## 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: United States Federal Judiciary should substantially increase National Environmental Policy Act restrictions to the introduction of Armed Forces into hostilities.

### 1AC – Giant Ass 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 – Strong Bioterror

#### 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.

#### Biodefense contractors use the national security exemption in NEPA to overlook safety concerns – results in pathogen spread and accidental release

Taylor 12 (David Chase Taylor, Degrees from San Diego State University, PhD Student at the University of Lugano, Switzerland, *The Bio-Terror Bible*, Part 3, p. 25)

Southern Research Institute, the military biodefense contractor recently in the news for sending live anthrax to the Children's Hospital of Oakland (CA), is also in charge of safety and security for a major new $30 million biodefense facility being built at the Department of Energy's Argonne National Laboratory near Chicago. The new Ricketts Regional Biocontainment Laboratory is funded by the National Institute of Allergy and Infectious Disease (NIAID) and is named after Howard T. Ricketts, a celebrated pathologist who acquired typhus in the course of research and died at age 39. It will begin biodefense work with studies of anthrax (Ames strain) and Yersinia pestis, the causative agent of plague. Southern Research Institute, with major labs of its own in Frederick, Maryland and Birmingham, Alabama, has a $75 million annual budget including biodefense contracts from an impressive roster of Pentagon agencies. Its Frederick, Maryland facility is located near the Army's biological weapons research headquarters at Fort Detrick, yet despite its biodefense prominence, Southern Research in Frederick does not maintain an institutional biosafety committee that complies with federal research rules. (And Southern Research in Birmingham has not honored requests for records of its institutional biosafety committee.) "Southern Research's incompetence is plain to see. Its own house is in dangerous disarray and does not comply with federal research rules," said Edward Hammond, Director of the Sunshine Project. "That threat is bad enough; but even after leaking anthrax, the institute is still developing biosafety and operating procedures for new high containment labs." According to a national coalition of biodefense watchdogs, formed in 2002 to monitor the US biodefense program, the Southern Research situation epitomizes their concern that biodefense laboratories are proliferating unsafely and with unsound planning, and that this could result in health, environment, and international security problems. The watchdogs also point to Southern Research's links to classified biodefense research. (Southern Research's facilities and personnel have "secret" clearance.) "Public interest groups seeking information about military biodefense programs are being stonewalled by the Army and other agencies." says Steve Erickson of Citizen's Education Project in Salt Lake City, which monitors the Army's Dugway Proving Ground. "That Southern Research and other secretive military contractors are also insinuating themselves into civilian biodefense programs is cause for concern that we are witnessing a steady erosion of openness and accountability, not only at Pentagon labs; but at academic institutions and in work funded by the National Institutes of Health." Two other Department of Energy (DOE) labs that design and develop the nation's nuclear weapons are also building new biosafety level three biodefense facilities. Both Lawrence Livermore and Los Alamos Labs have been sued by local community groups under the National Environmental Policy Act (NEPA). Inga Olson, Program Director at Tri-Valley CAREs, one of the groups that sued DOE, warns "Biodefense dollars are flowing like champagne at a wedding - into everywhere from nuclear weapons labs to children's hospitals - everyone wants a piece of the action. But a far more sober look is needed at whether the rapid spread of labs, pathogens, and bioweapons knowledge poses a greater threat than the problem we are trying to solve."

#### Addressing the court generated “National Security” exemption to NEPA is crucial to bio-weapons lab safety

Miles 8 (Loulena Miles, Associate at Adams Broadwell Joseph & Cardozo, Degrees from University of California at Santa Cruz, “Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico: Comment on the SWEIS,” <http://energy.gov/sites/prod/files/EIS-0380-FEIS-03-2-2008.pdf>)

NEPA has the twin aims of obligating a federal agency to consider environmental impacts before undertaking or approving a proposed action, and ensuring that the public is informed. The draft SWEIS is inadequate under the National Environmental Policy Act because it lacks a “hard look” at the impacts of a possible terrorist attack. There is no “national security” exemption from NEPA. Allowing a “security exemption” from NEPA would be inconsistent with one of NEPA’s purposes: to ensure that the public can contribute to the body of information being considered by the agency. The recent Mother’s for Peace decision in the 9th Circuit Court of Appeals held that if the risk of a terrorist attack is signiﬁ cant (which it is at Los Alamos) then NEPA requires taking a “hard look” at the environmental consequences of a terrorist attack. Please revise your draft SWEIS and re-release it so that that public will have an opportunity to comment on this important aspect of the required NEPA analysis. BSL-3 and/or BSL-4 Laboratory Space The Department of Energy is going full speed ahead in building more and more biodefense labs and facilities, including the one being reviewed at the Los Alamos National Lab. All of this work is going forward without a national plan that assesses where these labs should be, what their role is, how many are really needed, methods of oversight, transparency, and reporting requirements. A NEPA document is urgently needed to assess these issues in a forum where the public can comment. We believe Homeland Security should not be locating these advanced biodefense facilities inside nuclear weapons labs because it cloaks this work in a veil of secrecy and creates a “perception problem” whereas other countries could assume we’re conducting offensive research and / or may choose to collocate their advance biodefense research inside their nuclear weapons facilities.

#### Engineered pathogens cause extinction

**Sandberg et al 8**—Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

#### Use is likely

Wheelis 13 (Dr. Mark Wheelis, Chair, Scientists Working Group on Biological and Chemical Weapons, “Biological and Chemical Weapons,” The Center for Arms Control and Non-Proliferation, Issues, 2013, <http://armscontrolcenter.org/issues/biochem/>)

At the same time, however, the dramatic growth in biodefense research has some significant downsides. For instance, the large expansion in the number of institutions and individuals working with dangerous biological weapons agents, many without previous experience, is increasing the risk of dangerous pathogens being released accidentally from the laboratory. It is also giving thousands of individuals access to materials, technologies, knowledge, and skills that could be used for biological weapons attacks. Increased biodefense research in the United States appears to be encouraging increased biodefense research around the world. Such research is precisely the type that raises the greatest dual-use concerns. Of most concern in this regard is the growing amount of research aimed at exploring potential offensive aspects and applications of biotechnology. Such activities could very easily generate the very dangers they are designed to protect against. Even worse, because of their dual-use nature, biodefense activities undertaken as a hedge against technological surprise and the unpredictability of potential adversaries can generate significant uncertainty among outside observers about their true intent. This problem is most severe for threat assessment research, which is usually conducted in secret. Secrecy in biodefense is increasing, both in the U.S. and around the world. Secretive biodefense activities threaten to provoke a very real biological arms race as countries react to the suspected capabilities and activities of others and seek to anticipate and counter potential offensive developments by potential adversaries. A new biological arms race would be a disaster. It would greatly increase the danger that both states and terrorists alike will acquire and use biological weapons. The history of weapons proliferation indicates a flow from the big powers to those with lesser resources. Rigorous state compliance with the ban on biological weapons is critical for preventing bioterrorism.

