resultant conviction may not stand; (2) the trial court has the duty of so insulating the trial from publicity as to insure its fairness; (3) a free press plays a vital role in the effective and fair administration of justice. But the court did not set down any fixed rules to guide trial courts, law enforcement officers or media as to what could or could not be printed. Instead, the majority suggested that judicial restrictions on speech might sometimes be appropriate in the following dicta: "The courts [\*823] must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function. Collaboration between counsel and the press as to information affecting the fairness of a criminal trial is not only subject to regulation, but is highly censurable and worthy of disciplinary measures. [\*\*\*16] " (Ibid., p. 363 [16 L.Ed.2d p. 620].)

3. **Counter interpretation – restrict means to limit through conditions.**

**Cambridge Dictionary 9** (Cambridge Dictionary of American English, *Restrict – Definition*, http://dictionary.cambridge.org/define.asp?key=restrict\*1+0&dict=A)

Restrict

Verb [T]

To limit (an intended action) esp. by setting the conditions under which it is allowed to happen

The state legislature voted to restrict development in the area.

Efforts are under way to further restrict cigarette advertising.

#### Restriction is limitation not prohibition

CAC 12, COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants, DIVISION ONE, 207 Cal. App. 4th 601; 143 Cal. Rptr. 3d 716; 2012 Cal. App. LEXIS 772

We disagree with County that in using the phrases “further restrict the location or establishment” and “regulate the location or establishment” in [\*615] section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise “authorized by law to possess, cultivate, or distribute medical marijuana” (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words “ban” or “prohibit.” Yet County cites dictionary definitions of “regulate” (to govern or direct according to rule or law); “regulation” (controlling by rule or restriction; a rule or order that has legal force); “restriction” (a limitation or qualification, including on the use of property); “establishment” (the act of establishing or state or condition of being established); “ban” (to prohibit); and “prohibit” (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that “the ordinary meaning [\*\*\*23] of the terms, ‘restriction,’ ‘regulate,’ and ‘regulation’ are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business.” We disagree.¶CA(9)(9) The ordinary meanings of “restrict” and “regulate” suggest a degree of control or restriction falling short of “banning,” “prohibiting,” “forbidding,” or “preventing.” Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana [\*\*727] statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that HN21Go to this Headnote in the case. the phrases “further restrict the location or establishment” and “regulate the location or establishment” in section 11362.768, subdivisions (f) and (g) do not authorize a per se ban at the local level. The Legislature [\*\*\*24] decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution “solely on the basis” that they engage in a dispensary function. To interpret the phrases “further restrict the location or establishment” and “regulate the location or establishment” to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to “[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects” and “[p]romote uniform and consistent application of the [CUA] among the counties within the state” and the electorate's intent to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes” and “encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

#### 3. Prefer it –

#### A) Overlimits - all restrictions are regulations on military activity – not a ban on any one category – they result in 8 aff’s

#### B) Education – regulations on presidential activitiy key to broaden research which allows for encompassing understanding of war powers – bredth outweighs depth

#### 4. Aff ground outweighs – neg gets agent counterplans, conditionality and topic generics that check their impact claims

#### 5. No ground– no disads, CP’s or K’s that no longer apply

#### 6. Reasonability is good – prevents a race to the bottom and arbitrary counter interpretations that exclude the aff

### Carbon Tax CP – 2AC

#### Perm do both –

Treaty can’t solve – internal non-comply

#### Doesn’t solve international eladership – other countries won’t adopt because they still perceive the US to have an exemption – that’s Gormely – means they can’t solve warming

#### Also means they can’t solve Heg b/c the US military needs to develop those technologies to drive the civilian sector, it’s not the other way around b/c military has existing infrastructure

#### Can’t solve irreparable harm – overturning winter v. NRDC key

#### The plan causes carbon exporting – turns the case

**Nowicki 11** (Meghan, JD – University of Alabama, “Note: Implementing Sustainable Industrial Development in the United States and Abroad: the Need for Legislation and International Cooperation,” Alabama Law Review, 62 Ala. L. Rev. 1093, Lexis)

3. Lack of Uniformity One of the main failures of international efforts to implement sustainable industrial development is a lack of uniform laws and regulations around the globe that discourage unsustainable activities and encourage sustainable activities. The lack of uniformity causes a phenomenon known as "carbon exporting" or "leakage." n92 When one country implements carbon taxes, for example, businesses may find it cheaper to move production to a country that does not impose carbon taxes. The well-intended policy implemented by the environmentally-conscious government then has the unfortunate effect of transferring the pollution to another part of the world. n93 Not only are emissions not reduced, but the local economy loses [\*1105] business. n94 This phenomenon is not limited to carbon taxes and emissions regulations, but occurs when a country attempts to regulate in any area of the environment. For this reason, many countries have been slow to implement policies that might encourage businesses to take their activities elsewhere. The lack of signals to investors and consumers n95 exacerbates this problem because corporations are typically not held accountable by consumers or investors for shifting unsustainable and environmentally costly activities to other nations. n96 This is exactly what has occurred in China in recent years. Under the current U.N. Framework Convention on Climate Change, emissions released during the production of internationally traded products are attributed to the producing nation. n97 This framework permits "carbon exporting" n98 and "leakage." n99 Corporations move production to countries such as China that do not have binding carbon emissions targets and then ship their products back into the countries that do implement carbon emissions targets. Consumers buy and use the same products, yet the carbon emissions released during the production of the products are exported to another country. More than one third of China's total economic output comes from exports alone, which is a higher percentage than any other similarly sized economy. n100 In 2006, nearly fifty-eight percent of China's exports were produced by multinational ventures, and of foreign investment in the Chinese economy, nearly seventy percent went towards production. n101 Two-thirds of the growth in carbon emissions since 2000 is attributable to China. n102 This evidence "show[s] that consumers in industrial countries are indirectly responsible for a significant proportion of China's carbon emissions." n103 The situation with China exemplifies the importance of implementing uniform sustainability policies. Without an international effort, industrial development will never become truly sustainable, but will instead shift emissions and harmful activities to other parts of the world. Without the proper signals to consumers and investors, individuals will continue to consume products produced in countries with low sustainability standards [\*1106] and the net effect of the local nations' efforts will be zero. Not only will the local nations' efforts be stifled, but local industries will suffer because they will be forced to compete with corporations that produce in nations with substandard regulations. n104

#### Inelastic demand means high electricity prices slay consumer spending and collapse the economy

Energy Tech Stocks 8 (“U.S. Power Agency Warns High Electricity Prices Could Plague America ‘For Years to Come’,” 6/30, http://energytechstocks.com/wp/?p=1396)

America’s federal power agency has warned that high power prices could plague the nation “for years to come.” Citing high commodity prices for natural gas and coal, which were the fuel sources for 18% and 50%, respectively, of U.S. electricity generation in 2007, the Federal Energy Regulatory Commission (FERC) said this “may be the beginning of significantly higher power prices that will last for years to come.” The agency didn’t say exactly how high it thinks prices could rise, but EnergyTechStocks.com has learned that one major U.S. electric utility is now assuming in its internal forecasts that power prices in its region will double within five years or less. The FERC assessment, rendered on June 19, is particularly worrisome since sky-high electric rates would appear to represent an even greater threat to the U.S. economy than high gasoline prices. That’s because electricity is an even more pervasive aspect of American economic life than gasoline. Indeed, after the oil shocks of the 1970s, all American business essentially became electrified in order to improve efficiency, meet new environmental regulations, and minimize exposure to another oil shock. With U.S. presidential candidate John McCain now leading the charge for cars and trucks that run on electricity, the prospect of sharply higher electric rates for years to come could put a dent in this promising alternative approach to personal transportation. In discussing the future of power on June 19, FERC chairman Joseph Kelliher outlined what might be described as a “no-win” situation that the U.S. finds itself in. He reportedly said, “The United States cannot simultaneously make the massive investments necessary to assure our electricity supply, make additional large investments to confront climate change, and lower electricity prices. Doing so would likely result in failure.” For a U.S. energy official to make such a dour public statement is extraordinary – and a clear warning to investors that, as much as inflationary pressures are starting to hit the U.S. economy, worse lies ahead.

#### Nuclear war

**Auslin 9** (Michael, Resident Scholar – American Enterprise Institute, and Desmond Lachman – Resident Fellow – American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187)

What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

#### Carbon tax fails – can’t predict its effect on the market

Gorrie 8 (Peter Gorrie, Toronto Star, “To work, carbon tax must sting,” 08, http://www.thestar.com/sciencetech/Environment/article/295677)

The report concludes we must start paying for the carbon we consume when we burn coal, oil, natural gas or gasoline, or use plastics. It proposes imposing a tax based on carbon content, putting a price on carbon dioxide emissions and allowing them to be traded, or a combination of the two. The basic idea: Boosting the cost of anything containing carbon – the main greenhouse gas – would compel industries and consumers to seek cheaper alternatives. They'd switch to cleaner fuels or consume less – either by adopting more efficient technologies or simply reducing their activity. Presumably, the alternatives would be better for the environment. The problem: No government appears willing to impose a cost high enough to actually change behaviour. And while several industry groups argue pricing carbon is a good idea, their enthusiasm is less than it seems. It's not clear how big the increase must be, although judging by the limited response to the near doubling of gasoline prices over the past five years, it would have to be huge. There's been little analysis, and evidence from the real world is flimsy. Carbon pricing has been attempted in only a handful of places, including Quebec – in each case too cautiously or with too many loopholes to be meaningful. "There is no doubt (that) a great deal of uncertainty exists regarding the price of greenhouse gas abatement," the Round Table report states. "At higher carbon prices, there is no way to accurately predict how the markets will react or how innovation will accelerate in response."

#### -- Conditionality is a voter – creates time and strategy skews, not reciprocal, argumentative irresponsibility, and one conditional advocacy solves their offense

### Intro PIC – 2AC

#### 1. Perm do both

#### 2. They are in a double either –

#### A) The counterplan generates court precedent – they are a ruling that spills up to do the aff and links to the net benefit

#### -OR-

#### B) The counterplan is a limited ruling – they have to clarify that the CP does not result in the aff and therefore does not generate precedent – that means that the national security exemption remains on the books- that means it can’t solve the case –

#### First - Warming – the national security exemption will still be used to justify shutting down warming citizen suits – prevents action on warming – that’s Lightbody and Narodick

#### ( ) Any exemption is used as a trump card – takes out solvency

Stellakis 10

[John C, J.D. Candidate, 2011, Villanova University School of Law; B.A.H, 2008, Villanova University., Villanova Law Review, U.S. Navy Torpedoes NEPA: Winter v. Natural Resources Defense Council May Sink Future Environmental Pleas Brought under the National Environmental Policy Act,1/1/10 <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1035&context=elj>,

The Winter holding has shown the significance of national security interests when the Court exercises discretion in deciding to fashion equitable relief.175 The Court also expressly set, and arguably raised, the bar for a requisite showing of irreparable harm to obtain a preliminary injunction for NEPA actions.176 Although narrow, the Court's decision is binding upon all courts, and thus may affect all NEPA claims brought in the lower courts. A. Weight of National Security The Winter majority demonstrated the importance of national security for both the public interest and for the Navy's interest in effectively trained sailors. 177 Although the Court discounts neither the public's environmental interest nor the effect of denying the preliminary injunction on the NRDC's interests, the majority's focus on national security serves as the Court's justification for finding an abuse of discretion by the lower courts in fashioning equitable relief, and it may be used persuasively in future cases. 178 Potential national security arguments in future cases could appeal to the Winter rationale, serving as a proverbial trump card. Courts could distinguish Winter on its narrow scope or on the facts. The Ninth Circuit distinguished Winter six months later in Internet Specialties West, Inc. v. Milon-DiGiorgio Enterprises, Inc.,179 a case dealing with trademark issues, which affirmed an injunction despite an appeal to Winters heavy public interest factor.' 80 The weight of the national security argument, however, has not yet been disturbed and may weaken pleas for environmental protection under NEPA if these NEPA claims will infringe military activities or other actions relating to national security. 81 NEPA and the environment may fall victim to this appeal to the national security interest. B. Raising the Irreparable Harm Bar NEPA plaintiffs seeking relief in the form of a preliminary injunction have an increased burden after Winter.'82 The relaxed standard for irreparable harm for NEPA claims, as established in previous cases, appears to have been set to the ordinary requisite level of establishing a likelihood of irreparable harm.183 The District Court for the Northern District of California in Save Strawberry Canyon v. Department of Energy (Strawberry Canyon),184 however, distinguished Winter and issued injunctive relief for the plaintiff.1 85 The Strawberry Canyon court found that Winter only addressed one of the two prongs of the preliminary injunction standard as established by the Ninth Circuit prior to Winter-the likelihood of success on the merits and possibility of irreparable harm prong.186 The Supreme Court in Winter neglected, according to Strawberry Canyon, to address the second prong: "A preliminary injunction is appropriate when a plaintiff demonstrates... that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.' 87 The Winter holding, therefore, might not preclude injunctive relief where the plaintiff cannot show a likelihood of success on the merits, but can show irreparable injury is likely and imminent and demonstrates serious meritorious issues with a favorable balancing of the hardships.188 While this holding allows plaintiffs to obtain injunctive relief without showing a likelihood of success on the merits, it still requires a showing of a likelihood of irreparable harm.189 The Winter likelihood standard may continue to impose an increased burden for NEPA plaintiffs seeking relief via equitable remedies. 190 The Winter holding also forecloses relief for NEPA plaintiffs who have difficulty establishing likelihood of irreparable harm, or any degree of irreparable harm acceptable in court.191 For NEPA's and the environment's sake, hopefully the Winter holding continues to remain narrow and tailored to the Navy's particular interest in antisubmarine warfare training in California, other significant military operations and activities, or when national security is truly and directly at issue. Finally, to meet the Court's seemingly established likelihood standard of irreparable harm for all NEPA claims, future NEPA plaintiffs must meet a higher burden of proof in litigation before the courts

#### Second - Bioterror – exemption remaining on the books means biodefense companies will continue to shed regulations which triggers the impact –that’s Donovan and Miles

Condo

#### 3. Perm do the CP

#### 4. Plan solves enviro collapse – extinction

Parsons 98 (Rymn James – Lieutenant Commander, JAGC, U.S. Navy. Staff Judge Advocate to Commander, “The Fight to Save the Planet: U.S. Armed Forces, "Greenkeeping," and Enforcement of the Law Pertaining to Environmental Protection During Armed Conflict”, 1998, 10 Geo. Int'l Envtl. L. Rev. 441, lexis)

Since time immemorial, war has visited its excesses on nature, excesses that many fear the Earth can no longer tolerate. From ancient times to modern, the environment has been used as a weapon and as a target of war. For instance, the Spartans salted Athenian fields during the Peloponnesian War. The Dutch opened dikes to create a water barrier (the "Dutch Water Line" of 1672) to halt the French in the Third Anglo-Dutch War. Both sides burned huge expanses of the veldt during the Boer War. Verdun was emaciated by artillery and poisoned with gas during World War I. A horrific loss of life and widespread devastation occurred when the Chinese dynamited the Huayuankow dike on the Yellow River during the Second Sino-Japanese War (1938). The United States extensively seeded clouds over the Ho Chi Minh Trail and defoliated large jungle tracts during the Vietnam War. n2 Another chilling example is the contamination of [\*442] Scotland's Gruinard Island during Britain's Anthrax testing in 1942; the island remains uninhabitable today. n3 If environmental damage during armed conflict is not restrained, the armed forces that are intended to protect us from harm may become the agents of our ultimate destruction. n4 In a world troubled by stratospheric ozone depletion, global warming, rain forest destruction, and other local, regional, and transboundary environmental dangers, n5 the potentially catastrophic environmental impact of armed conflict is further cause for great concern. n6 Extensive environmental damage from chemical weapons use, widespread habitat and species destruction, and unprecedented oil pollution has already occurred. n7 The full long-term health and environmental effects of war are unknown. It is uncertain how long it will take to acquire a complete understanding of how to remedy past, and prevent future, occurrences. n8 The need to protect the environment against unjustified damage during armed conflict is an unmet challenge of the 20th century. The weapons of war grow ever [\*443] more virulent, greatly increasing the risk of harm from incidental as well as intentional damage to the environment. n9 The environment itself may be the most potent weapon of all, a weapon that can be manipulated by both simple and technologically sophisticated means. n10

#### 5. Conditionality – say your normal shit

#### 6. CP is a voter -

#### A. Kills education - boggles the debate down in contrived and arbitrary issues.

#### B. Steals aff ground - PICs kill our ability to make comparisons based on the merits of the plan vs. the status quo or other counterplans.

