## \*\*\*1NC

### 1NC – T Hostilties

**T – HOSTILITIES**

#### “Hostilities” require an active exchange of fire with enemy force—the aff isn’t

Lee, U.S. Senator from Utah, and Koh, Legal Adviser of the U.S. Department of State and Sterling Professor of International Law at Yale, 6/28/2011

(Mike and Harold, Libya and War Powers, hearing of the U.S. Senate Foreign Relations Committee, CQ Testimony, Lexis)

First question I'd like to ask you relates to the definition of -- of **the term "hostilities" as used in Section 1541** and elsewhere in the War Powers Resolution. How do you sort of define the term "hostilities" as used in the War Powers Resolution? KOH: As our testimony sets forth, **the effort to define it** -- and -- and this is described in the descriptions of the conversations of Senator Javits, the sponsor, et cetera -- **was to leave the matter for subsequent executive practice**. Senator Corker had mentioned the House conference report had originally proposed the term "armed conflict." There's an irony in the question which is that arm conflicts is term of international law. They deliberately did not import that term into the statute precisely so that international law would not be the controlling factor. And the net result was that in 1975 under the Ford administration -- and -- and you know it well because of service that your own family did in that administration. The Congress -- and this is in the first footnote of my testimony -- invited the legal adviser, my predecessor, Monroe Leigh, **to come forth with a definition of hostilities** from the executive branch applying exactly the judgments that we're describing here. And in my testimony, I described the response that was given by Mr. Leigh and his co-author in which they essentially set forth a standard. And this is on page six of the testimony in which they said the executive branch understands the term "to mean **a situation in which units of U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces**" **and** then said that **the term should not include situations** which were -- ones **in which the nature of the mission is limited**, **where the exposure of U.S. forces is limited**, **where the risk of escalation is limited**, **or** when they're conducting **something less than full military encounters** as opposed to surgical military activity. LEE: Where is that from? Where is that from, Mr. Koh? KOH: It's described on page six of my testimony and it's in the first footnote of a letter from State Department of Legal Adviser Monroe Leigh with regard to the Mayaguez incident to the International Security and Scientific Affairs of the House Committee on International Relations. **It's an important document**, Senator, **because Congress acknowledged that it didn't know what** "**hostilities**" **meant from the legislative history alone**. And **so they invited the executive branch to give clarification**.

#### Vote neg for limits—any military policy involves the chance of conflict – this is the only clear standard

#### At best they’re extra topical which is still a reason to reject the team because it doesn’t affirm the resolution and gives the aff unpredictable advantage ground

### 1NC – T Restrictions

**T – RESTRICTIONS**

#### Restrictions are prohibitions on action—the aff is not

#### **Schiedler-Brown ‘12**

Jean, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### Vote neg—for limits and coherence—there are hundreds of insignificant conditions congress could impose and the question of the resolution is what powers the president has, not how he must use them—they destroy clash and literature

### 1NC – NonViolence K

**NON VIOLENCE**

#### Insisting on law to constrain executive violence ignores the role it plays in constructing exceptionalism; this depolitisization of war powers can only be resisted by rejecting the politics of security

Neocleous 8 (Mark Professor of the Critique of Political Economy at Brunel University (“Critique of Security”, McGill-Queen’s University, pp. 72-75, Published 2008))