#### And causes nuclear war

**Conley ‘3** Henry W. is Chief of the Systems Analysis Branch, Directorate of Requirements (Air and Space Power Journal, “Assessing US Policy for Retaliating to a Chemical or Biological Attack”, March 5, 2003, http://www.airpower.maxwell.af.mil/airchronicles/apj/apj03/spr03/conley.html)

The number of American casualties suffered due to a WMD attack may well be the most important variable in determining the nature of the US reprisal. A key question here is how many Americans would have to be killed to prompt a massive response by the United States. The bombing of marines in Lebanon, the Oklahoma City bombing, and the downing of Pan Am Flight 103 each resulted in a casualty count of roughly the same magnitude (150–300 deaths). Although these events caused anger and a desire for retaliation among the American public, they prompted no serious call for massive or nuclear retaliation. The body count from a single biological attack could easily be one or two orders of magnitude higher than the casualties caused by these events. Using the rule of proportionality as a guide, one could justifiably debate whether the United States should use massive force in responding to an event that resulted in only a few thousand deaths. However, what if the casualty count was around 300,000? Such an unthinkable result from a single CBW incident is not beyond the realm of possibility: “According to the U.S. Congress Office of Technology Assessment, 100 kg of anthrax spores delivered by an efficient aerosol generator on a large urban target would be between two and six times as lethal as a one megaton thermo-nuclear bomb.”46 Would the deaths of 300,000 Americans be enough to trigger a nuclear response? In this case, proportionality does not rule out the use of nuclear weapons. Besides simply the total number of casualties, the types of casualties- predominantly military versus civilian- will also affect the nature and scope of the US reprisal action. Military combat entails known risks, and the emotions resulting from a significant number of military casualties are not likely to be as forceful as they would be if the attack were against civilians. World War II provides perhaps the best examples for the kind of event or circumstance that would have to take place to trigger a nuclear response. A CBW event that produced a shock and death toll roughly equivalent to those arising from the attack on Pearl Harbor might be sufficient to prompt a nuclear retaliation. President Harry Truman’s decision to drop atomic bombs on Hiroshima and Nagasaki- based upon a calculation that up to one million casualties might be incurred in an invasion of the Japanese homeland47- is an example of the kind of thought process that would have to occur prior to a nuclear response to a CBW event. Victor Utgoff suggests that “if nuclear retaliation is seen at the time to offer the best prospects for suppressing further CB attacks and speeding the defeat of the aggressor, and if the original attacks had caused severe damage that had outraged American or allied publics, nuclear retaliation would be more than just a possibility, whatever promises had been made.”

## Case

### Yes Arms Race Now

#### High risk of theft, lethal spread and arms races

Hynes 11 (H. Patricia Hynes, former professor of environmental health from Boston University and chair of the board of the Traprock Center for Peace and Justice. “Biological Weapons: Bargaining With the Devil,” 8-18-11,

http://www.truth-out.org/news/item/2693:biological-weapons-bargaining-with-the-devil#3.)

The bullish climate of the "war on terrorism" set off a massive flow of federal funding for research on live, virulent bioweapons' organisms (also referred to as biodefense, bioterrorism and biosafety organisms) to federal, university and private laboratories in rural, suburban and urban areas. Among the federal agencies building or expanding biodefense laboratories are the Departments of Defense (DoD), Homeland Security, State and Agriculture; the Environmental Protection Agency; and the National Institutes of Health (NIH). A new network, comprised of two large national biowarfare laboratories at BU and University of Texas, Galveston medical centers, more than a dozen small regional laboratories and ten Regional Centers of Excellence for Biodefense and Emerging Infectious Diseases Research, was designed for funding by the National Institute for Allergy and Infectious Diseases, a division of NIH. The validation offered by the federal health research agency for ramped-up biological warfare research is the dual use of the research results: "better vaccines, diagnostics and therapeutics against bioterrorist agents but also for coping with naturally occurring disease." Today, in dozens of newly sprung laboratories, research on the most lethal bacteria and viruses with no known cure is being conducted in an atmosphere of secrecy, with hand-picked internal review boards and little, if any, public oversight or accountability. Fort Detrick, Maryland, a longstanding military base and major government research facility, is the site of the largest biodefense lab being built in the United States. Here, biowarfare pathogens will be created, including new genetically engineered viruses and bacteria, in order to simulate potential bioweapons attacks by terrorist groups. Novel, lethal organisms and methods of delivery in biowarfare will be tested, all rationalized by the national security need to study them and develop a figurative bioshield against them. In fact, Fort Detrick's research agenda - modifying and dispersing lethal and genetically modified organisms - has "unmistakable hallmarks of an offensive weapons program" ... "in essence creating new threats that we're going to have to defend ourselves against" - threats from accidents, theft of organisms and stimulus of a bioarms race.(3)

## T

### 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.”

## CP

### XO CP – 2AC w/NEPA

#### The executive has already done the CP and it failed

Schwabach 00 (Aaron – Associate Professor of Law, Thomas Jefferson School of Law, “Associate Professor of Law, Thomas Jefferson School of Law”, Environmental Damage Resulting from the NATO Military Action Against Yugoslavia”, 2000, 25 Colum. J. Envtl. L. 117, lexis)

Overseas activities of the U.S. military are governed instead by Executive Order 12,114, n108 which requires that the military comply with the spirit and intent of NEPA when operating overseas. Although NEPA environmental impact statements are not required, actions which will have significant environmental effects nonetheless require extensive environmental analysis and documentation. n109 The extent to which military planners actually comply with the spirit and intent of NEPA no doubt varies greatly from one individual to the next. Some military commentators, such as Fair, n110 Schmitt, n111 and Yuzon n112 8540\*136 write from an environmental perspective, while others, such as Whitaker n113 and Brauchler, n114 seem to view Executive Order 12,114 as a useful tool in avoiding documentation requirements and the necessity of performing environmental impact analyses. Yuzon advocates the adoption of a fifth Geneva Convention to protect the environment. n115 Whitaker, on the other hand, points out that "most foreseeable military operations are exempt from the "NEPA-like' analysis and documentation requirement of [Executive Order] 12,114." n116 He then notes that, although "United States policy has been described as requiring adherence "to United States environmental requirements, if feasible[,]'" n117 in actual practice "compliance with [Executive Order] 12,114 usually presents few problems relative to an overseas operation." n118 This is because of the "abundant and broad nature... of exemptions [and because Executive Order] 12,114 is not subject to judicial review and cannot be the basis for any sort of litigation." n119 Thus, "judge advocates should learn the rules that exempt most overseas operations from domestic environmental law regimes." n120 Then, when presented with any action with a possible detrimental impact on the environment, "once the [judge advocate] has identified the proper [Executive Order] 12,114 exemptions, no further analysis is required." n121