#### Plan solves space weapons – solves U.S. Russia war

Scheetz 6 (Lori – J.D. Candidate, Georgetown University Law Center, Cites Thomas Graham Jr. – Former Acting Director of the U.S Arms Control and Disarmament Agency, “Infusing Environmental Ethics into the Space Weapons Dialouge”, Georgetown International Environmental Law Review, Fall, 19 Geo. Int'l Envtl. L. Rev. 57, lexis)

Proponents of weaponizing space focus on American military dependence on space and a sense of increasing danger of a ballistic missile attack. n24 Supporters argue that space weapons might be able to address threats from small, enemy satellites, n25 ground-based anti-satellite weapons, n26 and high altitude nuclear explosions. n27 With the growing concern in the United States over terrorists and unfriendly nations, weaponizing space to bolster U.S. national security is close to becoming a reality. Furthermore, the 2005 report of the Presidential Commission on the Future of Space Exploration, ("Aldridge Commission Report"), focuses on the commercialization of space. n28 Space weapons could be used to protect these new commercial interests, along with providing diplomatic leverage and creating offensive potential from space. n29 Many in the arms control community, on the other hand, believe that space weapons will destabilize the global community and promote a costly arms race. n30 Emphasizing the destabilizing consequences of space weapons, Thomas Graham Jr. asserts that, because American missile interceptors in space could quickly wipe out Russian early warning satellites, the mere existence of these weapons will escalate tension between the two countries and place Russia on constant alert. One false signal from an early warning satellite could lead to a Russian nuclear strike. n31 Moreover, weaponization of space might not significantly reduce American vulnerability to attack because most weapons systems will depend on ground facilities and radio links, which can be attacked through electronic hacking and jamming. n32 The actual weaponry based in space is also susceptible to attack. n33 Only a few scholars have focused on the potential impact of space weapons on the quality of the space environment. Space is characterized by transparency, [\*63] fragility, and the ability to hold orbital debris for longer periods of time. As a result, testing, deployment, and use of space weapons could result in irreparable harm. n34 Placing environmental concerns in the thick of the space weapons debate and establishing restrictions on testing and deployment of space weapons are critical for the future quality of the environment in space and on Earth.

#### Extinction

Helfand and Pastore 9 (Ira Helfand, M.D., and John O. Pastore, M.D., are past presidents of Physicians for Social Responsibility, 3/31, “U.S.-Russia nuclear war still a threat”, http://www.projo.com/opinion/contributors/content/CT\_pastoreline\_03-31-09\_EODSCAO\_v15.bbdf23.html)

President Obama and Russian President Dimitri Medvedev are scheduled to Wednesday in London during the G-20 summit. They must not let the current economic crisis keep them from focusing on one of the greatest threats confronting humanity: the danger of nuclear war. Since the end of the Cold War, many have acted as though the danger of nuclear war has ended. It has not. There remain in the world more than 20,000 nuclear weapons. Alarmingly, more than 2,000 of these weapons in the U.S. and Russian arsenals remain on ready-alert status, commonly known as hair-trigger alert. They can be fired within five minutes and reach targets in the other country 30 minutes later. Just one of these weapons can destroy a city. A war involving a substantial number would cause devastation on a scale unprecedented in human history. A study conducted by Physicians for Social Responsibility in 2002 showed that if only 500 of the Russian weapons on high alert exploded over our cities, 100 million Americans would die in the first 30 minutes. An attack of this magnitude also would destroy the entire economic, communications and transportation infrastructure on which we all depend. Those who survived the initial attack would inhabit a nightmare landscape with huge swaths of the country blanketed with radioactive fallout and epidemic diseases rampant. They would have no food, no fuel, no electricity, no medicine, and certainly no organized health care. In the following months it is likely the vast majority of the U.S. population would die. Recent studies by the eminent climatologists Toon and Robock have shown that such a war would have a huge and immediate impact on climate world wide. If all of the warheads in the U.S. and Russian strategic arsenals were drawn into the conflict, the firestorms they caused would loft 180 million tons of soot and debris into the upper atmosphere — blotting out the sun. Temperatures across the globe would fall an average of 18 degrees Fahrenheit to levels not seen on earth since the depth of the last ice age, 18,000 years ago. Agriculture would stop, eco-systems would collapse, and many species, including perhaps our own, would become extinct. It is common to discuss nuclear war as a low-probabillity event. But is this true? We know of five occcasions during the last 30 years when either the U.S. or Russia believed it was under attack and prepared a counter-attack. The most recent of these near misses occurred after the end of the Cold War on Jan. 25, 1995, when the Russians mistook a U.S. weather rocket launched from Norway for a possible attack. Jan. 25, 1995, was an ordinary day with no major crisis involving the U.S. and Russia. But, unknown to almost every inhabitant on the planet, a misunderstanding led to the potential for a nuclear war. The ready alert status of nuclear weapons that existed in 1995 remains in place today.

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#### (if time )Undoing the entirety of the national security exemption is key to global warming action

**Gormley 10** (Neil Gormley, J.D., 2009, Harvard Law School, “Standing in the Way of Cooperation: Citizen Standing and Compliance with Environmental Agreements,” Summer 2010, West Northwest Journal of Environmental Law & Policy, 16 Hastings W.-N.W. J. Env. L. & Pol'y 397)

The Supreme Court's approach to standing, therefore, raises serious questions about the viability of a bedrock of U.S. environmental law - the citizen suit. Cass Sunstein concluded in the wake of Lujan that "it is now [\*405] apparently the law that Article III forbids Congress from granting standing to "citizens' to bring suit." n48 At the very least, as we have seen, these developments in standing doctrine will make the burdens on citizens and environmental groups more onerous. I will argue in Part II that standing doctrine may someday present insuperable obstacles to citizen suit enforcement with respect to international environmental problems that are yet to be comprehensively addressed under U.S. law. The growing doctrinal obstacles to the enforcement of federal environmental law via citizen suit are not, of course, strictly confined to Article III standing. A wide range of justiciability doctrines deter and weaken environmental citizen suits, including the Administrative Procedure Act's bar on "programmatic" challenges to agency action, announced in Lujan v. National Wildlife Federation, n49 and the arcane distinctions in Norton v. SUWA between agency "action" and agency "inaction" for purposes of determining whether the APA permits suit. n50 Perhaps the most prominent of these developments is the Court's 2008 decision in Winter v. NRDC, which raised the bar for even successful environmental plaintiffs to obtain injunctive relief. n51 In Winter, the Court decided that the balance of the equities and the public interest weighed against granting a preliminary injunction to environmental groups seeking to force the Navy to comply with the National Environmental Policy Act. n52 Particularly in the way it characterized the harms to be balanced in that inquiry - considering the risk of a national security incident but holding the environmental plaintiffs to a standard of actual, documented, past harm to wildlife - the Court took an approach to balancing that seemed systematically to disadvantage environmental plaintiffs. Interestingly, there were echoes of the Court's environmental standing jurisprudence in its balancing-of-the-harms analysis in Winter. Though NEPA is a procedural statute, the court did not consider or weigh any procedural harms on the side of the environmental plaintiffs, focusing instead on the types of harms that environmental plaintiffs traditionally have had to rely on to establish standing - individualized scientific, recreational and aesthetic harms. n53 At oral argument, Justice Scalia went so far as to evoke explicitly the requirements of Article III standing in the [\*406] discussion of what harms count for purposes of equitable injunctions. n54 Thus Winter may yet provide a new opening for reinserting common law conceptions of injury into these complex regulatory disputes. n55 Perhaps most significantly, Winter also announced that a district court would abuse its discretion in granting an injunction to the environmental groups even if they ultimately prevailed on the merits. n56 Winter thus appears to represent another significant obstacle in the path of environmental groups trying to force executive compliance with the law. Importantly, however, the decisions in National Wildlife Federation, Norton v. SUWA and Winters are not constitutional. Given sufficient political will, Congress can smooth those obstacles to environmental citizen suits by amending the Administrative Procedure Act and Federal Rule of Civil Procedure 65(a), governing preliminary injunctions. Because the core of Article III standing doctrine is, by contrast, beyond the capacity of Congress to alter by statute, standing decisions are likely to impose the steepest costs in enforcement of environmental law in the future. This cost to effective enforcement should be borne in mind as courts decide whether to embark down any of the several avenues that exist for reconciling Article III standing and environmental citizen suits. First, courts can opt to extend the Massachusetts approach to causation and redressability to all plaintiffs, rather than confining it to states. They also might accommodate citizen suits by indulging in some slight of hand concerning the nature of the injury that is required. Courts have shown themselves willing, in the past, to sidestep standing difficulties by simply redefining the injury. n57 Thus, in Laidlaw, a "reasonable fear" of illness stemming from toxic emissions was enough to confer standing. n58 A generous application of the "reasonable fear" approach could go a long way towards getting [\*407] environmental groups into court. Finally, the most accommodating way forward, by far, would be to recognize the power of Congress to define injuries and articulate chains of causation free from the constraints of the common law. III. The Problem of Compliance The ability of citizens to access courts in order to compel executive compliance with environmental laws may have important repercussions on the international plane, because domestic enforcement bears on one of the most fundamental questions in the design of international environmental agreements - why do states comply with their commitments? International environmental problems require deep cooperation among states. Given the prevalence of physical, economic, and psychological externalities associated with environmentally harmful practices, cooperation is necessary to the realization of the mutual benefits of common solutions. n59 Negotiated agreements, of course, only facilitate cooperation if states comply with them. Furthermore, expectations about compliance will often constrain the depth of the commitments that states are willing to make - that is, the extent to which they are willing to depart from the course that they would have taken in the absence of cooperation. Just as in private contract situations, states need to be able to rely on credible commitments by other states, especially when the contemplated activities are highly reciprocal. A state party may not be willing to embark on a path of costly pollution control, for example, without highly credible commitments from peer states that they will make the same sacrifices. David Victor blames the shallowness of international environmental law generally on the failure of efforts to develop effective compliance mechanisms. n60 The risk of defection in the environmental context is generally quite high. Because of scientific and economic uncertainty, the costs and benefits of cooperation are difficult to predict and assess ex ante. Moreover, this uncertainty is magnified by the long duration of cooperation that is often necessary to deal effectively with serious environmental problems. Similarly, political economy models predict that compliance with environmental commitments will be inconsistent. n61 The costs of [\*408] environmental regulation are typically highly concentrated, so that regulated sectors - industry groups in particular - have strong incentives to oppose compliance over time. The benefits of regulation, by contrast, are typically diffuse. Beneficiaries face higher transaction costs in organizing in favor of compliance, and high levels of political mobilization may be unsustainable over the long term. As Sunstein argues, the fact that environmental commitments are concluded at all often has to do with the "availability heuristic." n62 By this reasoning, environmental regulation has more widespread appeal when environmental harms are more "cognitively available" - when vivid and salient examples are present in the popular consciousness. As the cognitive availability of environmental harms fades, popular support for costly regulatory measures - and thus for compliance with environmental agreements that compel such measures - tends to fade as well. Given these challenges, how can the advocates of international environmental cooperation ensure compliance with negotiated agreements? A wide variety of explanations have been advanced to explain observed compliance. They need not be viewed as mutually exclusive; more likely, each of these mechanisms contributes in some respect to state compliance. The leading explanations include the reputational costs of defection, n63 the perceived fairness and legitimacy of negotiated agreements, n64 social learning, n65 and administrative capacity-building, both bilateral and multilateral. n66 Transnational legal process theorists, such as Harold Koh and Anne Marie Slaughter, predict greater compliance stemming from interactions - direct and indirect - between the legal institutions, broadly understood, of different countries. n67 Other theorists are far less sanguine about the prospects for compliance with international agreements in the face of changing conditions. Goldsmith and Posner have famously argued that the discipline [\*409] of international law mistakes correlation for causation. n68 They argue that the behaviors that international lawyers take to be manifestations of opinio juris are actually no more than states acting in their own interests. Pursuit of the national interest, they suggest, happens to produce consistent behaviors, at most times and in most places, which are mistaken for legal norms. Relatedly, David Victor and Kal Raustiala have questioned whether international law - as opposed to international political processes, culminating in so-called "soft law" - contributes meaningfully to compliance. n69 They point to several instances of highly effective environmental cooperation among states on the basis of non-legally binding agreements, and reason that nations may be more likely to agree to robust monitoring regimes when the commitments at stake are not legally binding. The accounts of compliance with international law that accord the most weight to direct enforceability of commitments in domestic legal systems are liberal theories, which focus on the distinctive domestic institutions of so-called "liberal states." Thus, according to David Victor, there are certain states - liberal democracies - "in which internal public pressure [and] robust legal systems make it possible to enforce international commitments from the inside (ground-up) rather than the outside (top-down)." n70 None of these, however, pays much heed to the potential for domestic courts to play a role in escaping the compliance dilemma. Even liberal theories tend to focus instead on interest groups and on the operations of the political branches. n71 Victor identified the existence of independent judiciaries as one of three factors explaining heightened compliance with international obligations by liberal states, but left the idea unexplored. He emphasized that "more work is needed to unravel [the] conditions under which they are most effective." n72 [\*410] Oona Hathaway offers empirical support for the hypothesis that domestic legal enforcement contributes meaningfully to compliance with international obligations. n73 After reviewing a range of studies, both qualitative and quantitative, that assess compliance with human rights law, she reaches two conclusions that are relevant here. First, states that boast independent judiciaries, media, and political parties are more likely to join treaties when their human rights practices are good, and are more likely to improve their practices upon joining. n74 In other words, they take their international legal obligations seriously. Second, just as domestic enforcement contributes to international compliance, the existence of "robust domestic rule-of-law institutions" tends to strengthen domestic enforcement. n75 Hathaway concludes, therefore, that work to strengthen local rule of law serves the ultimate goal of compliance with international human rights agreements. n76 In the environmental context, the compliance-reinforcing potential of domestic enforcement mechanisms is particularly pronounced. In the United States, citizen suits have been tremendously effective at forcing executive compliance, at both the federal and state levels, with the major federal environmental statutes. James May offers this assessment: Citizen suits work; they have transformed the environmental movement, and with it, society. Citizen suits have secured compliance by myriad agencies and thousands of polluting facilities, diminished pounds of pollution produced by the billions, and protected hundreds of rare species and thousands of acres of ecologically important land. The foregone monetary value of citizen enforcement has conserved innumerable agency resources and saved taxpayers billions. n77 Citizen suits are a staple of federal environmental law: nearly every major environmental statute imparts a private right of action to citizens. n78 And nearly 75 percent of all actions to enforce domestic environmental laws take the form of citizen suits. n79 Steps to make the environmental treaty obligations of the executive branch enforceable by citizen suit, therefore, may be expected to improve compliance. [\*411] Two overarching approaches to enforcement of international commitments by citizen suit are possible. First, environmental agreements could be made to include more specific, self-executing obligations, from the outset. n80 Alternatively, international agreements could continue to adhere to the model common to the Montreal and Kyoto protocols, whereby states commit to broad quantitative reductions, only now with an additional treaty obligation to provide for private enforcement of subsequent implementing legislation in the domestic legal system. Although this latter option would leave some margin for noncompliance, that margin would be highly circumscribed. Most noncompliance with environmental obligations is not through overt repudiation at the level of the executive or national legislature, but through non-enforcement. n81 Thus, whether international environmental agreements themselves create privately enforceable rights or those provisions are instead inserted later at the time of passage of implementing legislation by the legislature, the availability of citizen suits will greatly diminish the opportunity for states subsequently to renege through inaction on their commitments. n82 The key is to harness the enforcement potential of citizen suits in service of international compliance. This strategy is further recommended by the fact that domestic courts may be particularly well-suited, in institutional terms, to the task of long-term enforcement in the environmental context. Independent judiciaries are, in part by definition, more insulated from politics than the executive and the legislature, which means that they are also insulated from some of the most dangerous biases of political actors: short-termism, tendency to undervalue low-risk events, and unwillingness to face up to catastrophic risk. n83 Yet, generally speaking, domestic courts are not so insulated from the political tenor of a country so as to fail to perceive the costs of compliance. n84 Hence, they offer a solution to the vexing trade-off between credibility and [\*412] flexibility faced by the framers of international agreements in which environmental commitments - with their uncertain long-term costs - are at issue. What a country wants is to be bound when the question is close - so as to be able to make a credible commitment - but not when, from their perspective, circumstances have changed so much as to excuse noncompliance. n85 States are understandably wary of trusting foreign or international authorities to recognize and accommodate such instances of changed circumstances. A domestic institution is more likely to do so, even in cases of true judicial independence, simply by virtue of shared background assumptions that inhere in national identity and culture. Maximizing the extent to which international environmental commitments can make use of domestic legal institutions, therefore, may allow for optimal pre-commitment strategies. In addition to being highly effective, domestic enforcement of international environmental commitments is likely to be more politically palatable, at the stage of institutional design and ratification, than the alternatives. n86 Existing international agreements in this area are notable for their lack of monitoring, sanctions, and other international oversight mechanisms. n87 In the United States, at least, concerns about loss of national sovereignty to international institutions are highly politically salient, and often carried to irrational, even paranoid, extremes. n88 Thus, political resistance to foreign and international monitoring and sanctions regimes often goes far beyond what one would expect given the simple risk that those institutions will be insufficiently attentive to national interests in hard cases. This resistance means that any achievements in international oversight often come at the expense of the depth of the commitments made. n89 In the environmental context, therefore, provision for domestic judicial enforcement of international commitments may be a Goldilocks solution: just enough precommitment, without the steep political price upfront. Such a strategy, however, is closely bound up with the difficult questions about standing doctrine that were discussed in Part I. A [\*413] hospitable doctrine of standing is among the conditions necessary for making domestic courts an effective tool in ensuring compliance with international environmental agreements. If, instead, standing doctrine continues to constrict the environmental citizen suits that make it into court, these compliance benefits will be commensurately foregone. Ironically, standing doctrine will sweep most broadly in excluding citizen enforcement in a substantive area such as environmental law where the achievement of international cooperation was already highly challenging. In a further irony, the imminence and causation requirements of restrictive standing doctrine will make domestic enforcement most difficult to attain precisely when international institutions are most in need of support from domestic sources of compliance pressure: at the early stages of cooperation to address an incipient environmental problem. Climate change is the prime example of these risks, but the mismatch between standing doctrine and the substance of international environmental cooperation is institutional; it has the potential to extend far beyond the particular problem of climate change. Other environmental regimes promise even less concrete, more diffuse, and longer-term benefits from regulation. For example, failure of states to heed commitments directed towards preserving biodiversity will often fail to implicate any plaintiffs in particular. n90 What American has an "injury-in-fact," as interpreted by Justice Scalia, when an agency fails to take action to preserve the genetic diversity of obscure insects, plant species, or microorganisms, the use value of which to humans is almost nonexistent in the short or medium term? n91 Another highly problematic example is explored by Paul Hawken, Amory Lovins and L. Hunter Lovins in Natural Capitalism. n92 Several European countries have made great strides in reducing demand for natural resources and supply of solid waste by imposing responsibility for disposal and other "full life-cycle costs" on the manufacturers of consumer durables and industrial products. But when the environmental goods and services conserved by European states are freely traded, other economies can free-ride off of their efforts. If the United States agreed by treaty to impose similar requirements on manufacturers, what citizens would have standing to challenge executive noncompliance with resulting legislation? The doctrine of Article III standing has profound and far-reaching consequences for United States participation in international regimes to address the pressing environmental problems of today and tomorrow. If standing doctrine remains restrictive, unpredictable, and immune to [\*414] alteration by Congress, the international environment will pay part of the price. IV. Credibility as Negotiating Advantage The course of United States standing doctrine, of course, will not directly influence the enforceability of internationally agreed-upon environmental rules within other countries. Therefore, one might legitimately question the extent to which a change in the domestic law of one state - even that of a hegemonic power - will meaningfully affect the prospects for effective international coordination. n93 One response to such criticism is that removing one obstacle to greater reliance on domestic enforceability in international environmental regimes is a step in the right direction. As Justice Stevens reasoned in Massachusetts v. EPA, that a step is incremental does not defeat its utility. n94 But there also is a separate, stronger response: More robust domestic enforcement will strengthen the hand of the United States in international negotiations, whether or not other countries move in the same direction. The academic literature surrounding negotiation has a tendency to analyze the concept of credibility in the context of threats. That is, in bargaining over the spoils within a zone of possible agreement, the party that is able to tie its own hands or burn its bridges (or create the credible impression of having done so), alters (or obscures) its true bottom line. By threatening to walk away from the table, that party captures a greater share of the mutual benefits from agreement. n95 But as I explain, the capacity to make credible promises is also an asset in negotiation. The weakening of domestic enforcement of environmental law renders less valuable the promises made by U.S. negotiators, n96 by the following chain of causation: More restrictive environmental standing hinders domestic judicial enforcement, which in turn makes defection by the executive more likely, which drives negotiating partners to discount the value of promised actions by the (increased) likelihood of defection, thereby [\*415] rendering U.S. promises less valuable. As a result, the U.S. is able to get less in exchange for its promises in international environmental negotiations. Many scholars, however, emphasize the value of flexibility in international agreements, particularly in situations of uncertainty. n97 An advocate of restrictive standing might, in reliance on these analyses, argue that the gain in flexibility to the United States is worth the cost in terms of lost credibility. But the hypothesized Lujan apologist would be wrong. Weakened enforcement by the domestic courts serves only to narrow the range of options available to the political branches in the international arena. Whereas a state that is able to make credible promises can calibrate the value of a promise by varying its substantive content as it wishes, a state lacking credibility is limited in what it can (effectively, credibly) promise. In other words, a state in possession of credibility can still enjoy the benefits of flexibility, but the reverse is not true. Strategies of pre-commitment like domestic enforceability may be particularly useful to hegemonic powers like the United States. Hegemons of course, have a strong interest in preservation of the status quo. While ascendant political forces in the United States have, up to the present, identified the interests of the status quo as in conflict with concerted global action to deal with environmental problems, that position may no longer be tenable. Climate change and other looming ecological crises - not the efforts to deal with them - in fact pose the greater existential threat to the current global order, and American political elites are beginning to understand the need to address them. Thus, the nominees of both major American political parties expressed strong rhetorical support for efforts to deal with climate change in 2008, and a comprehensive cap-and-trade bill passed the House, but not the Senate, in 2009. n98 For a hegemonic power to convince other states to cooperate on its terms, however, it must be able to make credible commitments. Otherwise, the world will remain all too aware of the power of the hegemon to renege after the fact. n99 The U.S.'s need for credibility on the world stage derives not only from [\*416] structural factors. Though America's image in the world has rebounded substantially since the election of President Obama, n100 it was held in much lower esteem just one year ago. n101 And its perceived flouting of international norms was an important contributor to that decline. n102 The Bush administration's salient decisions to opt out of multilateral efforts, including "unsigning" the Rome Statute of the International Criminal Court, withdrawal from the Anti-Ballistic Missile Treaty, and non-participation in the Kyoto process are unlikely to be completely overlooked by global leaders considering long-term reciprocal cooperation with the United States, Obama's recent charm offensives notwithstanding. The international community is painfully aware of the periodic willingness of the political branches - particularly the executive - in the United States to spurn international obligations when interests so dictate. Many point out, however, that these manifestations of United States "exceptionalism" consisted not in noncompliance - violation of a binding legal norm - but rather in perfectly legal decisions to opt out of international processes. n103 The point is true for what it is worth, but prominent instances of U.S. noncompliance with binding legal norms are, nonetheless, fairly easy to identify. One of these instances of noncompliance is the requirement of consular notification in the Vienna Convention on Consular Relations. n104 In Medellin v. Texas, n105 the Supreme Court held that the state of Texas was not bound to refrain from executing Ernesto Medellin, even though the United States was indisputably in breach of its obligations under that treaty. n106 Domestic considerations of federalism and procedural default, therefore, trumped international compliance, much to the dismay of Mexico and many others in the international community. n107 Domestic procedural law also, [\*417] arguably, trumped international obligations for some time in the case of the prisoners of the war on terror held at Guantanamo. With respect to those individuals, the protections of the Geneva Conventions were undone - or at least very significantly delayed - by the jurisdictional requirements of U.S. law. n108 Comprehensive treatment of these controversies is beyond the scope of this paper, but the basic point is clear: the U.S.'s prospective negotiating partners are likely to be attentive to the risk that procedural hurdles - like strict standing - will undermine U.S. compliance in the environmental arena as well. V. Conclusion Several unresolved questions about Article III standing have important implications for the viability and effectiveness of citizen suits in environmental cases. If courts continue the recent trend of allowing procedural doctrines to restrict these suits, the shift may have important international repercussions which have not yet been fully reckoned with. Most important among these is that the unavailability of domestic enforcement of environmental laws through citizen suits will tend to undermine compliance with international environmental obligations. Both the negotiating position of the United States and the prospects for effective cooperation on the most pressing environmental issues facing humanity will suffer accordingly.