But there is a wider argument to be made, one with political implications. The idea that the permanent emergency involves a suspension of the law encourages the idea that resistance must involve a 'return to legality', a return to the 'normal' mode of governing through the rule of law. This involves a serious misjudgement in which it is simply assumed that legal procedures - both international and domestic are designed to protect human rights from state violence. 'Law' are comes to appear largely unproblematic and the rule of law 'an unqualified human good'." What this amounts to is what I have elsewhere called a form of legal fetishism, in which Law becomes a mystical answer to the problems posed by power. In the process, the problems inherent in Law are ignored. Law is treated as an 'indepen- dent' or 'autonomous' reality, explained according to its own dynamics, a Subject in itself whose very existence requires that individuals and institutions 'objectify' themselves before it. This produces the illusion that Law has a life of its own, abstracting the rule of law from its origins in class domination, ignoring the ways in which the rule of law is deployed as a political strategy, and obscuring the ideological mystification of these processes in the liberal trumpeting of the rule of law. To demand the return to the 'rule of law' is to seriously misread the history of the relation between the rule of law and emergency powers and, consequently, to get sucked into a less-than-radical politics in dealing with state violence. Part of what I am suggesting is that emergency measures are part of the everyday exercise of powers, working alongside rather than against the rule of law as part of a unified political strategy in the fabrication of social order. The question to ask, then, is less 'how can we bring law to bear on violence?' and much more 'what is it that the law permits emergency measures to accomplish?"' This question - the question that Schmitt, with his fetish for the decision cannot understand/'° which is also why contemporary Left Schmittianism is such a dead loss - disposes of any supposed juxtaposition between legality and emergency and allows us to recognise instead the extent to which the concept of emergency is deeply inscribed within the law and the legal condition of the modem state, and a central part of liberalism's authoritarian moment: the iron fist in the velvet glove of liberal constitutionalism. Far from suspending law or bracketing off the juridical, emergency powers lie firmly within the legal domain. How could they not, since they are so obviously central to state power and the political technology of government - part of the deployment of law, rather than its abandonment? Once this is recognised, the supposed problematic of violence disappears completely, for it can then be seen that emergency powers are deployed for the exercise of a violence necessary for the permanent refashioning of order - the violence of law, not violence contra law. Liberalism struggles with this, and thus presents it as an exceptional moment; fascism recognises it for what it is, and aestheticises the moment. As David Dyzenhaus points out, while the stripping of liberties in the name of emergency the denial of rights on the grounds of necessity and the suspension of freedoms through the exercise of prerogative might appear quite minor compared to what happens in fascist regimes, the fact that the stripping, denial and suspension does happen under the guise of emergency and in full view of the courts brings the legal order of liberal democracies far closer to the legal order of fascism than liberals would care to admit. But in a wonderful ideological loop, the rule of law is also its own ideological obfuscation of that fact The political implications of this are enormous. For if emergency powers are part and parcel of the exercise of law and violence (that is, law as violence), and if historically they have been aimed at the oppressed - in advanced capitalist states against the proletariat and its various struggles, in reactionary regimes against genuine politicisation of the people, in colonial systems against popular mobilisation - then they need to be fought not by demanding a return to the 'normal' rule of law, but in what Benjamin calls a real state of emergency, on the grounds that only this will improve our position in the struggle against the fascism of our time. And this is a task which requires violence, not the rule of law. As Benjamin saw, the law's claim to a monopoly of violence is explained not by the intention of preserving some mythical 'legal end' such as security or normality but, rather, for 'the intention of preserving the law itself'. But violence not in the hands of the law threatens it by its mere existence outside the law. A violence exercised not by the state, but used for very different political ends. For 'if the existence of violence outside the law, as pure immediate violence, is assured, [then] this furnishes proof that revolutionary violence ... is possible'."' That this possibility of and necessity for revolutionary violence is so often omitted when emergency powers are discussed is indicative of the extent to which much of the Left has given up any talk of political violence for the far more comfortable world of the rule of law, regardless of how little the latter has achieved in just the last few years. But if the history of emergency powers tells us anything it is that the least effective response to state violence is to simply insist on the rule of law. Rather than aiming to counter state violence with a demand for legality, then, what is needed is a counter-politics: against the permanent emergency by all means, but also against the 'normality' of everyday class power and the bourgeois world of the rule of law. And since the logic of emergency is so deeply embedded in the rhetorical structure of liberalism's concept of security this means being against the politics of security. For the very posing of political questions through the trope of emergency is always already on the side of security. To grasp why, we need to now refocus our attention more specifically on security as a political technology.