### Other CP – 2AC

sup

### China Add-On - 2AC

#### China will model the plan – solves pollution

Goldman 5 (Patti, Managing Attorney for Earthjustice's Seattle office, “Environmental Law in China,” 10-22-5, <http://earthjustice.org/features/dispatches-from-china>)

Sun Youhai, the Director of the Environmental and Resource Committee of the People's Congress provided an overview of the development of China's environmental law, moving from an early period of little regulation to framework laws and then progressive amendments and enactment of new laws to cover various modes of pollution and natural resource issues. He candidly identified the key weaknesses in the current scheme as: (1) lack of enforcement because local governments are so closely tied to and economically dependent (through their tax revenues) on the polluting industries; and (2) the lack of specific standards and implementing systems in the current laws. However, he expressed optimism that China could attain a stronger legal environmental protection regime due to greater public attention to the environment, a growing focus on public participation in environmental decisionmaking, and current government policies that favor building a harmonious society that integrates economic development, sustainability, human health and environmental protection. What was striking to this American observer was the strength of the pro-environment rhetoric coming from a Chinese official. Sun Youhai admitted that economic development is a strong force that often trumps environmental protection, but he then identified the need to have mechanisms in place to curb that impulse. He also gave credence to embodying into Chinese law such concepts as the precautionary principle, corporate social responsibility, and the polluter pays principle. And he touted the benefits of public participation as anti-environmental forces in the United States are poised to weaken the U.S. National Environmental Policy Act. The afternoon turned to China's 2003 Environmental Impact Assessment law with Wang Canfa, Professor at China University of Politics and Law and founder and director of the Center for Legal Assistance to Pollution Victims. He walked through the law's provisions with criticisms that echo those experienced under the U.S. National Environmental Policy Act. For example, a power plant divided its project into two components, neither of which warranted a full environmental impact assessment alone when such an assessment would be required by the project as a whole. He also lamented the fact that an environmental impact assessment does not compel the government to make the most environmentally sound decision and recounted an example where the government's analysis of an appeal supported canceling construction of a high-voltage electric line but it allowed the project to proceed in the end. While many of the issues resemble those still experienced in the U.S., China's law suffers from its early stage where implementation mechanisms are still not fully developed. When the law was adopted, a provision that would have allowed citizens to enforce the law's mandates was rejected. As a result, advocates like Professor Wang are struggling to create effective mechanisms for administrative and judicial review. The law's principal enforcement mechanism is currently in the hands of the government, which recently responded to criticism of its lack of enforcement by ordering approximately 30 projects to stop because they had proceeded without an environmental impact assessment. While the stop work orders may seem bold on the surface, they merely delayed most of the projects by a few weeks while additional paperwork was filed. The decision to proceed with the projects received little or no scrutiny in light of the tardy assessments.

**Extinction**

**Yee and Storey 02**

[Herbert Yee, Professor of Politics and IR, Hong Kong Baptist University --AND-- Ian Storey, Lecturer in Defence Studies at Deakin, 02

“The China Threat: Perceptions, Myths and Reality,” p5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

## Ptix

### 1NC No Econ War

#### 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.

### Immigration – 2AC (USC)

#### No immigration reform – House-Senate compromise unlikely, path to citizenship prevents agreement

Rojas 12/30 (Leslie Berestein Rojas, Immigration and Emerging Communities Reporter, “Immigration issues to watch in 2014,” 12-30-13,

<http://www.scpr.org/blogs/multiamerican/2013/12/30/15492/immigration-top-stories-to-watch-in-2014/>)

A year ago, advocates, politicos and pundits were speculating as to whether 2013 would be the year that the political winds finally favored a major immigration overhaul, the first since 1986. Republicans were smarting from the losses they took in the November 2012 election, with Latino and Asian voters stepping up in record numbers to hand a re-election victory to President Obama. But some veteran immigration watchers who had been down this path in 2006 and 2007 weren't so sure - and they were right. While the Senate passed a sweeping bill in June, which included a path to U.S. citizenship for unauthorized immigrants, House Republicans simply couldn't get behind it. Plans for a bipartisan House bill crumbled. The Senate plan stalled in the House and the rest is, well, recent political history. Fast-forward to the end of the year: Republican House Speaker John Boehner has dropped hints that he'll push the House on immigration reform in 2014. But what the House votes on might look quite different from what Senate supporters of a comprehensive reform plan envisioned. "We're likely to see bills that deal with specific components, like the Dream Act, high-skilled visas, and probably a bill that passes the House, or is at least proposed in the House, that would propose legalization for undocumented immigrants without a pathway to citizenship," said Karthick Ramakrishnan, a UC Riverside political scientist who studies immigration. This could even make for strange bedfellows, political observers say, as advocates push for a halt to deportations and Republicans float legal status without a path to citizenship. But compromises will most likely only go so far. President Obama and other immigration reform supporters have said they're willing to consider the piecemeal approach that House Republicans favor. But only if these piecemeal bills address key provisions of the Senate bill - and a path to U.S. citizenship is the key provision of the Senate bill. Without it, it's hard to count on much Senate support. As for the political winds, if the timing wasn't right for a broader proposal to succeed in 2013, when might it be? The short answer: 2014. But it's an election year, so don't hold your breath. There will also be other high-priority distractions in the coming year, like a debt ceiling redux. Where does this leave any kind of significant immigration legislation? "There's a small possibility after the election, in the lame duck session," said Louis DeSipio, a political scientist and immigration expert at UC Irvine. "But I would only expect action if Republicans lose more than they did in 2012, and that does not seem to be a likely outcome." On that note, the Republican Party has been making a concerted effort to reach to Latino voters in the wake of 2012. But the truth is that many House GOP members are secure in their districts without these voters, at least so far. Which means that it may take a little longer for a major immigration overhaul to go the distance.

### Obama Good – 2AC

#### 2. PC low

Kaminsky 12/29/13 (Ross, Political Commentator @ Heartland Institute, "Swirling the Bowl: An Administration Goes Down the Drain," http://blog.heartland.org/2013/12/swirling-the-bowl-an-administration-goes-down-the-drain/)