#### Impending US military intervention sparks US-China war in Africa - escalates to full-scale war

Bodansky 14 (Yossef, Senior Editor, Global Information System / Defense & Foreign Affairs, "U.S. interventionism in Africa makes colonialism look progressive, empowers China,"

<http://webcache.googleusercontent.com/search?q=cache:S3BWkY44V_MJ:www.worldtribune.com/2014/01/20/u-s-interventionism-in-africa-makes-colonialism-look-progressive-empowers-china/+&cd=21&hl=en&ct=clnk&gl=us>)

Given the changing realities, the U.S. and France are playing with fire in sub-Saharan Africa.¶ The region is undergoing a tense and explosive transformation. The populace is facing a lot of frightening uncertainties on account of hasty urbanization, popular mobility, and an information-communication revolution. There is a grassroots dread of the evolution of the role and power of clans, tribes, and states (regarding authority, legitimacy, corruption, abuse of power, etc.). There is confusion regarding the potential impact on society of the development of riches. Finally, there exist the seduction and lure of violent criminality, as well as religious and ethno-centrist militancy and radicalism. Taken together, these grassroots apprehensions create a very explosive yet confused and confusing environment. It doesn’t take great effort to exacerbate such a volatile situation and spark a major eruption.¶ Moreover, there exists the evolution in the People’s Republic of China’s (PRC’s) attitude toward, and commitment to, Africa.¶ The role of sub-Saharan Africa is evolving from just an economic resource for China into a Chinese strategic lever against the U.S.-led West. The Chinese have long been investing heavily in Africa as the key long-term source for energy, ores, rare earths, and other raw materials for their industrial growth.¶ Recently, the PRC has been expanding its operations into sponsoring the creation of a secondary industrial base in Africa itself in order to better support their economic undertakings. Beijing is now also looking to Africa as a prime instrument for preventing, or at the least controlling, the flow of resources to the West. The PRC is worried because the PRC leadership perceives that the U.S. is desperate to revive its sagging economy and disappearing industrial base while discussing an explicitly anti-Chinese pivot to East Asia.¶ The Chinese are also apprehensive that Europe is embarking on re industrialization and thus might lessen its dependence on Chinese imports and the trans-Asian venues of transportation — the new Silk Road — and their strategic value. It is in such a grand strategic context that Beijing is studying U.S.-led Western activities in Africa and, not without reason, is becoming increasingly apprehensive about them. Hence, Beijing is now determined to capitalize on the PRC’s preeminence in Africa in order to pressure, if not extort, the West. The margin for error under these conditions is extremely narrow.¶ America’s “humanitarian interventionism” in sub-Saharan Africa is markedly increasing tensions and exacerbating conflicts all around. The specter of current and future U.S.- and French-led military interventions and the ensuing toppling of leaders and governments is sending both African leaders and aspirant strongmen to posture for better positions in case the U.S. and France intervened in their states and regions. Desperate to increase their military capabilities, they make Faustian deals with any anti-Western power they can reach out to, be it China or Iran. Hence, there exists a growing possibility that U.S.-Chinese tension will also spark a clash in explosive Africa.¶ Where the next eruption in Africa will lead is anybody’s guess. In a recent Brookings Essay entitled “The Rhyme of History: Lessons of the Great War”, Professor Margaret MacMillan warned of the growing and disquieting similarities between the world of Summer 1914 and the world of early 2014.¶ “It is tempting — and sobering — to compare today’s relationship between China and the U.S. with that between Germany and England a century ago,” Professor MacMillan writes.¶ She also points to the prevailing belief — then as now — that a full-scale war between the major powers is unthinkable after such a prolonged period of peace. “Now, as then, the march of globalization has lulled us into a false sense of safety,” Professor MacMillan writes. “The 100th anniversary of 1914 should make us reflect anew on our vulnerability to human error, sudden catastrophes, and sheer accident.”

Enforcing NEPA restrictions precludes the use of US military force

Dorfman 4 (Bridget – J.D. Candidate, 2004, University of Pennsylvania Law School, “PERMISSION TO POLLUTE: THE UNITED STATES MILITARY, ENVIRONMENTAL DAMAGE, AND CITIZENS' CONSTITUTIONAL CLAIMS”, 2004, 6 U. Pa. J. Const. L. 604, lexis)

The United States military establishment is a significant polluter of the air, land, and water. n1 The Cold War demanded enormous consumption of resources so that weapons could be developed and military dominance could be preserved. n2 The Army, Navy, Air Force, and Marines test weapons, build dams and roads, discharge toxic wastes, create noise, and release pollutants into rivers and oceans and air. The United States military is the most powerful and expensive military force that has ever existed, and this environmental damage is one of the by-products. n3 One strategy employed by the citizens who want to protect the environment and themselves is to sue the government under any one of a number of environmental statutes. In some of these lawsuits, the plaintiffs include claims that the military has violated their federal constitutional rights. Yet the federal courts regularly and summarily dismiss these constitutional claims. The prioritization of military needs over environmental needs may benefit the military in the short term while a particular weapon needs to be tested or personnel need to be trained. In the longer term, however, all Americans are harmed because the environment is itself a source of both health and security. This Comment examines how and why federal constitutional claims fail when asserted by citizens in lawsuits against the United [\*605] States military establishment. This Comment is broad in scope, surveying federal cases in which citizens raise constitutional claims regarding various military actions. While not all of these plaintiffs were motivated by their concern for the environment, environmental damage was the result of military action in all of these cases and environmental statutes provided the legal tools to stop the damage. Some cases reach back thirty years, to the beginning of the modern environmental movement. The scope is limited, however, to cases in American courts over military activities occurring inside the territorial United States. Therefore, the scope excludes the environmental pollution that results from actual warfare. n4 Three factors make the potential conflicts between the military and the environment increasingly relevant today. First, the current Bush administration has been criticized by congressional Democrats, nonprofit organizations, and other commentators not only for failing to enforce our environmental laws, n5 but also for rolling them back. n6 Second, America's war on terrorism and the war with Iraq n7 have created a more militarized world, with more training, troop movement, and weapons testing, all of which increase environmental degradation. Today's weapons are more destructive and more countries have them. National security has been at the forefront of the nation's consciousness since September 11, 2001, and conventional wisdom dictates that national security must clash with environmental protection goals. The memory of past terrorist attacks and the threat of future ones render Americans willing to sacrifice the environment for security, perhaps understandably. Third, this is a time of heightened concern for the environment; environmental ills are worsening n8 and environmental consciousness is increasing. n9 The environmental costs of nearly a half century of Cold [\*606] War preparations have come to light, and the public is less willing to accept environmental costs that would have been accepted without question in an earlier era. n10 Part I of this Comment begins with a brief introduction to the general relationship between the military and the environment, and then takes up the analysis of federal cases in which citizens have sued the military for environmental infractions under the Third and Fifth Amendments in Part II. Part III provides a discussion of some of the reasons why these constitutional claims fail. In Part IV the Comment concludes that the courts commit a disservice to all citizens by disregarding their legitimate claims under the Bill of Rights, by both prioritizing what the military claims it needs above the Constitution and by allowing environmental degradation to continue unnecessarily. I. The Military and the Environment The military establishment is subject to a panoply of environmental statutes, which can be grouped into a handful of categories. n11 One category consists of planning statutes such as the National Environmental Policy Act ("NEPA") n12 and the Endangered Species Act ("ESA"), n13 which require government agencies to consider the environmental consequences of their actions. Another category consists of prospective statutes such as the Clean Water Act ("CWA"), n14 the Clean Air Act ("CAA"), n15 the Resource Conservation and Recovery Act ("RCRA"), n16 and the Toxic Substances Control Act ("TSCA"), n17 which seek to minimize or eliminate pollution before it is created. Finally, there are retrospective statutes such as the Comprehensive [\*607] Environmental Response, Compensation and Liability Act ("CERCLA"), n18 which seek to clean up and restore the environment after the damage has been done. n19 In order to comply with these and other environmental statutes, the Defense of Department ("DoD") has a Deputy Under Secretary for Environmental Security and an entire bureaucratic structure complete with environmental audits, research and development, insertion of environmental performance standards into procurement contracts, training programs to impart environmental awareness to military personnel, and public forums in which to discuss cleanup plans. n20 The DoD issues a "Report on Environmental Compliance" every year, describing the environmental impacts of the various DoD divisions. n21 The DoD also spends between $ 2.5 and $ 3 billion on environmental compliance in the territorial United States alone. n22 Despite the DoD's budgetary commitment to the environment, the relationship between the military and the environment is an inherently tense one. One commentator notes a culture clash: The two subject matter areas are characterized by radically different institutional and structural contexts. Whereas the national security field involves a highly disciplined, largely secret enterprise mobilized behind unitary goal-oriented missions, frequently beyond the reach of judicial supervision, environmental policy has been made in a relatively transparent setting with a high degree of public consultation and input, with the institution of judicial review playing a catalytic role. n23 This tension is most starkly expressed by the military's belief that environmental laws do not even apply in wartime. n24 The military requires victory at nearly any cost; the environment bears the burden of that determination. Yet, according to commentator Stephen Dycus, there is a rising current of environmentalism in the military establishment, a realization that environmental stewardship is part and parcel of national security, not an impediment to it. n25 In 1990, then-Defense Secretary Dick Cheney said that "defense and the environment is not an either/or proposition. To choose between them is impossible in this [\*608] real world of serious defense threats and genuine environmental concerns." n26 Some Pentagon officials have expressed the same view, pledging to repair past environmental wrongs and adhere to a stricter code of environmental protection while protecting the country. n27 Yet the DoD's most recent authorization bill, sent to President Bush on November 12, 2003, for his signature, n28 provided for military exemptions from the ESA and the Marine Mammal Protection Act, and the Pentagon is pushing this year for further exemptions from the RCRA, CERCLA, and CAA. n29

#### Impact is extinction

Lieven 12 (Anatol, Professor in the War Studies Department – King’s College (London), Senior Fellow – New America Foundation (Washington), “Avoiding US-China War,” New York Times, 6-12, http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html)

Relations between the United States and China are on a course that may one day lead to war. This month, Defense Secretary Leon Panetta announced that by 2020, 60 percent of the U.S. Navy will be deployed in the Pacific. Last November, in Australia, President Obama announced the establishment of a U.S. military base in that country, and threw down an ideological gauntlet to China with his statement that the United States will “continue to speak candidly to Beijing about the importance of upholding international norms and respecting the universal human rights of the Chinese people.” The dangers inherent in present developments in American, Chinese and regional policies are set out in “The China Choice: Why America Should Share Power,” an important forthcoming book by the Australian international affairs expert Hugh White. As he writes, “Washington and Beijing are already sliding toward rivalry by default.” To escape this, White makes a strong argument for a “concert of powers” in Asia, as the best — and perhaps only — way that this looming confrontation can be avoided. The economic basis of such a U.S.-China agreement is indeed already in place. The danger of conflict does not stem from a Chinese desire for global leadership. Outside East Asia, Beijing is sticking to a very cautious policy, centered on commercial advantage without military components, in part because Chinese leaders realize that it would take decades and colossal naval expenditure to allow them to mount a global challenge to the United States, and that even then they would almost certainly fail. In East Asia, things are very different. For most of its history, China has dominated the region. When it becomes the largest economy on earth, it will certainly seek to do so. While China cannot build up naval forces to challenge the United States in distant oceans, it would be very surprising if in future it will not be able to generate missile and air forces sufficient to deny the U.S. Navy access to the seas around China. Moreover, China is engaged in territorial disputes with other states in the region over island groups — disputes in which Chinese popular nationalist sentiments have become heavily engaged. With communism dead, the Chinese administration has relied very heavily — and successfully — on nationalism as an ideological support for its rule. The problem is that if clashes erupt over these islands, Beijing may find itself in a position where it cannot compromise without severe damage to its domestic legitimacy — very much the position of the European great powers in 1914. In these disputes, Chinese nationalism collides with other nationalisms — particularly that of Vietnam, which embodies strong historical resentments. The hostility to China of Vietnam and most of the other regional states is at once America’s greatest asset and greatest danger. It means that most of China’s neighbors want the United States to remain militarily present in the region. As White argues, even if the United States were to withdraw, it is highly unlikely that these countries would submit meekly to Chinese hegemony. But if the United States were to commit itself to a military alliance with these countries against China, Washington would risk embroiling America in their territorial disputes. In the event of a military clash between Vietnam and China, Washington would be faced with the choice of either holding aloof and seeing its credibility as an ally destroyed, or fighting China. Neither the United States nor China would “win” the resulting war outright, but they would certainly inflict catastrophic damage on each other and on the world economy. If the conflict escalated into a nuclear exchange, modern civilization would be wrecked. Even a prolonged period of military and strategic rivalry with an economically mighty China will gravely weaken America’s global position. Indeed, U.S. overstretch is already apparent — for example in Washington’s neglect of the crumbling states of Central America.