#### The 1AC’s securitization and obsession with American military dominance create a form of social relations that make extinction inevitable. Their knowledge production has been bankrupted by this system; and their epistemological underpinnings should be evaluated prior to the advantages.

Willson 13 (Brain, is a Ph.D New College San Fransisco, Humanities, JD, American University, “Developing Nonviolent Bioregional Revolutionary Strategies,” http://www.brianwillson.com/developing-nonviolent-bioregional-revolutionary-strategies/)

Industrial civilization is on a collision course with life itself. Facilitating its collapse is a deserved and welcomed correction, long overdue. Collapse is inevitable whether we seek to facilitate it or not. Nonetheless, whatever we do, industrial civilization, based as it is on mining and burning finite and polluting fossil fuels, cannot last because it is destroying the ecosystem and the basis of local, cooperative life itself. It knows no limits in a physically finite world and thus is unsustainable. And the numbers of our human species on earth, which have proliferated from 1.6 billion in 1900 to 7 billion today, is the consequence of mindlessly eating oil – tractors, fertilizers, pesticides, herbicides – while destroying human culture in the process. Our food system itself is not sustainable. Dramatic die-off is part of the inevitable correction in the very near future, whether we like it or not. Human and political culture has become totally subservient to a near religion of economics and market forces. Technologies are never neutral, with some being seriously detrimental. Technologies come with an intrinsic character representing the purposes and values of the prevailing political economy that births it. The Industrialism process itself is traumatic. It is likely that only when we experience an apprenticeship in nature can we be trusted with machines, especially when they capital intensive & complicated. The nation-state, intertwined more than ever with corporate industrialism, will always come to its aid and rescue. Withdrawal of popular support enables new imagination and energy for re-creating local human food sufficient communities conforming with bioregional limits. II. The United States of America is irredeemable and unreformable, a Pretend Society. The USA as a nation state, as a recent culture, is irredeemable, unreformable, an anti-democratic, vertical, over-sized imperial unmanageable monster, sustained by the obedience and cooperation, even if reluctant, of the vast majority of its non-autonomous population. Virtually all of us are complicit in this imperial plunder even as many of us are increasingly repulsed by it and speak out against it. Lofty rhetoric has conditioned us to believe in our national exceptionalism, despite it being dramatically at odds with the empirically revealed pattern of our plundering cultural behavior totally dependent upon outsourcing the pain and suffering elsewhere. We cling to living a life based on the social myth of US America being committed to justice for all, even as we increasingly know this has always served as a cover for the social secret that the US is committed to prosperity for a minority thru expansion at ANY cost. Our Eurocentric origins have been built on an extraordinary and forceful but rationalized dispossession of hundreds of Indigenous nations (a genocide) assuring acquisition of free land, murdering millions with total impunity. This still unaddressed crime against humanity assured that our eyes themselves are the wool. Our addiction to the comfort and convenience brought to us by centuries of forceful theft of land, labor, and resources is very difficult to break, as with any addiction. However, our survival, and healing, requires a commitment to recovery of our humanity, ceasing our obedience to the national state. This is the (r)evolution begging us. Original wool is in our eyes: Eurocentric values were established with the invasion by Columbus: Cruelty never before seen, nor heard of, nor read of – Bartolome de las Casas describing the behavior of the Spaniards inflicted on the Indigenous of the West Indies in the 1500s. In fact the Indigenous had no vocabulary words to describe the behavior inflicted on them (A Short Account of the Destruction of the Indies, 1552). Eurocentric racism (hatred driven by fear) and arrogant religious ethnocentrism (self-righteous superiority) have never been honestly addressed or overcome. Thus, our foundational values and behaviors, if not radically transformed from arrogance to caring, will prove fatal to our modern species. Wool has remained uncleansed from our eyes: I personally discovered the continued vigorous U.S. application of the “Columbus Enterprise” in Viet Nam, discovering that Viet Nam was no