A Gallup poll released earlier this month shows massive declines among all of Obama’s core base groups, led by a stunning 23 percent drop in Obama’s approval among Hispanics since last December. Among those earning less than $24,000 a year, the plunge was 18 percent. Nonwhite support of Obama fell 17 percent (though it still remains high at 65 percent). Support among moderates fell 16 percent and among 18-29 year-olds tumbled 15 percent, both resting under 50 percent with groups Democrats must have to win.¶ And so the Obama presidency circles the drain.¶ Union members are furious about the impact of Obamacare on their “Cadillac” health plans. In August, the International Longshore and Warehouse Union, which has over 40,000 members in the United States, dissolved their ties with the AFL-CIO based in large part on the AFL-CIO chief Richard Trumka’s active role in helping Obamacare become law.¶ Several other large labor unions are now suffering buyer’s remorse over the ironically named Affordable Care Act. Union dissatisfaction with the Obama administration has become intense enough that even the Washington Post’s Ezra Klein was compelled to report on it.¶ Among reporters, however, it’s more of a Silver Blaze situation: notable for the lapdogs not barking. Some are reluctantly recognizing that what little credibility they and their profession have left requires telling today’s political stories with near-honesty rather than serving as Obama’s human shields.¶ Of course there are holdouts: The slavishly pro-Obama NBC News begins a story about the president’s 38 percent job approval in Iowa by saying, “Not that he’s running for anything again.” I’m sure that makes the reporter feel better.¶ That’s par for the “journalistic” course among the usual old-line news outlets whose J-school-graduate employees are inconsolable as the legacy of their “historic” president swirls in the bowl like Tuesday’s pot roast, substantially less appealing after being fully digested.¶ And while the Hollywood celebrity elite try to stand their ground, the Wall Street Journal’s Peggy Noonan believes that “New York’s Democrats, to the degree they ever loved the president, don’t love him anymore, and have moved on. They are not thinking about what progress he might make in Washington next year, they’re talking about what Hillary might do the year after that.”¶ Yet all this talk about President Obama obscures a larger point, though one not lost on likely-to-be-ex-Senator Mark Pryor (D-AR) and other vulnerable Democrats — or on the declining Mrs. Clinton herself: The flush isn’t just sucking away Obama’s last measure of relevancy, but the relevancy of his party and his philosophy, and the morale and commitment of their supporters.¶ The last remaining glimmer of Obama’s political capital and personal appeal, and thus his ability to help vulnerable Democrats in the 2014 elections and beyond, is flowing into the septic tank of Progressive history.

#### 3. Congress likes the plan

Janofsky 05

[Michael, NY Times, 5/11/05, Pentagon Is Asking Congress to Loosen Environmental Laws, <http://www.nytimes.com/2005/05/11/politics/11enviro.html?_r=0>]

Dozens of groups have complained to Congress that the military's needs are covered by the laws that they seek to change and that waivers would result in conditions getting worse on and around the nation's military bases, endangering the health of millions of people. As the owner of 425 active bases and more than 10,000 training ranges, the Defense Department is widely regarded as one of the nation's leading polluters, producing vast amounts of chemicals from ordnance that leach into groundwater, as well as air pollution from military vehicles. The Environmental Protection Agency lists more than 130 Superfund sites on military bases. "Congress would never consider letting the nation's biggest corporate polluter off the hook," Heather Taylor, deputy legislative director for the Natural Resources Defense Council, said in a conference call with reporters. "Why, then, would Congress grant immunity to America's, and the world's, largest polluter?" Since 2001, the Pentagon has been asking Congress for greater latitude in complying with environmental laws. When it came to birds and animals, lawmakers were willing to compromise, granting exemptions to federal laws. But they have been more resistant to changes that might affect human health under the Clean Air Act; the Resource Conservation and Recovery Act, dealing with solid waste; and the Comprehensive Environmental Response, Compensation and Liability Act, which deals with toxic wastes and is better known as the Superfund law.

#### 4. Court shields

Stimson 9

[09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So what is really going on here? To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, it is becoming increasingly clear that this administration is trying to create the appearance of a tough national-security policy regarding the detention of terrorists at Guantanamo, yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. Letting the courts do it for him gives the president distance from the unsavory release decisions. It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy, as he promised, because it will anger his political base on the Left. The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, he would rather spend that capital on other policy priorities. Politically speaking, it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.

## Deference

### No Warfighting Impact

#### Iran will not be aggressive – they will back down from direct confrontation.

**Savyon**, 7/4/**2011** (Ayelet – director of the Iranian Media Project at the Middle East Media Research Institute, Iran’s Defeat in Bahrain, p. http://www.memri.org/report/en/0/0/0/0/0/0/5424.htm)

Despite its image as a looming superpower, which revolutionary Iran has sought for years to cultivate, its actual policy reveals a deep recognition of its weakness as a representative of the Shi'ites, who constitute a 10% minority in a Sunni Muslim region. Historically persecuted over centuries, the Shi'ites developed various means of survival, including taqiya – the Shi'ite principle of caution, as expressed in willingness to hide one's Shi'ite affiliation in order to survive under a hostile Sunni rule – and passivity, reflected in the use of diplomacy alongside indirect intimidation, terrorism, etc. The ideological change pioneered by the founder of the Islamic Revolution in Iran, Ayatollah Ruhollah Khomeini – who transformed the passive perception characteristic of the of the Shi'a (which was based on the legend of the martyrdom of Hussein at the Battle of Karbala) into an active perception of martyrdom (shahada)[26] – is not being carried out by Iran. Tehran is refraining from sending Iranian nationals to carry out martyrdom operations, despite its years-long glorification of this principle. It is also not sending Iranians to Gaza, either on aid missions or to carry out suicide attacks – and this despite the fact that regime-sponsored organizations are recruiting volunteers for such efforts. Moreover, it appears that the Shi'ite regime in Iran is utilizing the legend of Hussein's martyrdom solely for propaganda purposes, in order to glorify its own might and intimidate the Sunni and Western world. Such intimidation is in keeping with Shi'ite tradition, as a way to conceal Tehran's unwillingness to take overt military action against external challenges. Conclusion Tehran's defeat in the Bahrain crisis reflects characteristic Shi'ite restraint, stemming from recognition of its own weakness in the face of the vast Sunni majority. The decade during which Iran successfully expanded its strength and power exponentially via threats and creating an image of superpower military strength has collapsed in the Bahrain crisis; Iran is now revealed as a paper tiger that will refrain from any violent conflict. When it came to the crunch, it became clear that the most that Iran could do was threaten to use terrorism or to subvert the Shi'ite citizens of other countries – in keeping with customary Shi'ite behavior – and these threats were not even implemented. It can be assumed that the Sunni camp, headed by Saudi Arabia, is fully aware of the political and military significance of Iran's weakness and its unwillingness to initiate face-to-face conflict. This will have ramifications on both the regional and the global levels.