### Irregular Warfighting

#### Training solves the link

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 137]

It might seem terribly naive to suggest that in the midst of battle military leaders should have to worry about protecting the natural environment, or be distracted in any way from the immediate task of winning. But because, as we have noted, the environment itself is worth fighting to protect, environmental consequences must be considered in making tactical decisions. Fortunately, much that happens during a war is determined far in advance, from planning and training for combat, to the design of weapons. There is ordinarily plenty of time for reflection and debate about the wartime environmental implications of these preparations. One former infantry officer summed up the responsibility of military leaders this way: [C]ommanders must take strong positive steps to limit environmental damage. They must plan campaigns with the avoidance of damage in mind. For example, they should avoid, if at all possible, especially fragile areas. They should prohibit mass destruction of the land (such as the use of Agent Orange in Vietnam) as a method of warfare. They must make their subordinates aware of the environment, and they must issue orders prohibiting damage. They must continually assess the effects of their campaigns on the environment. Finally, they must insure that positive steps are taken to heal environmental damage in areas that they conquer and occupy. 13

#### The military is prepared for irregular war now and impact unlikely – their author

**Bennett 2007** [John T. Defense News, “DoD: Force Planning Built For Irregular, Lengthy Conflicts, Vol. 22 Issue 16, p6-6,

The Bush administration’s plan to add 92,000 soldiers and Marines to the U.S. armed forces is aimed primarily at preparing to fight another lengthy irregular war, with units rotating into theater and training indigenous militaries to carry out missions on their own turf, the Pentagon’s top policy deputy said.¶ “The need to move from a force that is garrisoned forward for highly kinetic, major combat operations to one that has more of its mass back in the United States — but rotates forward — is something that we see in the future,” said Ryan Henry, the Defense Department’s principal deputy undersecretary of defense for policy.¶ Henry’s comments offer a rare look into Pentagon thinking about how those new troops will be used, and how lessons from rolling rotations of units into the Iraq theater are making their way into the Defense Department’s force-planning strategy.¶ The concept “of prolonged, irregular campaigns — whatever the level of combat intensity or security cooperation it might be — does appear to be out there in the future,” Henry said.¶ U.S. defense leaders also believe forces will be called more often to train indigenous militaries in strategic hot spots.¶ “The need for the United States, on a cooperative level, to work with a larger number of partners and to work with them in their countries, we see as something that will be out there in the future,” Henry said April 6. “[An expanded] ground force supports that capability.”¶ The White House announced the expansion in mid-January, amid political pressure to swell the force as the longer-than-anticipated post-combat phase of the Iraq war stressed the Army and Marine Corps.¶ Some former defense officials and military experts have questioned the wisdom of swelling the force, and say the White House has failed to adequately explain how it foresees using the additional troops.¶ Until last year, the Department of Defense built its force structure around the “1-4-2-1 concept,” named for its major tenets:¶ \*Defend U.S. soil.¶ \*Fight aggression through forward deployments to places like Europe, Northeast Asia, the East Asian littoral and Middle East/Southwest Asia.¶ \*Fight two major conventional combat operations at nearly the same time.¶ \*Rapidly win in one of those conventional fights.¶ But the Pentagon scrapped the concept when officials crafted the 2006 Quadrennial Defense Review (QDR).¶ “Under the new construct, the U.S. military is sized and shaped for three main types of missions: homeland defense, the war on terrorism/irregular warfare and conventional campaigns,” Michèle Flournoy, a senior adviser in the International Security Program at the Center for Strategic and International Studies, Washington, wrote in a spring 2006 assessment of the QDR strategy.¶ “In each case, U.S. forces must be able to meet the peacetime or steady-state requirements associated with a given set of operations, to surge for crisis operations and to maintain a rotation base adequate to sustain longer operations over time,” she wrote.¶ Flournoy helped craft the 1997 QDR when she was deputy assistant defense secretary for strategy. She also led the National Defense University’s 2001 QDR working group.¶ Said Henry, “We moved from the concept of being able to engage in two, nearly simultaneous large conventional campaigns to saying one of those campaigns could be irregular and could be prolonged. And that’s obviously what we’re experiencing right now in Iraq and Afghanistan.¶ “When one looks at that, you realize the sizing part of the force is not driven by the major combat operations, where you tend to have them all there for the period and duration of the conflict, but it is driven more by the prolonged, irregular campaign where you’re rotating forces in,” he said. “And so, you have to size the force not just for those that are engaged, but for those that are in the rotational base.”¶ Unlikely Scenario?¶ But some observers say it is unlikely that the U.S. military might find itself in another — to use Henry’s description — “prolonged, irregular” fight.¶ “I just don’t see a country out there where we’d try this again,” said Gordon Adams, a former Clinton administration official in the Office of Management and Budget, referring to the invasion and subsequent occupation of Iraq.¶ None of the nations on the current list of potential trouble spots are candidates for sending in a massive American ground force, or keeping it there for a half-decade, Adams said.¶ U.S. military action against Iran likely would consist of air and naval strikes; using force in Pakistan to keep its nuclear capabilities out of the hands of Sunni Muslim extremists would more likely be the work of special operations forces; and invading China would mean taking on its massive population, Adams said.¶ “If it’s going to be irregular warfare — or even counterterrorism — in the future, you’re not talking about a larger force,” Adams said. For those missions, a smaller force trained for nonconventional missions would be needed.¶ Even Henry’s own read of the world as the Iraq conflict drags on seems to suggest the prospects for another “irregular, prolonged” encounter in the near term are fading.¶ “As we prepare for the ‘long war,’ do we see ourselves engaging in another evolution that looks exactly like Iraq or Afghanistan? In all, probably not,” Henry said. “I mean, history does not repeat itself that closely.”¶ Yet that appears to be what the Pentagon is planning for, Adams said: “They are already fighting the last war — and that is to say Iraq — all over again.”¶ But another former military official called the focus on being ready for more lengthy, asymmetric conflicts a “very prudent planning scenario.” He said the planning framework laid out by Henry is wiser in the emerging global security environment than preparing for a pair of simultaneous conventional fights.

#### And conventional military solves – irregular warfare claims are exaggerated – means there’s only a risk they undermine strategy

Borgeson 2012 [Benjamin, holds an MS in Defense and Strategic Studies, currently enlisted in the U.S. Army, “The Principles of Destruction in Irregular Warfare: Theory and Practice,” Small Wars Journal, http://smallwarsjournal.com/jrnl/art/the-principles-of-destruction-in-irregular-warfare-theory-and-practice]

What are the implications of this conclusion? Most important is that irregular warfare does not differ from regular warfare to the degree that some of the more frantic voices would suggest. At the strategic level, each mode requires the destruction of the enemy’s military forces to achieve victory. Guerrilla warfare itself does require unique skill sets from both insurgents and the counterinsurgents that oppose them, such as political and civic action to gain the support of the population, espionage and intelligence collection, small unit tactics, etc. However, guerrilla warfare is a transitory phase, incapable of producing victory except when one side has only a secondary interest in the conflict, and the skills associated with it are tactical in nature.[200]

Furthermore, the worldwide trend of decline in state power has devolved onto non-state actors de facto control over physical territory; militias and guerrilla movements more readily find themselves as pseudo-legitimate governing authorities. As noted in the study, territory can be defended only by positional warfare. Thus, military powers around the world will increasingly find themselves engaged in regular warfare with non-state actors.[201]

The wars in Afghanistan and Iraq have provided the impetus for a major effort to reform the military institutions of the United States to make them more suitable for long-term irregular wars. Changes that increase the U.S. military’s proficiency at counterinsurgency operations are manifestly appropriate; however, the U.S. must be wary of undermining the military’s core competency: “the capacity to destroy the largest possible defensive force over the largest possible territory for the smallest casualties in the least time.”[202] Any state that retains this capacity, along with the political will to continue the fight, will prevail in a war against irregulars. However, if this capacity is discarded in an effort to optimize military forces for arresting insurgencies when they are still in the guerrilla warfare phase, options for the counterinsurgent become severely limited: the irregulars must be defeated before they are able to field regular and semi-regular units. Otherwise, the insurgent and counterinsurgent will switch places, and the latter will be beaten at what should be its own game: destruction of the enemy.

### Minimalism DA – 2AC

#### Economic decline doesn’t cause war

Tir 10 [Jaroslav Tir - Ph.D. in Political Science, University of Illinois at Urbana-Champaign and is an Associate Professor in the Department of International Affairs at the University of Georgia, “Territorial Diversion: Diversionary Theory of War and Territorial Conflict”, The Journal of Politics, 2010, Volume 72: 413-425)]

Empirical support for the economic growth rate is much weaker. The finding that poor economic performance is associated with a higher likelihood of territorial conflict initiation is significant only in Models 3–4.14 The weak results are not altogether surprising given the findings from prior literature. In accordance with the insignificant relationships of Models 1–2 and 5–6, Ostrom and Job (1986), for example, note that the likelihood that a U.S. President will use force is uncertain, as the bad economy might create incentives both to divert the public’s attention with a foreign adventure and to focus on solving the economic problem, thus reducing the inclination to act abroad. Similarly, Fordham (1998a, 1998b), DeRouen (1995), and Gowa (1998) find no relation between a poor economy and U.S. use of force. Furthermore, Leeds and Davis (1997) conclude that the conflict-initiating behavior of 18 industrialized democracies is unrelated to economic conditions as do Pickering and Kisangani (2005) and Russett and Oneal (2001) in global studies. In contrast and more in line with my findings of a significant relationship (in Models 3–4), Hess and Orphanides (1995), for example, argue that economic recessions are linked with forceful action by an incumbent U.S. president. Furthermore, Fordham’s (2002) revision of Gowa’s (1998) analysis shows some effect of a bad economy and DeRouen and Peake (2002) report that U.S. use of force diverts the public’s attention from a poor economy. Among cross-national studies, Oneal and Russett (1997) report that slow growth increases the incidence of militarized disputes, as does Russett (1990)—but only for the United States; slow growth does not affect the behavior of other countries. Kisangani and Pickering (2007) report some significant associations, but they are sensitive to model specification, while Tir and Jasinski (2008) find a clearer link between economic underperformance and increased attacks on domestic ethnic minorities. While none of these works has focused on territorial diversions, my own inconsistent findings for economic growth fit well with the mixed results reported in the literature.15 Hypothesis 1 thus receives strong support via the unpopularity variable but only weak support via the economic growth variable. These results suggest that embattled leaders are much more likely to respond with territorial diversions to direct signs of their unpopularity (e.g., strikes, protests, riots) than to general background conditions such as economic malaise. Presumably, protesters can be distracted via territorial diversions while fixing the economy would take a more concerted and prolonged policy effort. Bad economic conditions seem to motivate only the most serious, fatal territorial confrontations. This implies that leaders may be reserving the most high-profile and risky diversions for the times when they are the most desperate, that is when their power is threatened both by signs of discontent with their rule and by more systemic problems plaguing the country (i.e., an underperforming economy).

#### No escalation

Robert Jervis 11, Professor in the Department of Political Science and School of International and Public Affairs at Columbia University, December 2011, “Force in Our Times,” Survival, Vol. 25, No. 4, p. 403-425

Even if war is still seen as evil, the security community could be dissolved if severe conflicts of interest were to arise. Could the more peaceful world generate new interests that would bring the members of the community into sharp disputes? 45 A zero-sum sense of status would be one example, perhaps linked to a steep rise in nationalism. More likely would be a worsening of the current economic difficulties, which could itself produce greater nationalism, undermine democracy and bring back old-fashioned beggar-my-neighbor economic policies. While these dangers are real, it is hard to believe that the conflicts could be great enough to lead the members of the community to contemplate fighting each other. It is not so much that economic interdependence has proceeded to the point where it could not be reversed – states that were more internally interdependent than anything seen internationally have fought bloody civil wars. Rather it is that even if the more extreme versions of free trade and economic liberalism become discredited, it is hard to see how without building on a preexisting high level of political conflict leaders and mass opinion would come to believe that their countries could prosper by impoverishing or even attacking others. Is it possible that problems will not only become severe, but that people will entertain the thought that they have to be solved by war? While a pessimist could note that this argument does not appear as outlandish as it did before the financial crisis, an optimist could reply (correctly, in my view) that the very fact that we have seen such a sharp economic down-turn without anyone suggesting that force of arms is the solution shows that even if bad times bring about greater economic conflict, it will not make war thinkable.

#### Resilient

#### 1. No link – plan isn’t a controversial ruling. It has settled precedent to rely on, that’s Donovan 11.

#### 2. No impact to minimalism – judges are ideological and the strategy is broken

McQuillen 12

[Molly, .D. Candidate, 2012, Case Western Reserve University School of Law., THE ROLE OF THE AVOIDANCE CANON IN THE ROBERTS COURT AND THE IMPLICATIONS OF ITS INCONSISTENT APPLICATION IN THE COURT'S DECISIONS, Spring 2012, L/N]

The Roberts Court's use of the avoidance canon has been anything but consistent. In practical terms, the outcomes of the cases and the reasons that the Court applied the avoidance canon inconsistently may be a result of what was at issue in each case. While NAMUDNO dealt with the controversial issue of section 5 of the Voting Rights Act, neither Citizens United nor Free Enterprise Fund dealt with similar controversial issues. Given the less controversial nature of these cases, perhaps the conservative members of the Court felt more comfortable pushing the envelope and refusing to adhere to the avoidance canon to accomplish its ideological goals. Or, maybe Citizens United and Free Enterprise Fund turned out differently because in those cases Justice Kennedy, the Court's current swing vote, was willing to vote with the conservative members of the Court, whereas he was reluctant to do so in NAMUDNO. Regardless of the reasons these cases turned out differently, the Court's disparate approaches to the avoidance canon in each case, the way in which the justices wrote the opinions, and the increasingly flawed reasoning of these decisions have broad implications for the canon, its future legitimacy, and the public's perception of the Court. The Court's differing approaches to constitutional avoidance in NAMUDNO, Citizens United, and Free Enterprise Fund reveal the threat not only to the legitimacy of the avoidance canon, but also to the reputation of the Court. While the Court claimed that constitutional avoidance was its "usual practice" in NAMUDNO, n236 it proceeded to give a cursory treatment to the canon in Citizens United and Free Enterprise Fund. The Court seems to vigorously defend and support the canon one minute, but gives superficial reasons for not [\*878] applying the canon in a specific case, or ignores the canon altogether the next minute. Chief Justice Roberts claims that the members of the Court are united in their allegiance to the avoidance canon, n237 but Citizens United and Free Enterprise Fund suggest otherwise. The mixed messages these decisions send about the canon cause it to suffer because it conveys the perception that the justices' personal ideologies are driving the decisions rather than the facts of a given case. These contradictory statements about, and approaches to, the canon cannot continue if the Court wants to preserve the canon's legitimacy. While the canon may be discretionary, it cannot continue to be meaningful and persuasive if the justices constantly change the way in which it applies, or if they deliberately ignore it to promote their own agendas. Additionally, if the justices continue to use flawed reasoning and fail to adhere to the avoidance canon to promote a political agenda, the Roberts Court will lose its reputation as a minimalist court, if it has not done so already.