### Warfighting DA NEW– 2AC

#### 5. Court rules against executive now

Wong 13 -- PhD dissertation in Government to Georgetown University (U Jin, 4/22/2013, "THE BLANK CHECK: SUPREME COURT DECISION - MAKING IN NATIONAL SECURITY CLAIMS AND DURING WARTIME," http://repository.library.georgetown.edu/bitstream/handle/10822/558286/Wong\_georgetown\_0076D\_12276.pdf?sequence=1)

This study started out with two questions. The first was: ?Does war influence judicial decision - making?? The second was: ?Do **national security** claims influence judicial decision - making?? The answer to the first question is: In a general hypothetical s ignificant war, there is a **statistically significant finding** of voting against the government. In the models run using the Spaeth database where the government is a party, the influence of all significant wars on judicial decision - making generally was to vote against the government. Presidential approval ratings are statistically significant only in wartime, but with a positive coefficient. Outside of wartime, presidential approval ratings are not statistically likely to influence Supreme Court behavior. This result suggests that while Courts vote strategically and support a popular president, they are still statistically likely to find against the government in a significant war. These findings altogether suggest that that the Supreme Court votes strat egically with an eye towards the popularity of the president, but revert to skepticism of government‘s wartime claims as the war progresses. The answer to the second question is: National security claims brought by the government achieve a **statistically significant likelihood** that the Supreme Court will vote against the government. National security claims were statistically significant with a negative signifier. **This finding is consistent across all the major wars as well as peacetime**. It also suggest s that the Supreme Court generally is not predisposed to defer to the executive branch‘s arguments when it comes to national security claims

#### Plan returns the US to case law circa 2004 – 5 years of legal application disproves the disad

Schiffer 4 (Lois J., partner at Baach Robinson & Lewis PLLC in Washington, D.C., Assistant Attorney General for the Environment and Natural Resources Division at the U.S. Department of Justice from 1994-2001, adjunct professor of environmental law at Georgetown University Law Center, “The National Environmental Policy Act today, with an emphasis on its application across U.S. Borders,” Duke Environmental Law & Policy Forum, Vol. 14:2, 2004, <http://www.eli.org/pdf/seminars/NEPA/NEPA%20Today.pdf>)

The Bush Administration has made clear its view that NEPA should be limited to impacts within the United States. In Natural Resources Defense Council v. U.S. Department of the Navy, which challenged the Navy’s testing of low-frequency sonar on the basis that the Navy must prepare an EIS to evaluate impacts on marine mammals, the government argued that NEPA did not apply to the sonar program because most of the testing took place outside the territorial waters of the LLS.\*1 The government relied on the presumption against extraterritorial application of federal laws. In a clear and strong decision, the court rejected the claim and held that NEPA applied.45 While the Navy and the NRDC then reached a substantive settlement, congressional legislation that redefined what constitutes "harassment" under the Marine Mammal Protection Act reopened this debate. In Center for Biological Diversity v. National Science Foundation, in which the National Science Foundation's plan to undertake acoustical research in an environmentally sensitive area of the Gulf of California without NEPA compliance was challenged, the United States argued that it need not prepare an environmental review for a project within the Exclusive Economic Zone of Mexico: the court held that the area was the high seas, that NEPA applied, and thus issued a temporary restraining order.1" in Border Power Plant Working Group v. Department of Energy, the federal government argued that the Department of Energy, in permitting transmission lines in the U.S. to connect Mexican power plants to the U.S. grid, need not consider the environmental effects of the power plants.\* The court disagreed and held that NEPA requires assessment of effects in the U.S. resulting from power plants in Mexico. Since that ruling, the Department of Energy has undertaken an environmental analysis of the project and took public comments on the draft EIS through June 2004.'11"

#### 2. Current Court decisions over war powers are already hamstringing warfighting and causing battlefield uncertainty

Chertoff, 11 – Secretary, Department of Homeland Security (2005-2009); Judge, Court of Appeals for the Third Circuit (2003-2005); Assistant Attorney General, Criminal Division, U.S. Department of Justice (2001-2003); U.S. Attorney for the District of New Jersey (1990-1994) (Michael, 2/3. “THE DECLINE OF JUDICIAL DEFERENCE ON NATIONAL SECURITY.” http://www.rutgerslawreview.com/wp-content/uploads/archive/vol63/Issue4/Chertoff\_Speech\_PDF.pdf)

The last outcome which I think is surprising about Boumediene is the discussion of the practical concerns. Again and again what the Court does as it reviews the historical records, which are inclusive, is it comes back and says that it looks like the earlier courts were animated by practical considerations.39 So you would expect there to be a really intense practical discussion of what the impact of granting habeas in these cases has on military operations. Here is the kind of practical discussion you get. In Eisentrager, in which the court said there is no habeas right for German prisoners being held in American military prisons in Germany in 1950, the Court mentions in passing that it was concerned about interfering with military operations.40 Now remember, this is 1950. The war has been over for five years. We have had the Marshall Plan, and yet, five years later, the Supreme Court is still worried about interfering with military operations. What does the Boumediene Court say? They say that it is distinguishable because in Eisentrager the Court had a real concern about the occupation; there were Nazi sympathizers; and there was guerrilla warfare. So understandably, there were practical considerations there. That is not present here because we do not have that issue in Guantánamo.41 Again, let me step back. In 1950, I would seriously doubt, five years after the end of the war, that we were spending a lot of time worrying about Nazi insurgents. But I will tell you that in Guantánamo, not only do they have force protection issues with respect to prisoners, but also they have to worry about the impact of what goes on in terms of how they handle prisoners with respect to active combat operations that are literally going on in two theaters of war overseas. So to argue that the military challenges in 1950 were greater than the military challenges in 2007 is frankly counterfactual. And it suggests to me a real problem with the whole practical analysis. So, where has this left us? It has left us in a puzzling situation. In a decision called Al-Bihani in the D.C. Circuit in 2010, Judge Janice Rogers Brown talked about the consequences—practical consequences—of having habeas review in Guantánamo as it affects the battlefield.42 And what she said is that the process at the tail end is now impacting the front end because when you conduct combat operations, you now have to worry about collecting evidence.43 A somewhat darker analysis has been put forward by Ben Wittes who has recently written a book called Detention and Denial, where he argues that the courts have now created an incentive system to kill rather than capture.44 And much of the law of war over the years was designed to move away from the “give no quarter” theory, where you killed everybody at the battlefield, into the theory of you would rather capture than kill. And his point, and you can agree or disagree with it, is that you have now actually loaded it the other way; you have pushed it in the direction of kill rather than capture.45 We have complete uncertainty now in the standards to be applied in the individual cases. If you read Ben Wittes‟s book Detention and Denial, he will details about ten or twelve district court cases where literally on the same facts you get different answers.46 And it is not that the district judges are not doing their best, but they have no guidance. There is no standard, and no one has offered them a standard. We now have litigation about Bagram Air Force Base in Afghanistan.47 It was absolutely predictable when Boumediene was decided that the next case would be against Bagram Airbase. I do not know how it is going to come out at the end. I think it is still in the district court, but I will tell you, the logic—now they may have stopped the logic of Guantánamo—the logic of Boumediene certainly raises questions about Bagram. How do you wind up having habeas in Bagram? And then what is going to happen when you are in a forward firebase? Are you going to have habeas cases there? No one knows, but the big problem is that the battlefield commanders do not know either; that is a serious operational problem. In many ways, it is absolutely a great example of what the Court in Eisentrager predicted.48 When you go down this path, you are going to actually have real operational problems with warfighting. But of course, we are not in 1950 now; we are actually in active operations. Finally, and I find this really to be the most interesting contemporary question posed by this series of issues, the press reports—and I cannot verify this, I am not confirming it, but I am assuming it to be true—the press reports that President Obama has authorized the killing of Anwar al-Aulaki, the American citizen in Yemen who is, in my mind for quite good reason, believed to be a major recruiter and operation leader for al-Qaeda.49 I want to be clear: I am perfectly okay with that, and I think it is exactly the right decision, so I do not want to be misunderstood. But I will say that if you read the decision and logic of Boumediene that is a very puzzling situation for al-Aulaki. Because if you need court permission to detain somebody, and if you need court permission to wiretap somebody, how can you kill that person without court permission?