#### 3. No link – if Roberts wants minimalism he will inevitably vote to balance the other justices

#### 4. No link – no minimalism on the environment now

Schiff 12

[Damien, Principal Attorney Pacific Legal Foundation , Judicial Minimalism and the Supreme Court’s Recent Environmental Law Jurisprudence: An Update, 2012, <http://blog.pacificlegal.org/wordpress/wp-content/uploads/2012/10/Schiff-Minimalism-Essay-1.pdf>]

At first blush, Sackett is strongly anti-minimalist. The Court opened the courthouse doors potentially to many new lawsuits. The Court declined to hold that challenges to compliance orders were unripe because agency action was ongoing. The Court declined to credit the agency’s contention that judicial review of compliance orders would hamper its administration of the Clean Water Act. The Court overturned dozens of lower-court decisions, spanning two decades, holding that compliance orders were not reviewable. Thus, one might easily conclude that the Court abandoned any pretense to minimalism in Sackett. But such a judgment would be at least partially inaccurate. By ruling in favor of the Sacketts on the availability of judicial review, the Court avoided having to address the second question presented, namely, would the preclusion of judicial review violate the Sacketts’ due process rights? In dodging that question, the Court observed the rule of constitutional avoidance, close to the heart of every minimalist. The Court also avoided a significant and sweeping decision that might have called into question the constitutionality of many environmental statutes’ enforcement provisions, and that might have effected a significant change in administrative practice. Notwithstanding these inconsistencies, one might still argue that Sackett is consistent with the Chief Justice’s understanding of minimalism. Recall that he underscored the judge’s responsibility to be faithful to the Constitution and the laws, regardless of outcome. Especially in light of the strong and hoary presumption in favor of judicial review of final agency action, even the least minimalist-minded judge might have ruled for the Sacketts. It is difficult to make a minimalism assessment about the third environmental decision of the term, Southern Union Co. The case concerned a criminal action against the company for violations of the Resource Conservation and Recovery Act,55 which imposes a criminal fine of a maximum of $50,000 per day of violation. A jury found the company guilty, and the district court imposed a fine for 762 days of violation (over $38 million). The company contested the fine, arguing that the jury only found one day of violation. The company relied on Apprendi v. New Jersey, 56 which held that the Sixth Amendment’s jury trial guarantee requires that any fact (other than a prior conviction) that can increase one’s punishment must be found by the jury. The Second Circuit Court of Appeals held that Apprendi does not apply to criminal fines (as opposed to imprisonment), but the Supreme Court reversed.57 Southern Union Co. is only superficially an environmental controversy, 58 and is not a good case study for minimalism. Most of the opinion of the Court deals with historical evidence pro and con about the common law tradition of juries and the types of issues they decided. The Court had no opportunity to defer to an agency interpretation, no standing or other justiciability issue was raised, and no other issue existed that could be avoided. The Court did not overturn any precedent. To be sure, the Court’s opinion is filled with discussion of precedents; but if discussion of precedents were a sufficient mark of a minimalist opinion, then nearly every opinion could be so labeled. In sum, the 2011 Term’s environmental decisions are not unreservedly minimalist, although one might argue that there is insufficient evidence to call them anti-minimalist. The reasoning and outcomes of PPL Montana and Southern Union Co. do not readily lend themselves to a minimalist analysis, in that the classic issues that divide minimalists from anti-minimalists were not presented. In Sackett, one could plausibly argue that the decision was anti-minimalist in making a number of lawsuits reviewable that previously were not justiciable. One could also make a charge of anti-minimalism by the Court’s overturning such a long and unbroken chain of lower-court precedent. But one could also defend the Court because it avoided the due process issue. Further, the fact that the Chief Justice was able to keep the

#### 5. Minimalism doesn’t affect other justices

Anderson 09

[Robert, Associate Professor of Law, Pepperdine University School of Law, MEASURINGMETA‐DOCTRINE:AN EMPIRICAL ASSESSMENT OF JUDICIALMINIMALISM IN THESUPREMECOURT, 2009, <http://www.harvard-jlpp.com/wp-content/uploads/2009/05/AndersonFinal.pdf>]

The practical significance of minimalism, however, is difficult to ascertain without empirical evidence of whether minimalism actually influences the opinion writing and voting of the Jus‐ tices.7 Although many scholars have embraced Sunstein’s char‐ acterization of the Rehnquist Court,8 other scholars have criti‐ cized his failure to provide empirical support for the theory.9 One recent article, in fact, goes further, arguing that empirical evidence contradicts Sunstein’s theory.10 Similarly, Sunstein has been criticized for focusing on specific types of cases and for re‐ lying on “too few data points to be truly convincing,”11 a criti‐ cism that reflects Sunstein’s focus on a handful of high‐profile cases in constitutional law,rather than conducting a comprehen‐ sive survey of minimalism across a broad range of cases. Thus, although it is certain that judicial minimalism has had an impor‐ tant influence on scholarship, stimulating an “ever‐burgeoning literature”12 on the subject, it is less certain that minimalism has had an important influence on the Justices.

#### 6. Court liberalizes over time – no chance Roberts gets more conservative

Egelko 05 (Bob, San Francisco Chronicle Staff Writer, “Will Roberts move left? The ideological migration of other justices is instructive”, September 4, 2005, http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2005/09/04/INGDDEFONS1.DTL)

On the other hand, friends and colleagues of Roberts have described him as open-minded, willing to be persuaded and anything but an ideologue. At Hogan & Hartson, the bipartisan Washington law firm where he spent half of his professional career, Roberts represented not only business clients but also an environmental agency, an office defending a preferential voting system for native Hawaiians, a group of welfare applicants and at least one prison inmate. He also helped gay-rights lawyers prepare for the 1996 Supreme Court case that resulted in Kennedy's landmark opinion -- a task that Roberts surely could have declined if the cause had repelled him. Roberts' record as a litigator in 39 Supreme Court cases, plus his statements about respect for legal precedent, has convinced one court observer that President Bush is in for an unpleasant surprise. "I'm expecting Roberts to look a lot like O'Connor, much to the disappointment of some people in the administration," said Craig Bradley, a law professor at Indiana University and, like Roberts, a former Rehnquist clerk. He said the institutional tug at the Supreme Court isn't so much toward the ideological left as it is toward the center -- in the direction of upholding precedent. Alan Morrison, a fellow Supreme Court litigator and a lecturer at Stanford Law School, said Roberts won't be driven by ideology. "John Roberts is a very careful and good lawyer, and I think the facts (of each case) will matter to him," Morrison said. Conservative commentator Bruce Fein, who worked with Roberts in the Reagan administration's Justice Department and has known him for 25 years, has a different view of the forces at work within the court and how Roberts will withstand them. "I've talked with him for hours. His philosophy is pretty solid," Fein said. "I would be stunned if John ended up resembling a Justice Sandra Day O'Connor in his approach to constitutional interpretation." The justices most susceptible to transformation, Fein said, are those who have not thought deeply or written extensively about judicial philosophy or the role of a judge. He said O'Connor came to the court with "relatively soft or uncrystallized ideas about the law" and had published just one article in a legal journal. By contrast, he said, Rehnquist and Scalia were prolific writers before their appointments, had well-defined views on the judicial role and haven't changed since taking office. Fein puts Roberts in the same category. But one liberal commentator said the court itself can have a liberalizing influence. "There's a certain romanticism about the court's role in American life, the ability of the court to be a moral beacon for the country, that drives justices to take progressive stands," said Los Angeles attorney Edward Lazarus, who clerked for the late Justice Harry Blackmun in 1988. Blackmun may have been the clearest example of a right-to-left shift in recent decades. Universally viewed as a down-the-line conservative -- the "Minnesota Twin" of Chief Justice Warren Burger -- when President Richard Nixon appointed him in 1970, Blackmun wrote Roe vs. Wade three years later and gained the undying fury of the political and religious right. Blackmun also voted to uphold death penalty laws in his early years on the court, despite personal opposition to capital punishment, but became a death penalty abolitionist before his retirement in 1994, declaring that he would "no longer tinker with the machinery of death." Blackmun "would often talk about it being the people's court," a reflection of the institution's effect on him, Lazarus said. He said the justice may also have dug in his heels, ideologically, in response to the attacks on him over the abortion case, a theme explored by New York Times reporter Linda Greenhouse in her recent book "Becoming Justice Blackmun."

#### 7. Aff is an impact turn – minimalism is at the root of deference to the military on environmental issues

Dorfman 4 (Bridget – J.D. Candidate, 2004, University of Pennsylvania Law School, “PERMISSION TO POLLUTE: THE UNITED STATES MILITARY, ENVIRONMENTAL DAMAGE, AND CITIZENS' CONSTITUTIONAL CLAIMS”, 2004, 6 U. Pa. J. Const. L. 604, lexis)

This case indicates that the court's dismissal of constitutional claims in citizen suits against the military may have less to do with national security (since the Army Corps of Engineers is not actually on the front lines of any fighting force) than with a narrow reading of constitutional rights and a strict adherence to legal precedent. More than twenty years later, there is still no constitutional right to a clean environment."0 All of the cases above are decided by judges who mechanically apply the law: the Third Amendment applies only when soldiers are sleeping in your bed; the Fifth Amendment applies only when the Air Force builds an airstrip on your front lawn. If the military says they need to do it this way, who are we to question them? This stagnant treatment of the military and the environment does not take into account the decades-long accumulation of environmental damage that must be addressed at some point. Nor does it take into account the modernization that the other constitutional amendments have undergone. For instance, the First Amendment accommodates the Internet, and the Second Amendment accommodates weapons other than muskets. Perhaps the judiciary may eventually reflect the current trend of environmentalism that is slowly growing in this country.

#### 8. No risk of short-term conservative backlash: no test case for those cases, Congress won’t do it, and Obama would veto.

### Circumvention DA

Rule of law no impact – old ev, everyone uses it, u.s. isn’t key

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

#### Obama supports NEPA agency review

Goad & Kroh 13 -- \*Manager of Research and Outreach for American Progress’ Public Lands Project AND\*\* Deputy Editor of ClimateProgress, worked on the Energy policy team at American Progress as the Associate Director for Ocean Communications (Jessica and Kiley, 4/25/2013, "Using Executive Authority to Account for the Greenhouse-Gas Emissions of Federal Projects," http://www.americanprogress.org/issues/green/report/2013/04/25/61446/using-executive-authority-to-account-for-the-greenhouse-gas-emissions-of-federal-projects/)

While Congress has shown no signs that it will take action to address the growing threat of climate change, there are a number of executive authorities under existing laws to address the crisis. The National Environmental Policy Act, which requires analyses of the environmental impacts of federal activities, is frequently overlooked in this context but could be an important tool for assessing the potential climate impacts from a proposed project—a key first step in shaping informed decisions. The Council on Environmental Quality should finalize its draft guidance for federal agencies to include carbon pollution in NEPA analyses, and the president should issue an executive order on this subject to give it more clarity and permanence. Additionally, CEQ must be certain to include federal resource-management agencies in its final guidance. Burning the oil, coal, and natural gas that come from our public lands and waters accounts for nearly a quarter of all U.S. greenhouse-gas emissions. Ignoring the federal mineral estate in the guidance is leaving out a large portion of the federal governments’ activities related to climate change. As President Obama made clear in his 2013 State of the Union address: I will direct my cabinet to come up with executive actions we can take, now and in the future, to reduce pollution, prepare our communities for the consequences of climate change, and speed the transition to more sustainable sources of energy. Ensuring that federal agencies—especially the land- and ocean-management agencies—assess greenhouse-gas pollution generated by proposed federal actions when reviewing their impacts is an important step in making this promise a reality.

#### The military will comply

Gillespie 12 -- Prof @ Univ of Waikato, has advised the Ministry of Foreign Affairs and Trade and the Department of Conservation, provides commissioned work for the United Nations and the Commonwealth Secretariat, has been awarded a Rotary International Scholarship, a Fulbright Fellowship, a Rockefeller Fellowship (Alexander, Winter 2012, "ARTICLE: The Limits of International Environmental Law: Military Necessity v. Conservation," 23 COLO. J. INT'L ENVTL. L. & POL'Y 1, L/N)

Generally, the answer is that the military can be made to comply with laws that seek to resolve internationally significant environmental problems. In some instances, such as where they are main culprits in the causation of the problem, they can be the subject of particular treaties. This was the case with the testing of nuclear weapons in the atmosphere. In other instances, obligations can be placed upon them to control their pollutants, just as all other sectors within a country may be obligated to comply with agreed international rules. This is true with climate change, ozone depletion, and some persistent organic pollutants. Nonetheless, in some instances, the ability for the military to be granted exceptions exists, although they are rarely used. Rather, militaries have learned to adapt and comply with international standards.

#### 1. Legitimacy low – DOMA

Sanchez 13

[Elizabeth, Charisma News, Supreme Court Loses Legitimacy, Authority With Gay Rights Ruling, 6/28/13, <http://www.charismanews.com/politics/40067-supreme-court-loses-legitimacy-authority-with-gay-rights-ruling>]

The 5-4 opinion by the Supreme Court on the Federal Defense of Marriage Act (DOMA) raises serious questions about the legitimacy of the Court’s authority. History has proven that the Supreme Court does not always issue legitimate opinions. In Dred Scott v. Sandford, 60 U.S. 393 (1857), Chief Justice Roger Taney wrote for the majority that while some states had granted citizenship to blacks, the U.S. Constitution did not recognize citizenship of blacks. Taney wrote that blacks were “regarded as beings of inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights that the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his own benefit.” Thus, according to the Supreme Court, Scott had no standing to file the suit. As might be expected, this decision created further rift between the North and the South in the days leading up to the Civil War. The Fourteenth Amendment later put the nail in the coffin of the Dred Scott decision. This decision was thus made illegitimate and is repudiated today. In Buck v. Bell, 274 U.S. 200 (1927), Justice Oliver Wendell Holmes, writing for the Court, described Charlottesville, Va., native Carrie Buck, whom he described as an “imbecile,” as the “probable potential parent of socially inadequate offspring, likewise afflicted,” and he went on to say that “her welfare and that of society will be promoted by her sterilization.” His infamous words still cause one to shudder when he wrote, “Three generations of imbeciles are enough.” The Buck v. Bell case approved forced sterilization to prevent “feebleminded and socially inadequate” people from having children. This horrible decision set the stage for more than 60,000 sterilizations in the United States and was cited favorably at the Nuremberg trials in defense of Nazi sterilization experiments. Incredibly, this decision has never been overturned. Even so, this decision was illegitimate and is repudiated today. In Korematsu v. U.S., 324 U.S. 885 (1945), the Supreme Court upheld Executive Order 9066, which ordered Japanese Americans to be herded into internment camps during World War II. Citizenship had no value to the Japanese. All persons of Japanese descent were placed in custody, despite the constitutional guarantee of the Fifth Amendment. This decision, too, is illegitimate. Justice O’Connor, writing in Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 864-869 (1992), candidly acknowledged, “As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands. ... “The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is obliged to make. Thus, the Court’s legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.” “The 5-4 decision by the Supreme Court in the Federal Defense of Marriage Act case has caused millions of Americans to lose confidence in the Court,” says Mat Staver, founder and chairman of Liberty Counsel. “The decision is as far removed from the Constitution and the Court’s prior precedent as the east is from the west. Led by Justice Kennedy, the majority of the justices have cut the tether that once connected them to the Constitution. "This decision does not even pretend to be governed by the Constitution or Court precedent. Although the Court used the words 'equal protection,' the Court never engaged in an equal protection analysis. Not once did the Court identify the right sought by the petitioners. "Not once did the Court ask whether the claimed right was protected, either by an enumerated provision of the Constitution or deeply rooted in history and necessary to ordered liberty. Not once did the Court seek to determine the level of judicial scrutiny the case should receive. In short, the opinion represents the personal views of five Justices and it finds no support in the Constitution or reason. As history has shown us, such decisions delegitimize the Court. "On top of this flawed opinion, the majority demeaned the Court and weakened its authority by labeling as hateful those who believe that marriage is the union of one man and one woman. Marriage pre-dates religion and all civil authorities. It is ontologically a union of a man and a woman and is part of the natural created order. Such irresponsible language by the Court undermines its legitimacy in the eyes of the people. The Court does not have unlimited authority. This decision presumed too much of the people’s blind acceptance of its authority. Just like a corporate act cannot be ultra vires (beyond its authority), the people may determine that this decision is beyond the authority of this Court. If that happens, the Court will lose its authority,” concludes Staver.

#### 2. Legitimacy resilient – single decisions don’t matter

Grosskopf 98 (Anke and Jeffrey Mondak, Professor of Political Science – University of Pittsburgh and Florida State University, “Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of Webster and Texas v. Johnson on Public Confidence in the Supreme Court”, Political Research Quarterly, 51(3), September)

Opinion about the Supreme Court may influence opinion about the Court’s decisions, but is the opposite true? Viewed from the perspective of the Court’s justices, it would be preferable if public reaction to rulings did not shape subsequent levels of support for the Court. If opinion about the Court were fully determined by early political socialization and deeply rooted attachments to democratic values, then justices would be free to intervene in controversial policy questions without risk that doing so would expend political capital. Consistent with this perspective, a long tradition of scholarship argues that the Supreme Court is esteemed partly because it commands a bedrock of public support or a reservoir of goodwill, which helps it to remain legitimate despite occasional critical reaction to unpopular rulings (Murphy and Tanenhaus 1958; Easton 1965, 1975; Caldeira 1986; Caldiera and Gibson 1992). The sources of this diffuse support are usually seen as rather stable and immune from short-term influences, implying that evaluations of specific decisions are of little or no broad importance. For instance, Caldeira and Gibson (1992) find that basic democratic values, not reactions to decisions, act as the strongest determinants of institutional support.