#### 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 **incorporate environmental 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 disease and nonbattle injury, and reducing the unit's visibility to the enemy**. 95

## 1AR

### Add-On

#### Specifically – causes China/Russia war

**Nankivell 9**

[Nathan, Senior Researcher at the Office of the Special Advisor Policy, Canadien Department of National Defence, “China's Pollution and the Threat to Domestic and Regional Stability”, Asia-Pacific Journal, 3-21, http://japanfocus.org/-Nathan-Nankivell/1799]

Moreover, protests serve as a venue for the politically disaffected who are unhappy with the current state of governance, and may be open to considering alternative forms of political rule. Environmental experts like Elizabeth Economy note that protests afford an opportunity for the environmental movement to forge linkages with democracy advocates. She notes in her book, The River Runs Black, that several environmentalists argue that change is only possible through greater democratization and notes that the environmental and democracy movements united in Eastern Europe prior to the end of the Cold War. It is conceivable that in this way, environmentally-motivated protests might help to spread democracy and undermine CCP rule. A further key challenge is trying to contain protests once they begin. The steady introduction of new media like cell phones, email, and text messaging are preventing China’s authorities from silencing and hiding unrest. Moreover, the ability to send and receive information ensures that domestic and international observers will be made aware of unrest, making it far more difficult for local authorities to employ state-sanctioned force. The security ramifications of greater social unrest cannot be overlooked. Linkages between environmental and democracy advocates potentially challenge the Party’s monolithic control of power. In the past, similar challenges by Falun Gong and the Tiananmen protestors have been met by force and detainment. In an extreme situation, such as national water shortages, social unrest could generate widespread, coordinated action and political mobilization that would serve as a midwife to anti-CCP political challenges, create divisions within the Party over how to deal with the environment, or lead to a massive show of force. Any of these outcomes would mark an erosion or alteration to the CCP’s current power dynamic. And while many would treat political change in China, especially the implosion of the Party, as a welcome development, it must be noted that any slippage of the Party’s dominance would most likely be accompanied by a period of transitional violence. Though most violence would be directed toward dissident Chinese, a ripple effect would be felt in neighboring states through immigration, impediments to trade, and an increased military presence along the Chinese border. All of these situations would alter security assumptions in the region. Other Security Concerns While unrest presents the most obvious example of a security threat related to pollution, several other key concerns are worth noting. The cost of environmental destruction could, for example, begin to reverse the blistering rate of economic growth in China that is the foundation of CCP legitimacy. Estimates maintain that 7 percent annual growth is required to preserve social stability. Yet the costs of pollution are already taxing the economy between 8 and 12 percent of GDP per year [1]. As environmental problems mount, this percentage will increase, in turn reducing annual growth. As a result, the CCP could be seriously challenged to legitimize its continued control if economic growth stagnates. Nationalists in surrounding states could use pollution as a rallying point to muster support for anti-Chinese causes. For example, attacks on China’s environmental management for its impact on surrounding states like Japan, could be used to argue against further investment in the country or be highlighted during territorial disputes in the East China Sea to agitate anti-Chinese sentiment. While nationalism does not imply conflict, it could reduce patterns of cooperation in the region and hopes for balanced and effective multilateral institutions and dialogues. Finally, China’s seemingly insatiable appetite for timber and other resources, such as fish, are fuelling illegal exports from nations like Myanmar and Indonesia. As these states continue to deplete key resources, they too will face problems in the years to come and hence the impact on third nations must be considered. Territorial Expansion or Newfound Alliances In addition to the concerns already mentioned, pollution, if linked to a specific issue like water shortage, could have important geopolitical ramifications. China’s northern plains, home to hundreds of millions, face acute water shortages. Growing demand, a decade of drought, inefficient delivery methods, and increasing water pollution have reduced per capita water holdings to critical levels. Although Beijing hopes to relieve some of the pressures via the North-South Water Diversion project, it requires tens of billions of dollars and its completion is, at best, still several years away and, at worst, impossible. Yet just to the north lies one of the most under-populated areas in Asia, the Russian Far East. While there is little agreement among scholars about whether resource shortages lead to greater cooperation or conflict, either scenario encompasses security considerations. Russian politicians already allege possible Chinese territorial designs on the region. They note Russia’s falling population in the Far East, currently estimated at some 6 to 7 million, and argue that the growing Chinese population along the border, more than 80 million, may soon take over. While these concerns smack of inflated nationalism and scare tactics, there could be some truth to them. The method by which China might annex the territory can only be speculated upon, but would **surely result in full-scale war between** two powerful, **nuclear-equipped nations**.

#### . Pre-9/11 restrictions disprove the DA – no significant effect on readiness

Dycus 05

[Stephen, Professor, Vermont Law School, Osama's Submarine: National Security and

Environmental Protection After 9/11, William & Mary Environmental Law and Policy Review, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1112&context=wmelpr>]

The evidence that compliance with environmental laws has seriously impaired U.S. preparations for war is, however, far from conclusive. After all, the U.S. military's successes in Afghanistan and Iraq were achieved using troops trained and weapons tested under **pre-September 11th environmental statutes** and regulations. A Navy Admiral, testifying before Congress in support of RRPI in 2003, declared that "the readiness of the Navy is excellent. 32 According to a General Accounting Office report in 2002, "[d]espite the loss of some capabilities, service readiness data do not indicate the extent to which encroachment has significantly affected reported training readiness.” 33 In fact, the report concluded, "Training readiness, as reported in official readiness reports, remains high for most units.,34 Environmental Protection Agency ("EPA") Administrator Christine Todd Whitman went further in early 2003, stating, "**I don't believe that there is a training mission anywhere in the country that is being held up or not taking place because of environmental protection regulation**."35 A more recent study by the Congressional Research Service noted that "[a]lthough DOD has cited some examples of training restrictions or delays at certain installations and has used these as the basis for seeking legislative remedies, the department does not have a system in place to comprehensively track these cases and determine their impact on readiness.' "36 Some have taken a dimmer view of DOD's protests. EPA complained that the definition of "military readiness activities" in the DOD proposal was "broad and unclear and could be read to encompass more than the Department intends."37 Congressman John Dingell, a Democrat from Michigan, was much more emphatic: "I have dealt with the military for years and they constantly seek to get out from under environmental laws. But using the threat of 9-11 and al Qaeda to get unprecedented environmental immunity is despicable. 38

### A2: Terror Impact

#### No risk of terrorism – a Harvard professor says to prefer our study

Walt 12 (Stephen, Belfer Professor of International Affairs – Harvard University, “What Terrorist Threat?,” Foreign Policy, 8-13, http://walt.foreignpolicy.com/posts/2012/08/13/what\_terrorist\_threat)

Remember how the London Olympics were supposedly left vulnerable to terrorists after the security firm hired for the games admitted that it couldn't supply enough manpower? This "humiliating shambles" forced the British government to call in 3,500 security personnel of its own, and led GOP presidential candidate Mitt Romney to utter some tactless remarks about Britain's alleged mismanagement during his official "Foot-in-Mouth" foreign tour last month. Well, surprise, surprise. Not only was there no terrorist attack, the Games themselves came off rather well. There were the inevitable minor glitches, of course, but no disasters and some quite impressive organizational achievements. And of course, athletes from around the world delivered inspiring, impressive, heroic, and sometimes disappointing performances, which is what the Games are all about. Two lessons might be drawn from this event. The first is that the head-long rush to privatize everything -- including the provision of security -- has some obvious downsides. When markets and private firms fail, it is the state that has to come to the rescue. It was true after the 2007-08 financial crisis, it's true in the ongoing euro-mess, and it was true in the Olympics. Bear that in mind when Romney and new VP nominee Paul Ryan tout the virtues of shrinking government, especially the need to privatize Social Security and Medicare. The second lesson is that we continue to over-react to the "terrorist threat." Here I recommend you read John Mueller and Mark G. Stewart's The Terrorism Delusion: America's Overwrought Response to September 11, in the latest issue of International Security. Mueller and Stewart analyze 50 cases of supposed "Islamic terrorist plots" against the United States, and show how virtually all of the perpetrators were (in their words) "incompetent, ineffective, unintelligent, idiotic, ignorant, unorganized, misguided, muddled, amateurish, dopey, unrealistic, moronic, irrational and foolish." They quote former Glenn Carle, former deputy national intelligence officer for transnational threats saying "we must see jihadists for the small, lethal, disjointed and miserable opponents that they are," noting further that al Qaeda's "capabilities are far inferior to its desires." Further, Mueller and Stewart estimate that expenditures on domestic homeland security (i.e., not counting the wars in Iraq or Afghanistan) have increased by more than $1 trillion since 9/11, even though the annual risk of dying in a domestic terrorist attack is about 1 in 3.5 million. Using conservative assumptions and conventional risk-assessment methodology, they estimate that for these expenditures to be cost-effective "they would have had to deter, prevent, foil or protect against 333 very large attacks that would otherwise have been successful every year." Finally, they worry that this exaggerated sense of danger has now been "internalized": even when politicians and "terrorism experts" aren't hyping the danger, the public still sees the threat as large and imminent. As they conclude: ... Americans seems to have internalized their anxiety about terrorism, and politicians and policymakers have come to believe that they can defy it only at their own peril.  Concern about appearing to be soft on terrorism has replaced concern about seeming to be soft on communism, a phenomenon that lasted far longer than the dramatic that generated it ... This extraordinarily exaggerated and essentially delusional response may prove to be perpetual." Which is another way of saying that you should be prepared to keep standing in those pleasant and efficient TSA lines for the rest of your life, and to keep paying for far-flung foreign interventions designed to "root out" those nasty jihadis.

### No Nuclear Use

#### No nuclear war

Quinlan ‘9 (Sir Michael, visiting professor at King's College London, Permanent Under-Secretary at the Ministry of Defence and former senior fellow at the International Institute of Strategic Studies, “Thinking About Nuclear Weapons: Principles, Problems, Prospects,” Oxford University Press, CMR)

One special form of miscalculation appeared sporadically in the speculations of academic commentators, though it was scarcely ever to be encountered—at least so far as my own observation went—in the utterances of practical planners within government. This is the idea that nuclear war might be erroneously triggered, or erroneously widened, through a state under attack misreading either what sort of attack it was being subjected to, or where the attack came from. The postulated misreading of the nature of the attack referred in particular to the hypothesis that if a delivery system—normally a missile—that was known to be capable of carrying either a nuclear or a conventional warhead was launched in a conventional role, the target country might, on detecting the launch through its early warning systems, misconstrue the mission as an imminent nuclear strike and immediately unleash a nuclear counter-strike of its own. This conjecture was voiced, for example, as a criticism of the proposals for giving the US Trident SLBM, long associated with nuclear missions, a capability to deliver conventional warheads. Whatever the merit of those proposals (it is not explored here), it is hard to regard this particular apprehension as having any real-life credibility. The ﬂight time of a ballistic missile would not exceed about thirty minutes, and that of a cruise missile a few hours, before arrival on target made its character—conventional or nuclear—unmistakable. No government will need, and no nonlunatic government could wish, to take within so short a span of time a step as enormous and irrevocable as the execution of a nuclear strike on the basis of early-warning information alone without knowing the true nature of the incoming attack. The speculation tends moreover to be expressed without reference either to any realistic political or conﬂict-related context thought to render the episode plausible, or to the manifest interest of the launching country, should there be any risk of doubt, in ensuring—by explicit communication if necessary—that there was no misinterpretation of its conventionally armed launch.

### No Court Link

#### Courts don’t link

Litwick and Schragger 10/8/06(Dahlia and Richard, Legal Affairs Correspondent @ Slate Magazine + Prof of Law @ UVA, Wash Post, lexis)

Criticizing the court for overturning the laws passed by Congress -- as Specter did repeatedly during the confirmation hearings for John G. Roberts Jr. and Samuel A. Alito Jr. -- is fair . But crying "judicial activism" at the same time you rely on the courts for political cover when you're too timid to defy the electorate -- or your president -- is hypocritical . Why should the Supreme Court defer to a Congress that adopts laws it suspects are unconstitutional? And what should we think of those elected officials who would take so cavalier an attitude toward their oath to uphold the Constitution? Members of Congress take the same oath as Supreme Court justices do, after all. And Congress regularly asserts its institutional capacity to interpret the Constitution -- to act on an equal footing with the Supreme Court in deciding the constitutionality of a law. Moreover, the justices are supposed to assume that Congress never intentionally adopts an unconstitutional law, and you need attend oral argument for only a few moments to know how seriously they take that charge. So how is it possible that an oath-bound member of Congress can support a law that he or she believes violates the Constitution? Congress gives in to the temptation of passing bills that are of questionable constitutionality because it's easy and convenient . Political expediency seems to trump constitutional principle. The elected branches need never defy the popular will if the courts are available to do so instead. And those members of Congress who insist that the courts should stay out of Congress's business should recognize Congress for the enabler it has become. It's a two-way street: The courts work with what Congress sends them and sometimes Congress purposely sends them unconstitutional legislation, because it is politically expedient to do so. That's why lawmakers who know that legislation to ban flag burning violates the First Amendment regularly trot it out anyway. It is an easy way to mollify voters, while letting some other branch grapple with what the Constitution requires. As a bonus , lawmakers then can blame the courts for usurping the will of the electorate, turning an ordinary political pander into an Olympic-worthy double-pander. So instead of pointing fingers at the court, let's call the whole relationship what it is: dysfunctional . For all its railing against the court, Congress sometimes relies on it to achieve substantive aims. The court, sheltered from political fallout, can sometimes afford to be brave when Congress cannot . But this suggests that cries of "judicial activism" from the Congress should be suspect. As is the case in any dysfunctional relationship, Congress has a vested interest in being upheld when it wants to be, and struck down when it needs to be bailed out.