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#### Plan is a restriction – NEPA non-compliance causes an injunction, forbids the activity

Krueger 9 (William, J.D., University of North Carolina School of Law, Legal Aid of North Carolina, Department of Environment & Natural Resources, North Carolina Journal Of Law &Technology Volume 10,Issue 2: Spring 2009 “In The Navy: The Future Strength Of Preliminary Injunctions Under NEPA In Light Of NRDC v. Winter”)

Since the 1970s, many laws have been passed with the overarching goal of protecting the environment. n2 Without proper enforcement of environmental protection laws, the environment will likely suffer from increased pollution levels and less biological diversity. Therefore, it is critical to ensure that these laws are enforced. A person or agency with proper standing can bring a citizen suit to enforce environmental protection laws [\*424] against alleged perpetrators. n3 To ensure that the perpetrator does not continue to harm the environment while the action is pending in court, the plaintiff will often seek a preliminary injunction n4 to force the perpetrator to stop or alter his environmentally detrimental practices. n5 Without the preliminary injunction, enforcement of environmental statutes would be much more difficult. On November 12, 2008, the Supreme Court handed down its decision in Winter v. Natural Resources Defense Council. n6 The Court's primary concern in this case was whether a preliminary injunction which forbade the Navy's use of mid-frequency active ("MFA") sonar n7 during certain portions of its submarine training exercises off the coast of southern California was properly issued. n8 The injunction was sought by the National Resources Defense Council (NRDC), n9 a handful of other environmental interest [\*425] groups, and several concerned citizens. The injunction was granted by the United States District Court for the Central District of California on January 3, 2008, n10 and upheld by the Court of Appeals for the Ninth Circuit on February 29, 2008. n11 The district court granted the injunction because the Navy failed to comply with the requirements of the National Environmental Policy Act (NEPA). n12 Specifically, the Navy failed to prepare an adequate Environmental Assessment (EA) n13 or a subsequent Environmental Impact Statement (EIS), n14 both of which must be prepared for proposed "major Federal actions significantly affecting the human environment." n15 The injunction imposed several restrictions on the Navy's ability to use its MFA sonar in training exercises. n16 The Navy eventually appealed to the Supreme Court, which published three very divided opinions. n17 The Roberts majority opined that the environmentalists' interests were "plainly [\*426] outweighed by the Navy's need to conduct realistic training exercises." n18 The majority focused on two primary factors before holding that the district court had abused its discretion by granting a preliminary injunction. n19 First, the Court challenged the level of probability that the district court assigned to the likelihood of the plaintiffs' success at trial. n20 Second, the Court felt that neither the district court nor the Ninth Circuit adequately considered the balance of equities between the plaintiffs and the Navy. n21 For these two reasons, the Court held that the district court abused its discretion by imposing the injunctive measures challenged here by the Navy. n22 Therefore, the Court vacated the portion of the district court's injunction that the Navy challenged. n23

### Nanotech Now

#### Advancements in molecular manufacturing are speeding up—nanobots will exist.

McGaughran 10—Honors in Environmental Studies @ University of Colorado - Boulder [Jamie L. McGaughran, “FUTURE WAR WILL LIKELY BE UNSUSTAINABLE FOR THE SURVIVAL AND CONTINUATION OF HUMANITY AND THE EARTH‘S BIOSPHERE,” A thesis submitted to the University of Colorado at Boulder in partial fulfillment of the requirements to receive Honors designation in Environmental Studies, May 2010, pg. <http://citizenpresident.com/uploads/Whole_Thesis_Future_War_UnSstnble.pdf>]

It is conjectured in some scientific circles that when molecular manufacturing comes of age it will represent a significant technological breakthrough comparable to that of the Industrial Revolution, only accomplished in a much shorter period of time (Nanotechnology: Dangers of Molecular Manufacturing, 2010). The late Nobel Prize winner in physics, Richard Feynman, spoke of wanting to build billions upon billions of tiny factories, exact duplicates of each other, which would ceaselessly manufacture and create anything atom by atom. Feynman is quoted as saying ―The principles of physics, as far as I can see, do not speak against the possibility of maneuvering things atom by atom. It is not an attempt to violate any laws; it is something, in principle, that can be done‖ (Hey, 2002). These types of developments may very well require a new paradigm in thinking. It appears that we are moving into the realm of microscale coherence, intelligence, computing and information storage. Multiple fields such as bioinformatics, robotics and AI are experiencing full scale technological revolutions and opening up new sub fields such as Quantum Computing and molecular manufacturing. Although we continue to see and experience technological advancement in the macro world as illustrated in the continuation of smaller, faster computers, space satellites and the beginnings of commercial space flight, rather, it is in the realm of the microworld in which the biggest changes are yet to come. Pg. 20-21

#### Nano research is fueling tech convergence

Whitman 6—Senior Lecture in Peace Studies @ Bradford University [Jim Whitman (Director of Postgraduate Programme @ School of Social and International Studies, Bradford University), “Governance Challenges of Technological Systems Convergence,” Bulletin of Science, Technology & Society Vol. 26, No. 5, October 2006, pg. 398-409]

Advances in nanoscience and nanotechnology are rapidly furthering the unification of domains—a profound convergence of our understanding of, and ability to manipulate at the most fundamental levels, the material constituents, and processes of inert substances and living things. Expressed succinctly, “From the point of view of nanotechnology, what used to be separate domains of biomedicine, information technology, chemistry, photonics, electronics, robotics, and materials science come together in a single engineering paradigm” (Nordmann, 2004, p. 12). Also part of the convergence trend are the cognitive sciences— sometimes classed under “technologies for improving human performance”—that range from the possibility of a startling range of implants to brain-machine interfaces and what has even been described as “humane machines.” Pg. 400

## Circumvention

### 1AR AT Circumvention – Enviro-Specific

#### Environmental restrictions get implemented – not the big counter-terror / military regulation you assume – just requires DoD to implement minor strategy adjustments

#### Obama complies – Goad says his state of the union speech promised to restrict agency environmental damage – the plan would be the perfect tool to do this

#### Military complies – Gillespie says they’ll go along with environmental law when asked to

#### The DoD will comply

Baldwin 12 -- US Dept of the Army, certificate in NEPA Due Environmental Ldrshp Program @ Nicholas School of the Environment @ Duke (Charlotte Fay, Oct 2012, "The National Environmental Policy Act (NEPA) Process with Military Projects," http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/6030/C.%20Baldwin\_Capstone%20Paper%20Oct%20%209%202012\_FINAL.pdf?sequence=1)

Review Process The environmental review process under NEPA provides an opportunity for the public to be involved in the Federal agency decision - making process. This process help s the average citizen understand wha t the Federal agency is proposing . It also offer s an avenue for the citizen to provide ideas and thoughts on alternative ways for the Federal agency to accomplish what it is proposing . The NEPA process additionally offer s the citizen the opportunity to comment on the Federal agency’s analysis of the environmental effects of the proposed action and possible mitigation of potential harmful effects of such actions. NEPA requires Federal agencies to consider environmental effects that include, among others, impacts on social, cultural, and economic resources, as well as natural resources. Citizens often have valuable information about places and resources that they value and the potential environmental, social, and economic effects that proposed federal act ions may have on those places and resources. NEPA’s requirements provide the public means to work with the agencies so they can take the citizen’s concerns and information into account. NEPA Practitioners have found that the "NEPA process" is often triggered too late to be fully effective. At the same time, agency managers who have learned to use NEPA have discovered it helps them do their jobs. NEPA’s requirements to consider alternatives and involve the public and other agencies with expertise can make it easier to discourage poor proposals, reduce the amount of documentation down the road, and support innovation. NEPA helps managers make better decisions, produce better results, and build trust in surrounding communities. Fort unately, many agencies are making progress by taking a more comprehensive and strategic approach to decision - making. Experience with the NEPA process has shown that better decisions — those that meet the needs of the community and minimize adverse impacts on the environment — require the integrated perspective that can only be obtained by incorporating expertise and information from many fields and sources, including state and local agencies. The keys to implementing an interdisciplinary place - based approach, and addressing the full range of cumulative effects, are obtaining adequate environmental data and finding the tools to use it. The NEPA process is a vital tool for proper planning of military projects. DoD, the Department of the Army and other military branches have provided regulations, guidance and training to assure implementation and compliance to this act. Utilizing the NEPA process in the infancy of a project concept can reduce project delays and expense.

#### Military will have no trouble complying

Baldwin 12 -- US Dept of the Army, certificate in NEPA Due Environmental Ldrshp Program @ Nicholas School of the Environment @ Duke (Charlotte Fay, Oct 2012, "The National Environmental Policy Act (NEPA) Process with Military Projects," http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/6030/C.%20Baldwin\_Capstone%20Paper%20Oct%20%209%202012\_FINAL.pdf?sequence=1)

The purpose of the National Environmental Policy Act (NEPA) is to include environmental considerations into federal agency planning and action. This is done by providing decision makers and other stakeholders with information they need to understand any potentially significant environmental impacts resulting from an action. NEPA requires, to the fullest extent possible, that the po licies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals. NEPA also requires Federal agencies to use an interdisciplinary approach in planning and decision making for any action that adversely impacts the environment. The process used in complying with NEPA is very similar to the decision - making process taught to military leaders for years. The first step in the NEPA process is to receive a mission assignment. If that m ission assignment involves the potential for construction, or earth disturbing, or planning on either of those actions, you are now in the NEPA process. The goal is to review the application and management of the NEPA process as it pertains to military pro jects, so that the spirit and the letter of the act are fulfilled legally and efficiently by informing military planners and decision makers and help integrate environmental considerations into the decision - making process.

### 1AR AT Circumvention – Generic

#### President will comply – Bradley says external perception creates an obligation to abide – proven by Bush

#### Presidents will comply with military restrictions

Barron 8 – Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, David J, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis

In addition to offering important guidance concerning the congressional role, our historical review also illuminates the practices of the President in creating the constitutional law of war powers at the "lowest ebb." Given the apparent advantages to the Executive of possessing preclusive powers in this area, it is tempting to think that Commanders in Chief would always have claimed a unilateral and unregulable authority to determine the conduct of military operations. And yet, as we show, for most of our history, the presidential practice was otherwise. Several of our most esteemed Presidents - Washington, Lincoln, and both Roosevelts, among others - never invoked the sort of preclusive claims of authority that some modern Presidents appear to embrace without pause. In fact, no Chief Executive did so in any clear way until the onset of the Korean War, even when they confronted problematic restrictions, some of which could not be fully interpreted away and some of which even purported to regulate troop deployments and the actions of troops already deployed.¶ Even since claims of preclusive power emerged in full, the practice within the executive branch has waxed and waned. No consensus among modern Presidents has crystallized. Indeed, rather than denying the authority of Congress to act in this area, some modern Presidents, like their predecessors, have acknowledged the constitutionality of legislative regulation. They have therefore concentrated their efforts on making effective use of other presidential authorities and institutional [\*949] advantages to shape military matters to their preferred design. n11 In sum, there has been much less executive assertion of an inviolate power over the conduct of military campaigns than one might think. And, perhaps most importantly, until recently there has been almost no actual defiance of statutory limitations predicated on such a constitutional theory.¶ This repeated, though not unbroken, deferential executive branch stance is not, we think, best understood as evidence of the timidity of prior Commanders in Chief. Nor do we think it is the accidental result of political conditions that just happened to make it expedient for all of these Executives to refrain from lodging such a constitutional objection. This consistent pattern of executive behavior is more accurately viewed as reflecting deeply rooted norms and understandings of how the Constitution structures conflict between the branches over war. In particular, this well-developed executive branch practice appears to be premised on the assumption that the constitutional plan requires the nation's chief commander to guard his supervisory powers over the military chain of command jealously, to be willing to act in times of exigency if Congress is not available for consultation, and to use the very powerful weapon of the veto to forestall unacceptable limits proposed in the midst of military conflict - but that otherwise, the Constitution compels the Commander in Chief to comply with legislative restrictions.¶ In this way, the founding legal charter itself exhorts the President to justify controversial military judgments to a sympathetic but sometimes skeptical or demanding legislature and nation, not only for the sake of liberty, but also for effective and prudent conduct of military operations. Justice Jackson's famous instruction that "with all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations" n12 continues to have a strong pull on the constitutional imagination. n13 What emerges from our analysis is how much pull it seemed to [\*950] have on the executive branch itself for most of our history of war powers development.

#### Obama will comply with the court

Vladeck 9 -- Professor of Law and Associate Dean for Scholarship at American University Washington College of Law, senior editor of the peer-reviewed Journal of National Security Law and Policy, Supreme Court Fellow at the Constitution Project, and fellow at the Center on National Security at Fordham University School of Law, JD from Yale Law School (Stephen I., 3-1-2009, “The Long War, the Federal Courts, and the Necessity / Legality Paradox,” http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1002&context=facsch\_bkrev)

Moreover, even if one believes that suspensions are unreviewable, there is a critical difference between the Suspension Clause and the issue here: at least with regard to the former, there is a colorable claim that the Constitution itself ousts the courts from reviewing whether there is a “Case[ ] of Rebellion or Invasion [where] the public Safety may require” suspension––and even then, only for the duration of the suspension.179 In contrast, Jackson’s argument sounds purely in pragmatism—courts should not review whether military necessity exists because such review will lead either to the courts affirming an unlawful policy, or to the potential that the political branches will simply ignore a judicial decision invalidating such a policy.180 Like Jackson before him, Wittes seems to believe that the threat to liberty posed by judicial deference in that situation pales in comparison to the threat posed by judicial review. ¶ The problem is that such a belief is based on a series of assumptions that Wittes does not attempt to prove. First, he assumes that the executive branch would ignore a judicial decision invalidating action that might be justified by military necessity.181 While Jackson may arguably have had credible reason to fear such conduct (given his experience with both the Gold Clause Cases182 and the “switch in time”),183 a lot has changed in the past six-and-a-half decades, to the point where I, at least, cannot imagine a contemporary President possessing the political capital to squarely refuse to comply with a Supreme Court decision. But perhaps I am naïve.184

#### He’ll act as if he’s constrained

Prakash 12 – professor of law at the University of Virginia and Michael Ramsey, professor of law at San Diego, Saikrishna**,** “The Goldilocks Executive” Feb, SSRN

We accept that the President’s lawyers search for legal arguments to justify presidential action, that they find the President’s policy preferences legal more often than they do not, and that the President sometimes disregards their conclusions. But the close attention the Executive pays to legal constraints suggests that the President (who, after all, is in a good position to know) believes himself constrained by law. Perhaps Posner and Vermeule believe that the President is mistaken. But we think, to the contrary, it represents the President’s recognition of the various constraints we have listed, and his appreciation that attempting to operate outside the bounds of law would trigger censure from Congress, courts, and the public.