#### Courts shield

Whittington 5 (Keith E., Cromwell Professor of Politics – Princeton University, ““Interpose Your Friendly Hand”: Political Supports for the Exercise of Judicial Review by the United States Supreme Court”, American Political Science Review, 99(4), November, p. 585, 591-592)

Political leaders in such a situation will have reason to support or, at minimum, tolerate the active exercise of judicial review. In the American context, the presidency is a particularly useful site for locating such behavior. The Constitution gives the president a powerful role in selecting and speaking to federal judges. As national party leaders, presidents and presidential candidates are both conscious of the fragmented nature of American political parties and sensitive to policy goals that will not be shared by all of the president’s putative partisan allies in Congress. We would expect political support for judicial review to make itself apparent in any of four fields of activity: (1) in the selection of “activist” judges, (2) in the encouragement of specific judicial action consistent with the political needs of coalition leaders, (3) in the congenial reception of judicial action after it has been taken, and (4) in the public expression of generalized support for judicial supremacy in the articulation of constitutional commitments. Although it might sometimes be the case that judges and elected officials act in more-or-less explicit concert to shift the politically appropriate decisions into the judicial arena for resolution, it is also the case that judges might act independently of elected officials but nonetheless in ways that elected officials find congenial to their own interests and are willing and able to accommodate. Although Attorney General Richard Olney and perhaps President Grover Cleveland thought the 1894 federal income tax was politically unwise and socially unjust, they did not necessarily therefore think judicial intervention was appropriate in the case considered in more detail later (Eggert 1974, 101– 14). If a majority of the justices and Cleveland-allies in and around the administration had more serious doubts about the constitutionality of the tax, however, the White House would hardly feel aggrieved. We should be equally interested in how judges might exploit the political space open to them to render controversial decisions and in how elected officials might anticipate the utility of future acts of judicial review to their own interests.

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There are some issues that politicians cannot easily handle. For individual legislators, their constituents may be sharply divided on a given issue or overwhelmingly hostile to a policy that the legislator would nonetheless like to see adopted. Party leaders, including presidents and legislative leaders, must similarly sometimes manage deeply divided or cross-pressured coalitions. When faced with such issues, elected officials may actively seek to turn over controversial political questions to the courts so as to circumvent a paralyzed legislature and avoid the political fallout that would come with taking direct action themselves. As Mark Graber (1993) has detailed in cases such as slavery and abortion, elected officials may prefer judicial resolution of disruptive political issues to direct legislative action, especially when the courts are believed to be sympathetic to the politician’s own substantive preferences but even when the attitude of the courts is uncertain or unfavorable (see also, Lovell 2003). Even when politicians do not invite judicial intervention, strategically minded courts will take into account not only the policy preferences of well-positioned policymakers but also the willingness of those potential policymakers to act if doing so means that they must assume responsibility for policy outcomes. For cross-pressured politicians and coalition leaders, shifting blame for controversial decisions to the Court and obscuring their own relationship to those decisions may preserve electoral support and coalition unity without threatening active judicial review (Arnold 1990; Fiorina 1986; Weaver 1986). The conditions for the exercise of judicial review may be relatively favorable when judicial invalidations of legislative policy can be managed to the electoral benefit of most legislators. In the cases considered previously, fractious coalitions produced legislation that presidents and party leaders deplored but were unwilling to block. Divisions within the governing coalition can also prevent legislative action that political leaders want taken, as illustrated in the following case.

#### Court avoids politics

CSM 97 (Christian Science Monitor, “Why America Puts Its Supreme Court On Lofty Pedestal”, 6-25, Lexis)

Today this holds true even more. In one sense, the reason is obvious: With divided government and partisan sniping in Washington, when politicians must create a TV image and constantly raise funds, the scholarly-looking justices seem a refreshing alternative. They come out in black robes from behind red silk curtains, and everyone stands. They ask incisive questions. They disappear. It looks like competence personified. And there's some truth to it. The members of the court don't need to campaign for office every few years. They were selected for life. They don't need speech writers or have to check the polls. The current justices, unlike earlier courts, generally write their own opinions. They are free to dissent, and their rulings are not tied to interest-group pressure. Moreover, as an institution, the court is uniquely constituted. It is not one targetable political persona, as is a single chief executive. Yet it is smaller than a Congress of 535 people. Congress is covered by TV four times as much as the court is. The White House is covered eight times as much, says Lee Epstein of Washington University in St. Louis. The court stands out now because it is not part of Washington's political swamp. The carefully cultivated aloofness of the Supreme Court is, in the Washington scene, almost countercultural in nature. The court's warts don't show. "People don't see the court infighting; it seems more harmonious and less political," says one court-watcher. "With Congress and the White House, we see the blood-letting on the street." Importantly, say scholars, current justices benefit from courageous stands the court took in cases like Brown school desegregation, and the Roe abortion-rights case - when the majority was fragile and the justices felt under great pressure. Those decisions are a main reason the court image is so buffed today.

#### Obama can deflect controversy to the Court

Spann 00 (Giradeau, Professor of Law – Georgetown University, “The Constitution Under Clinton: A Critical Assessment: Writing Off Race”, Law and Contemporary Problems, Winter / Spring, 63 Law & Contemp. Prob. 467, Lexis)  
What President Clinton has failed to do is to assert the full scope of his constitutional authority to formulate race relations policy for the nation that elected him to be its political leader. In so doing, he has aligned himself with past Presidents who were passive rather than active in the formulation of constitutional policy. It is often convenient for a President to deflect political controversy to the Supreme Court. A President can appease political allies with rhetoric that endorses more than the Court will allow, and can appease political opponents by acquiescing in Court-ordered results that fall short of presidential rhetoric. That is rational behavior for a politician - particularly in the contemporary environment of designer politics, where rhetorical labels seem to matter at least as much substantive outcomes. It is rational, but it may also be unconstitutional.