## Hostilities PIC

### Turn

#### 4. Turn – NEPA allows for flexibility and makes our military more effective

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 149]

There is serious, continuing debate about whether the domestic environmental laws apply abroad. 89 The Defense Department expressly disavows the applicability of NEPA to military actions outside the nation's borders, especially to armed conflict.90 The Pentagon's "Overseas Environmental Baseline Guidance Document" claims only to have "considered" United States environmental laws and regulations, not to be governed by them, and it does not apply to "deployments for operations," that is, to warfare.91 The environmental laws themselves are silent on the question, and the legislative histories are almost as enigmatic. Aside from the usual presumption that domestic laws are not meant to apply abroad unless Congress expressly states otherwise, there is no compelling evidence that Congress intended to exclude their application to armed conflict. Indeed, these laws should be applied to warfare. As a practical matter, they provide convenient, familiar mechanisms for evaluating and minimizing risks to the environment in time of war just as they do in peacetime. Applied with a practical flexibility, they need not interfere with military operations. No one has suggested that the Defense Department ought to have prepared the kind of formal environmental impact statement required by NEPA before deploying troops and equipment in the Persian Gulf, even though Operations Desert Shield and Desert Storm were undeniably "major federal actions affecting the human environment." The political objectives of freeing Kuwait and protecting Saudi Arabia from further Iraqi advances might well have been frustrated by delays inherent in the usual public notice and interagency review process. Very much to its credit, the Pentagon did not ignore the environmental risks altogether. But it failed to undertake, even internally, the kind of systematic, coordinated environmental evaluation that NEPA requires. We cannot expect the environmental laws to apply the same way on the battlefield that they do in planning a highway or operating a sewage disposal plant. A field commander whose forces come under attack cannot stop to prepare an environmental assessment or apply for a Clean Water Act permit before mounting a counteroffensive. Because of the need for speed and secrecy, members of the public cannot expect to receive advance notice or have an opportunity to comment on proposed tactics. Citizen enforcement will be nearly impossible; we will have to rely on the military branches to police their own operations and personnel, aided by oversight from their inspectors general. It may not even be practical for our field commander to fully document his consideration of environmental effects, making accountability more problematic. Yet even in a combat setting, our commander can apply performance standards and follow procedures set out in the domestic environmental laws as closely as circumstances permit. Much that takes place on the battlefield is planned far in advance. Operation plans, rules of engagement, and standardized tactics should be routinely vetted for compliance with domestic environmental law standards, just as they are now reviewed for conformity with the law of war, even though for security reasons neither the planning process nor the plans themselves can be made public. The designs of weapons and other equipment, and protocols for their use on the battlefield, should also conform to requirements of the environmental laws. Just as the law of war proscribes weapons that cause unnecessary suffering, application of the environmental laws ought to prevent the deployment of weapons that cause unnecessary injury to the environment. Thus, the Navy should only deploy ships that have the capacity to treat or store their solid wastes while at sea, instead of dumping them overboard in violation of the Ocean Dumping Act or the Clean Water Act. 92 The Army has decided that if chemical herbicides are used in combat, they "must be employed in accordance with federal laws and regulations which would govern their use within the United States.... Environmental Protection Agency regulations pertaining to dilution, droplet size, protective clothing, etc. are binding on U.S. forces."93 The EPA regulations are promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).94 The military services are beginning to incorporateenvironmental compliance into combat training, just as they now train every soldier, sailor, and airman to be familiar with the law of war. As one high­ranking Air Force officer put it, "we fight the way we are trained." Long before reaching the battlefield, for example, a tank commander needs to learn not to drive through the middle of a wetland if a path across high ground offers the same tactical advantage. The same commander should be instructed to carry along not only a change of oil for his tank's engine, but also a safe receptacle for the old oil, so it will not have to be drained onto the ground, as was done in the Persian Gulf War. Finally, environmental compliance on the battlefield itself will not necessarily make combat units less effective in carrying out their military missions. A recent Army­ financed study concluded that successful introduction of pollution prevention initiatives into combat doctrine and planning would actually enhance fighting strength by increasing each unit's self­sufficiency, reducing diseaseand nonbattle injury, and reducing the unit's visibility to the enemy. 95

### China Impact

#### China war coming now – our evidence is from –

It’s not Africa war – it’s US china war over Africa

#### Impact is extinction

Lieven 12 (Anatol, Professor in the War Studies Department – King’s College (London), Senior Fellow – New America Foundation (Washington), “Avoiding US-China War,” New York Times, 6-12, http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html)

Relations between the United States and China are on a course that may one day lead to war. This month, Defense Secretary Leon Panetta announced that by 2020, 60 percent of the U.S. Navy will be deployed in the Pacific. Last November, in Australia, President Obama announced the establishment of a U.S. military base in that country, and threw down an ideological gauntlet to China with his statement that the United States will “continue to speak candidly to Beijing about the importance of upholding international norms and respecting the universal human rights of the Chinese people.” The dangers inherent in present developments in American, Chinese and regional policies are set out in “The China Choice: Why America Should Share Power,” an important forthcoming book by the Australian international affairs expert Hugh White. As he writes, “Washington and Beijing are already sliding toward rivalry by default.” To escape this, White makes a strong argument for a “concert of powers” in Asia, as the best — and perhaps only — way that this looming confrontation can be avoided. The economic basis of such a U.S.-China agreement is indeed already in place. The danger of conflict does not stem from a Chinese desire for global leadership. Outside East Asia, Beijing is sticking to a very cautious policy, centered on commercial advantage without military components, in part because Chinese leaders realize that it would take decades and colossal naval expenditure to allow them to mount a global challenge to the United States, and that even then they would almost certainly fail. In East Asia, things are very different. For most of its history, China has dominated the region. When it becomes the largest economy on earth, it will certainly seek to do so. While China cannot build up naval forces to challenge the United States in distant oceans, it would be very surprising if in future it will not be able to generate missile and air forces sufficient to deny the U.S. Navy access to the seas around China. Moreover, China is engaged in territorial disputes with other states in the region over island groups — disputes in which Chinese popular nationalist sentiments have become heavily engaged. With communism dead, the Chinese administration has relied very heavily — and successfully — on nationalism as an ideological support for its rule. The problem is that if clashes erupt over these islands, Beijing may find itself in a position where it cannot compromise without severe damage to its domestic legitimacy — very much the position of the European great powers in 1914. In these disputes, Chinese nationalism collides with other nationalisms — particularly that of Vietnam, which embodies strong historical resentments. The hostility to China of Vietnam and most of the other regional states is at once America’s greatest asset and greatest danger. It means that most of China’s neighbors want the United States to remain militarily present in the region. As White argues, even if the United States were to withdraw, it is highly unlikely that these countries would submit meekly to Chinese hegemony. But if the United States were to commit itself to a military alliance with these countries against China, Washington would risk embroiling America in their territorial disputes. In the event of a military clash between Vietnam and China, Washington would be faced with the choice of either holding aloof and seeing its credibility as an ally destroyed, or fighting China. Neither the United States nor China would “win” the resulting war outright, but they would certainly inflict catastrophic damage on each other and on the world economy. If the conflict escalated into a nuclear exchange, modern civilization would be wrecked. Even a prolonged period of military and strategic rivalry with an economically mighty China will gravely weaken America’s global position. Indeed, U.S. overstretch is already apparent — for example in Washington’s neglect of the crumbling states of Central America.

### A2: Econ Ties Check China

**Economic ties don’t prevent war—WWI proves**

**Dowd 13** (Alan, American Security Council Foundation Senior Fellow, 3-18-13, “Collision Course or Peaceful Pacific?” The Dowd Report) http://67.199.60.145/Articles.aspx?ArticleId=774

**Some argue that** the risk of **war**—even an accidental war—**is precluded by** the **economic linkages between China and its neighbors.** After all, China needs the Asia-Pacific region’s markets, and the region needs China’s cash. China owns $1.1 trillion in U.S. debt. **China’s** annual **trade with the U.S. is some $535 billion**, with Japan $333 billion, with South Korea $246 billion, with Australia $123 billion. **However, it pays to recall that European nations enjoyed deep and intricate commercial connections a century ago. Then came the summer of 1914**. Indeed, Kevin **Rudd**, the foreign minister of Australia, **describes the South China Seas as “a tinderbox on water” and points to ominous parallels to the Europe of 1913, where a combustible mix of** “primitive, almost atavistic **nationalism**s” **and “great power politics” opened the door to a war no one wanted. “The idea of armed conflict, which seems contrary to every element of rational self-interest for any nation-state enjoying** the benefits of such unprecedented regional **economic dynamism, has now become a terrifying**, almost **normal part of the regional conversation,”** he sighs.

### Enviro Slows Down Conflict

#### Environmental liability deters wars of aggression

McManus 06

[Keith, Senior Articles Editor, Boston College Environmental Affairs Law Review, Civil Liability For Wartime Environmental Damage: Adapting The United Nations Compensation Commission For The Iraq War, 2006, L/N]

In addition to fairness, imposing civil liability on Coalition nations for environmental damage caused during the Iraq War will also perform the important normative function of assessing state responsibility for causing environmental damage, as was the case with Iraq in Resolution 687. n257 Following the invasion of Iraq in March 2003, U.S. forces established an informal system of compensation for aggrieved Iraqis. n258 The program, dubbed "condolence payments," allows Iraqis to file claims for death, injury, and property damage and to receive compensation [\*447] from the U.S. military. n259 The compensation system, however, "does not admit guilt or acknowledge liability or negligence. . . . [But, is rather] a gesture that expresses sympathy in concrete terms." n260 This type of system is indicative of nations' reluctance to voluntarily take responsibility for wartime damages. n261 However, assessing UNCC civil liability to Coalition forces, as was done to Iraq in the Persian Gulf War, would express state responsibility in concrete terms. n262 This application of UNCC liability to Coalition forces would act as a deterrent to future conflicts, since the cost of engaging in armed conflict would greatly increase. n263 This precedent would be invaluable in ensuring that aggressive nations include harm to the environment in their calculations when contemplating possible military action. n264 Over the first year of the program, the United States has paid out about $ 2.2 million in the form of condolence payments. n265 This paltry sum makes it apparent that UNCC involvement is required to ensure that Iraqis are sufficiently compensated for their environmental losses. n266 The closest that condolence payments come to recognizing environmental damage is a maximum five hundred dollar payment for property damage. n267 Attaining condolence payments is difficult for Iraqis as they shoulder the burden of proof and U.S. military commanders make the decisions without any appeals process. n268 Major John Moore, an Army legal officer, described the condolence payments "'as a public relations tool--sort of a no-hard-feelings type of payment' ... 'It's not designed to make them whole again, only to alleviate their hardships.'" n269 As the full extent of the damage to Iraq's environment becomes apparent, there are certain to be justified "hard feelings" on the part of Iraqi citizens. Regardless of the sympathetic nature of the condolence payment program, Iraqi citizens--like the citizens of Kuwait following the Persian Gulf War--deserve a program [\*448] that will aim to make their degraded environment whole again through adequate payments and an accessible, fair claims process. The UNCC is such a mechanism, and the U.N. should build upon the Persian Gulf War precedent by imposing civil liability for environmental damage on Coalition forces through this mechanism. CONCLUSION Military history, as well as more current events such as the Persian Gulf War and the Iraq War, makes clear that war causes significant environmental damage. This is a fact that is often overlooked when considering the toll of war. Current international environmental law provisions are inadequate to protect the natural environmental from wartime degradation. If effective wartime environmental protection does not yet exist, a civil liability system can act as a substitute, serving as both a deterrent to aggressive nations and as an opportunity for environmental remediation.

### Africa Conflict coming

#### Africa conflict coming now – harms the environment

Hynes 11

[H Patricia, Truthout, The Military Assault on Global Climate, 9/8/11, [www.truth-out.org/news/item/3181:the-military-assault-on-global-climate+&cd=12&hl=en&ct=clnk&gl=us](http://www.truth-out.org/news/item/3181:the-military-assault-on-global-climate+&cd=12&hl=en&ct=clnk&gl=us)]

Our national security has been reduced in large part to energy security, which has led us to militarizing our access to oil through establishing a military presence across the oil-bearing regions of the world and instigating armed conflict in Iraq, sustaining it in Afghanistan and provoking it in Libya. The air war in Libya has given the new US Africa Command (AFRICOM) - itself another extension of the Carter Doctrine - some spotlight and muscle. A few commentators have concluded that the NATO war in Libya is a justifiable humanitarian military intervention. The more trenchant judgment, in my view, is that the air war violated the UN Security Council Resolution 1973, the US Constitution and the War Powers Act; and that it sets a precedent and "model for how the United States wields force in other countries where its interests are threatened," to quote administration officials. The air war in Libya is another setback to non-militarized diplomacy; it marginalized the African Union and it sets a course for more military intervention in Africa when US interests are at stake. Air war a model for future wars? If so, a death knell for the planet. This insatiable militarism is the single greatest institutional contributor to the growing natural disasters intensified by global climate change.

### Uniqueness

#### Africa intervention coming now

Dorrie 13

[Peter Dörrie, Common Dreams, Ready for More Interventions in Africa? Obama is, 1/14/13, <https://www.commondreams.org/view/2013/06/14-0>]

The appointments will strengthen the interventionist faction in the Obama administration; if this results in a shift in actual policy, no continent will be more impacted by it than Africa. There are currently a whole range of conflicts that could warrant military intervention: Most prominently, the civil wars in Darfur, Somalia, Eastern Congo and Mali — but also low-intensity or developing conflicts in South Sudan, Guinea, Côte d’Ivoire, Central African Republic, the Katanga province of Congo and Zimbabwe. It is likely that Power and Rice will try to use their new positions (as they have used their old ones) to push for greater U.S. engagement in resolving these conflicts, by military means if necessary. Of course, this doesn’t necessarily mean U.S. boots on the ground. Recent interventions in Somalia, Mali and Eastern Congo are probably more of a prototype for future U.S. military interventions than Libya is: The United States supports African or international forces financially and logistically, with training and intelligence, but otherwise keeps out of the fray. This greatly limits political risks at home while promising to deliver more or less the same results. The United States is still the 800 pound gorilla in international relations, and U.S. intervention — direct or indirect — can greatly influence the dynamics of a conflict. With the appointment of Power and Rice we are more likely than ever to see more of this, which raises the question of how atrocity-preventing interventions fit into the greater U.S. approach to Africa. In short: The United States (like other countries) is pretty good at aiding and abetting situations that result in the need for humanitarian intervention in the first place. The U.S. military has consistently expanded its footprint in Africa over the past decade. The most potent sign of this has been the creation of AFRICOM in 2008, a central command for all U.S. military activities in Africa, based in Stuttgart, Germany. Today the U.S. military runs a number of bases in Africa, some of them used for the deployment of armed and unarmed drones. The Pentagon has spent billions of dollars in Africa, most of it for military aid — that is, weapons — and training. Most of the renewed interest in Africa comes from the War on Terror. Al Qaida and other guerrilla organizations have gained a foothold in a range of countries; the default response of U.S. foreign and military policy has been to support local authorities in suppressing violent dissent with violent means — even though corrupt local authorities are often causing the grievances underlying these conflicts. The result: Conflicts escalate to a level of violence that can’t be contained by local actors and makes outside intervention — in some form or another — necessary. Probably the best example for this is Mali. Under the Trans-Saharan Counterterrorism Initiative, more than $500 million in military aid and training was invested in the region, with considerable sums going to the Malian military and government. Nevertheless, terrorist activities and drug trafficking flourished in Mali, while the corrupt political elite skimmed off large amounts of the money. Frustration with the Malian government first led to a Tuareg rebellion and then a military coup in early 2012. The coup leader was a captain of the Malian army, who in the past had visited the United States as part of a training mission. The Tuareg rebellion was hijacked by fundamentalist groups that implemented a strict version of Islamic law in the regions they controlled. Their treatment of the civilian population — and threats of terrorist attacks abroad — ultimately resulted in a French-led and U.S.-supported intervention. From Nigeria to Ethiopia, the rest of the continent is rife with examples of U.S. foreign policy functioning as part of the problem, or at least not part of the solution. Many of these conflicts will result in calls for international intervention to safeguard human rights and prevent genocide sooner or later. It remains to be seen whether Obama’s newly strengthened pro-interventionist advisers will start to craft a holistic approach to atrocity prevention, or if U.S. foreign policy will continue to try repairing the damage it has caused with military intervention. The backgrounds of Rice and Powers lead one to suspect the latter.

### Intervention makes shit worse

#### Intervention makes the situation worse

Rogers 12

[Paul, Global Security Consultant to Oxford Research Group (ORG) and Professor of Peace Studies at the University of Bradford, Mali: The Risk of Intervention, 6/29/12, [www.oxfordresearchgroup.org.uk/publications/middle\_east/mali\_risk\_intervention+&cd=11&hl=en&ct=clnk&gl=us](http://www.oxfordresearchgroup.org.uk/publications/middle_east/mali_risk_intervention+&cd=11&hl=en&ct=clnk&gl=us)]

Military intervention may indeed be complicated and unpredictable, not least because of the heterogeneous nature of the rebellion, but even more important is the need to see this in a wider context. From the point of view of the leadership of AQIM in North Africa, and Boko Haram in Nigeria, military intervention would actually be welcome as further evidence of external interference, in particular if there was French and US involvement. From that perspective, any escalation would be expected to increase support for their own movements, especially if an early phase of military support included a reliance on armed drones and Special Forces. It is also necessary to factor in the rapidity with which the effects of such intervention, including the inevitable civilian casualties, would be communicated around the world. One of the main lessons of the experience in Afghanistan and Iraq over the past eleven years has been the manner in which events in one region have far greater and more rapid impacts in other areas than even a few decades ago. This is a reflection of changes in commercial, public and social media, but it means that any attempt to impose a military solution in northern Mali should be expected to have a wide impact, not just across northern Africa, but even in the Middle East and beyond. There needs to be a far greater focus on negotiations. This is a matter of some urgency, given that Malian government defence forces (reportedly with assistance from Ukrainian contract pilots flying attack helicopters) are already responding with force to recent developments. Negotiations, though, must be undertaken while recognising that the relative underdevelopment of northern Mali and the marginalisation of the Tuareg people and other groups must be addressed. In effect, negotiations may be able to buy time and help avoid military action, with its potentially dangerous consequences, but will not in themselves provide a long term solution.

### Space Weapons – 1AR

#### Space weapons result in U.S.- Russia war – causes extinction – that’s Schaatz and Helfand – triggers miscalculation which escalates to nuclear winter- plan solves by restraining their introduction into hostilities because of environmental effects

#### Space militarization makes global WMD conflict inevitable

Mitchell 1 (Gordon, Associate Professor and Dir Debate – U Pittsburgh, Et al., ISIS Briefing on Ballistic Missile Defense, July, [http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6.html](https://mail.msu.edu/cgi-bin/webmail?timestamp=1155773646&md5=nbdSk8IggXVhlJHMdBeJkw%3D%3D&redirect=http%3A%2F%2Fwww.isisuk.demon.co.uk%2F0811%2Fisis%2Fuk%2Fbmd%2Fno6.html" \t "_blank))

A buildup of space weapons might begin with noble intentions of 'peace through strength' deterrence, but this rationale glosses over the tendency that '… the presence of space weapons…will result in the increased likelihood of their use'.[33](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) This drift toward usage is strengthened by a strategic fact elucidated by Frank Barnaby: when it comes to arming the heavens, 'anti-ballistic missiles and anti-satellite warfare technologies go hand-in-hand'.[34](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) The interlocking nature of offense and defense in military space technology stems from the inherent 'dual capability' of spaceborne weapon components. As Marc Vidricaire, Delegation of Canada to the UN Conference on Disarmament, explains: 'If you want to intercept something in space, you could use the same capability to target something on land'. [35](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) To the extent that ballistic missile interceptors based in space can knock out enemy missiles in mid-flight, such interceptors can also be used as orbiting 'Death Stars', capable of sending munitions hurtling through the Earth's atmosphere. The dizzying speed of space warfare would introduce intense 'use or lose' pressure into strategic calculations, with the spectre of split-second attacks creating incentives to rig orbiting Death Stars with automated 'hair trigger' devices. In theory, this automation would enhance survivability of vulnerable space weapon platforms. However, by taking the decision to commit violence out of human hands and endowing computers with authority to make war, military planners could sow insidious seeds of accidental conflict. Yale sociologist Charles Perrow has analyzed 'complexly interactive, tightly coupled' industrial systems such as space weapons, which have many sophisticated components that all depend on each other's flawless performance. According to Perrow, this interlocking complexity makes it impossible to foresee all the different ways such systems could fail. As Perrow explains, '[t]he odd term "normal accident" is meant to signal that, given the system characteristics, multiple and unexpected interactions of failures are inevitable'.[36](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) Deployment of space weapons with pre-delegated authority to fire death rays or unleash killer projectiles would likely make war itself inevitable, given the susceptibility of such systems to 'normal accidents'. It is chilling to contemplate the possible effects of a space war. According to retired Lt. Col. Robert M. Bowman, 'even a tiny projectile reentering from space strikes the earth with such high velocity that it can do enormous damage — even more thanwould be done by a nuclear weapon of the same size!'. [37](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) In the same Star Wars technology touted as a quintessential tool of peace, defence analyst David Langford sees one of the most destabilizing offensive weapons ever conceived: 'One imagines dead cities of microwave-grilled people'.[38](http://www.isisuk.demon.co.uk/0811/isis/uk/bmd/no6_paper.html#note1#note1) Given this unique potential for destruction, it is not hard to imagine that any nation subjected to space weapon attack would retaliate with maximum force, including use of nuclear, biological, and/or chemical weapons. An accidental war sparked by a computer glitch in space could plunge the world into the most destructive military conflict ever seen.

#### It comparatively outweighs their disad – greatest existential risk

Bostrom 2 (Nick, PhD Philosophy – Oxford University, “Existential Risks: Analyzing Human Extinction Scenarios”, Journal of Evolution and Technology, Vol. 9, March, http://www.nickbostrom.com/existential/risks.html)

The unique challenge of existential risks Risks in this sixth category are a recent phenomenon. This is part of the reason why it is useful to distinguish them from other risks. We have not evolved mechanisms, either biologically or culturally, for managing such risks. Our intuitions and coping strategies have been shaped by our long experience with risks such as dangerous animals, hostile individuals or tribes, poisonous foods, automobile accidents, Chernobyl, Bhopal, volcano eruptions, earthquakes, draughts, World War I, World War II, epidemics of influenza, smallpox, black plague, and AIDS. These types of disasters have occurred many times and our cultural attitudes towards risk have been shaped by trial-and-error in managing such hazards. But tragic as such events are to the people immediately affected, in the big picture of things – from the perspective of humankind as a whole – even the worst of these catastrophes are mere ripples on the surface of the great sea of life. They haven’t significantly affected the total amount of human suffering or happiness or determined the long-term fate of our species. With the exception of a species-destroying comet or asteroid impact (an extremely rare occurrence), there were probably no significant existential risks in human history until the mid-twentieth century, and certainly none that it was within our power to do something about. The first manmade existential risk was the inaugural detonation of an atomic bomb. At the time, there was some concern that the explosion might start a runaway chain-reaction by “igniting” the atmosphere. Although we now know that such an outcome was physically impossible, it qualifies as an existential risk that was present at the time. For there to be a risk, given the knowledge and understanding available, it suffices that there is some subjective probability of an adverse outcome, even if it later turns out that objectively there was no chance of something bad happening. If we don’t know whether something is objectively risky or not, then it is risky in the subjective sense. The subjective sense is of course what we must base our decisions on.[[2]](http://www.nickbostrom.com/existential/risks.html#_ftn2) At any given time we must use our best current subjective estimate of what the objective risk factors are.[[3]](http://www.nickbostrom.com/existential/risks.html#_ftn3) 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]](http://www.nickbostrom.com/existential/risks.html#_ftn4)  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

### Space Weapons Solvency – 1AR

#### US is pursing space weaponization – only environmental protection can stop it

Scheetz 6 (Lori – J.D. Candidate, Georgetown University Law Center, “Infusing Environmental Ethics into the Space Weapons Dialouge”, Georgetown International Environmental Law Review, Fall, 19 Geo. Int'l Envtl. L. Rev. 57, lexis)

Imagine a ruthless struggle for military control over space, with space weapons zipping into and around the space environment, and the genuine possibility of war in space. While the notion of weapons in space might seem far-fetched and futuristic, the debate over weaponizing space has endured since the 1950s. Throughout the late 1950s and early 1960s, the United States pursued research in satellites designed to catch ballistic missiles; manned space bombers, like the [\*58] Dyna-Soar project; and military space stations, like Gemini Blue. n1 With the signing of the Anti-Ballistic Missile (ABM) Treaty in 1972, though, the United States and the Soviet Union drastically limited the possibilities for space weaponization. n2 The ABM Treaty forbade both nations from interfering with the other country's national technical means of verification. Equally important, the Treaty prohibited developing, testing, or deploying space-based missile defense systems and banned other space-based mechanisms, including lasers. n3 While the ABM Treaty proved to be a stabilizing global force, following President Bush's recent decision to withdraw from the bilateral Treaty, n4 the debate over weapons in space has once again come to the forefront. Pursuant to section 1623 of the National Defense Authorization Act for Fiscal Year 2000, the Commission to Assess U.S. National Security Space Management and Organization ("Rumsfeld Commission") began investigating the potential for weaponizing space to combat "rogue" nations and terrorist groups. n5 The Rumsfeld Commission Report analogizes space to other conflict mediums, including air, land, and the high seas, and advises the U.S. government to pursue the prospect of deploying space weapons. n6 Pointing to the danger of "rogue" nations or terrorist groups using the space medium to attack U.S. assets, the Rumsfeld Commission bleakly warns that "[w]ith the growing commercial and national security use of space, U.S. assets in space and on the ground offer just such targets. The U.S. is an attractive candidate for a 'Space Pearl Harbor.'" n7 The U.S. withdrawal from the ABM Treaty, the Rumsfeld Commission Report, and the Bush Administration's strong desire for a comprehensive Ballistic Missile Defense System (BMDS), n8 have heightened the international community's awareness of the weaknesses of the current outer space treaty regime. However, in terms of avoiding the weaponization of space, the international community has failed to garner consensus to form a new, more comprehensive [\*59] space treaty. n9 In addition, the international community has approached the space weapons issue solely in terms of arms control rather than also utilizing the lens of environmental protection. Employing an international environmental framework, the international community can address issues outside of traditional national security interests, such as the obligations of the present generation to prevent destruction of the space commons resulting from the development or use of space weapons. This article argues that, although largely ignored in the dialogue thus far, the preservation of the fragile space environment should be at the center of the raging debate on space weapons. While space assets can be secured by means other than weaponization, n10 compromising the space environment by testing, deploying, and utilizing space weapons is a risk not worth taking. Part II provides a starting point for viewing the space weapons debate through an environmental ethical lens by defining "space weapon," briefly introducing the mainstream debate over space weaponization, and discussing the shortcomings of the current international treaty regime with regard to space weaponization. Using the well-known "tragedy of the commons" concept developed by Garrett Hardin, n11 Part II concludes by urging policymakers to view space as a commons and recognize that the environmental fallout from weapons in space is extremely perilous to the space environment and to the Earth's environment.

#### Plan solves – placing importance in environmental protection prevents weaponization

Scheetz 6 (Lori – J.D. Candidate, Georgetown University Law Center, “Infusing Environmental Ethics into the Space Weapons Dialouge”, Georgetown International Environmental Law Review, Fall, 19 Geo. Int'l Envtl. L. Rev. 57, lexis)

V. CONCLUSION During the height of the Cold War, President Reagan imagined a Strategic [\*81] Defense Initiative that would have combined thousands of sensors and interceptors based in all mediums, including space. n156 Although these capabilities seemed inconceivable at the time, with the recent American withdrawal from the ABM Treaty, the issuance of the Rumsfeld Commission Report, and efforts by the Missile Defense Agency to develop a ballistic missile defense system, viewing space as a fourth medium of warfare has reemerged in U.S. and international policy debates, In order to protect the space environment, it is crucial that environmental analysis about the potential impact of space weapons on the space environment, now and in the future, assume a principal role in the space weapons policy debate. To facilitate protecting outer space as the province of all mankind, policymakers, especially in the United States, must consider environmental concerns alongside national security concerns. The dramatic increase in space debris and the potential tragedy of the space commons that could result from the testing, deployment, and use of space weapons cannot be ignored when addressing potential threats from terrorist organizations and unfriendly states. Bringing intergenerational equity and sustainable development principles into the space weapons debate will avert a tragedy of the space commons and ensure that the interests of future generations are taken into consideration in contemporary national security decisionmaking. In order to accomplish these objectives, international actors must consider environmental concerns together with security policies, rather than allowing environmental trepidations simply to give way to national security interests. Further, policymakers must adopt a long-term outlook towards protecting the space environment by viewing "the human community in an interconnected manner, every generation [becoming] both the trustee for and the beneficiary of Earth's environment." n157 Either by implementing a blanket ban on space weapons to comport wholly with the goals of sustainable development or by striking a balance between environmental objectives and national security interests with a more flexible model banning only space-based weapons, the present generation will ensure adequate protection of the space commons for future generations. Although national security interests will almost always take precedence over other interests, because of the fragile characteristics of the space environment and its critical role for the continued existence of Earth, international restrictions on the weaponization of space are justifiable and necessary. While contemporary national security threats are causing a sense of trepidation in many Western nations, including the United States, in the long-term, irreparable damage to the space environment could result in a global threat to mankind's security. There is no better time than the present to inject real meaning into the phrase "province of all mankind" by focusing on environmental protection of the space commons and halting efforts to weaponize space.

### Space Weapons Now – 1AR

#### US space weaponization is inevitable – now is key to prevent destabilizing arms races

Chanock 13 (Alexander – J.D. Candidate 2014, UCLA School of Law; Claremont McKenna College, 2011, “THE PROBLEMS AND POTENTIAL SOLUTIONS RELATED TO THE EMERGENCE OF SPACE WEAPONS IN THE 21ST CENTURY”, 2013, 78 J. Air L. & Com. 691, lexis)

III. SPACE POLICY CHANGES

Consistent with its development of weapons for space, the United States has taken a number of policy steps that illustrate it no longer views space as existing solely for peaceful means. This is exemplified by the United States withdrawal from the Anti-Ballistic Missile (ABM) Treaty in 2001. n26 At that time, President Bush stated that the reason for the withdrawal was that the treaty was an outdated relic of the Cold War. n27 However, there is reason to believe that the real reason for withdrawal was that the United States wanted to develop specific ABM space-based weapon systems, which were banned by the ABM Treaty. n28 Recent reports from the Obama Administration provide additional evidence that the United States is shifting toward a more militarized space policy. In the 2012 Department of Defense Strategy Report, the Obama Administration stated that the United States needs to invest in space technology to help protect U.S. interests. n29 Also, under the White House Space Policy, President Obama declared that "'peaceful purposes' allow[] for space to be used for national and homeland security activities." n30 The President further elaborated that the United States "will employ a variety of measures to help assure the use of space for all responsible parties ... [and] deter others from interference and attack ... and, if deterrence fails, defeat efforts to attack them." n31 At the end of the report, the President specified that [\*695] the Secretary of Defense must "develop capabilities, plans, and options" for space defense measures. n32 Even though the President does not specify what types of space military activities should be developed, it is apparent from the report's broad language that the President desires to have military capabilities in space (possibly including space weapons) to help defend American space interests. n33 IV. SPACE WEAPONS: DEFINITION AND USE TODAY One major obstacle to sufficiently addressing the space weapon issue is that what constitutes a "space weapon" is not altogether clear. One reason for this is that there is no universally agreed-upon definition. n34 This presents several problems in determining whether a space device is a space weapon or a tool used to assist the military, such as a GPS tracker. It is important to clearly distinguish space weapons from other space tools and devices if one wants to construct an effective legal regime for regulating the weaponization of space. Although there is no official definition of "space weapon," there are several proposed definitions that could clarify the matter. The United Nations (U.N.) Institute for Disarmament Research proposed that: A space weapon is a device stationed in outer space ... or in the Earth environment designed to destroy, damage or otherwise interfere with the normal functioning of an object or being in outer space, or a device stationed in outer space designed to destroy, damage or otherwise interfere with the normal functioning of an object or being in the Earth environment. Any other device with the inherent capability to be used as defined above will be considered as a space weapon. n35 Importantly, this proposed definition states that a space weapon can be stationed on Earth and have "dual-use" capabilities, as illustrated by the final sentence. n36 However, this dual-use prohibition is likely why the proposed definition failed to garner approval from spacefaring nations. n37 [\*696] Some countries have also offered their own definitions, which could shed light on a potential definition. For example, Canada proposed that space should continue to be usable for surveillance and intelligence gathering, but that devices designed to inflict physical harm on any other object should be banned. n38 These proposals show that although there is not a universal definition, there is a general consensus that a "space weapon" must have the capability to inflict damage on another space object. Nevertheless, what is unclear to the international community is whether a space weapon's primary purpose is to inflict harm and whether it must be based in space. These definitional problems are evident when one examines some of the prominent weapons used in space today. For example, ballistic missile technology has the potential to be used for ASAT weapons. n39 As a result, it is unclear whether one can classify ASAT devices as space weapons because of the dual-use issue. Whether the X-37B is a space weapon is also uncertain because, although it is capable of inflicting damage on other space objects, the ship does not stay in space. n40 As a result, the U.S. military maintains that it is not a space weapon. n41 These examples illustrate that a clear and encompassing definition for space weapons is needed in order to effectively address the issue. V. PROBLEMS WITH WEAPONIZING SPACE As evidenced by the development of the aforementioned space weapons, there is a strong likelihood that space will be weaponized in the near future. This raises numerous concerns for countries and people on Earth. There are many critics who believe that space needs to remain peaceful and free of weapons because conflicts in space could easily affect the entire world. n42 The main problem associated with weaponizing space is that an arms race would likely occur, which could destabilize the international system and make the world more vulnerable to war. [\*697] Accordingly, if the United States develops space weapons, other countries such as China and Russia will inevitably start to develop their own weapons to counteract the United States' advantage in space. n43 Since space is the ultimate high ground, other countries will be forced to counteract the United States' advantage in space or else face the consequences of a superpower with a strategic advantage. This potential arms race will also cost countries vast amounts of money and will put many weapons in space, which increases the likelihood that they will be used. Such an arms race would be expensive because launching weapons into space is incredibly costly. As a cost reference point, sending the X-37B on one mission costs roughly $ 100 million. n44 Another major concern is the amount of space debris that space weapons would produce. This problem is complex and requires a separate lengthy analysis to detail all the potential problems. However, it is vital for a discussion of space weapons to briefly survey this topic because the production of space debris is a natural concern that arises when a country considers utilizing space weapons. The fear is that destroying objects in space could generate extremely dangerous debris with a long orbital life. n45 This will in effect create "perpetual shrapnel that poses a grave threat to all other satellites in orbit." n46 As noted by Joel Primack, one of the premier experts on space debris, "the weaponization of space would make the debris problem much worse, and even one war in space could encase the entire planet in a shell of whizzing debris that would thereafter make space near the Earth highly hazardous for peaceful as well as military purposes." n47 An example of the disastrous effects of space debris was seen when the Chinese ASAT test in 2007 produced "2,087 pieces of debris large enough to be routinely tracked" and "generated over 35,000 pieces of debris down to 1 centimeter in size." n48 In January 2013, one of these pieces severely damaged a [\*698] Russian spacecraft. n49 As this collision illustrates, if one controlled military test can cause harmful debris six years later, a space war could have disastrous consequences for space assets that could continue for years after the conflict has ended. This is especially dangerous for the United States because its civilian and military infrastructures rely heavily on space commons. The United States owns 95% of the military satellites and pays two-thirds of the expenditures for commercial space uses. n50 Thus, space debris could collide into many valuable U.S. assets. VI. WHY THE UNITED STATES IS MOVING TOWARD WEAPONIZING SPACE As illustrated by President Obama's policy and the development of space weapons, it is evident that the United States wants to develop space weapons even though there are many potential dangers. n51 Although this development might destabilize the international system and start an arms race, as discussed above, the United States has some valid reasons for taking these risks. These reasons include the inevitability of the weaponization of space and the vulnerability of U.S. space assets. n52 The inevitability theory of space weaponization stems from the notion that the international community will develop weapons for space just as it has for every other frontier. For example, at first airplanes were not used as weapons, but as technology progressed and the need for planes increased, airspace became weaponized. Logically, it follows that space is no different than airspace and thus will eventually become weaponized. This is because one of the potential benefits of weaponizing space is too great to ignore - it would provide the weaponizing country with a substantial tactical advantage. n53