aberration after learning of more than 500 previous US military interventions beginning in the late 1790s. Our business is killing, and business is good was a slogan painted on the front of a 9th Infantry Division helicopter in Viet Nam’s Mekong Delta in 1969. We, not the Indigenous, were and remain the savages. The US has been built on three genocides: violent and arrogant dispossession of hundreds of Indigenous nations in North America (Genocide #1), and in Africa (Genocide #2), stealing land and labor, respectively, with total impunity, murdering and maiming millions, amounting to genocide. It is morally unsustainable, now ecologically, politically, economically, and socially unsustainable as well. Further, in the 20th Century, the Republic of the US intervened several hundred times in well over a hundred nations stealing resources and labor, while imposing US-friendly markets, killing millions, impoverishing perhaps billions (Genocide #3). Since 1798, the US military forces have militarily intervened over 560 times in dozens of nations, nearly 400 of which have occurred since World War II. And since WWII, the US has bombed 28 countries, while covertly intervening thousands of times in the majority of nations on the earth. It is not helpful to continue believing in the social myth that the USA is a society committed to justice for all , in fact a convenient mask (since our origins) of our social secret being a society committed to prosperity for a few through expansion at ANY cost. (See William Appleman Williams). Always possessing oligarchic tendencies, it is now an outright corrupt corporatocracy owned lock stock and barrel by big money made obscenely rich from war making with our consent, even if reluctant. The Cold War and its nuclear and conventional arms race with the exaggerated “red menace”, was an insidious cover for a war preserving the Haves from the Have-Nots, in effect, ironically preserving a western, consumptive way of life that itself is killing us. Pretty amazing! Our way of life has produced so much carbon in the water, soil, and atmosphere, that it may in the end be equivalent to having caused nuclear winter. The war OF wholesale terror on retail terror has replaced the “red menace” as the rhetorical justification for the continued imperial plunder of the earth and the riches it brings to the military-industrial-intelligence-congressional-executive-information complex. Our cooperation with and addiction to the American Way Of Life provides the political energy that guarantees continuation of U.S. polices of imperial plunder. III. The American Way Of Life (AWOL), and the Western Way of Life in general, is the most dangerous force that exists on the earth. Our insatiable consumption patterns on a finite earth, enabled by but a one-century blip in burning energy efficient liquid fossil fuels, have made virtually all of us addicted to our way of life as we have been conditioned to be in denial about the egregious consequences outsourced outside our view or feeling fields. Of course, this trend began 2 centuries earlier with the advent of the industrial revolution. With 4.6% of the world’s population, we consume anywhere from 25% to nearly half the world’s resources. This kind of theft can only occur by force or its threat, justifying it with noble sounding rhetoric, over and over and over. Our insatiable individual and collective human demands for energy inputs originating from outside our bioregions, furnish the political-economic profit motives for the energy extractors, which in turn own the political process obsessed with preserving “national (in)security”, e.g., maintaining a very class-based life of affluence and comfort for a minority of the world’s people. This, in turn, requires a huge military to assure control of resources for our use, protecting corporate plunder, and to eliminate perceived threats from competing political agendas. The U.S. War department’s policy of “full spectrum dominance” is intended to control the world’s seas, airspaces, land bases, outer spaces, our “inner” mental spaces, and cyberspaces. Resources everywhere are constantly needed to supply our delusional modern life demands on a finite planet as the system seeks to dumb us down ever more. Thus, we are terribly complicit in the current severe dilemmas coming to a head due to (1) climate instability largely caused by mindless human activities; (2) from our dependence upon national currencies; and (3) dependence upon rapidly depleting finite resources. We have become addicts in a classical sense. Recovery requires a deep psychological, spiritual, and physical commitment to break our addiction to materialism, as we embark on a radical healing journey, individually and collectively, where less and local becomes a mantra, as does sharing and caring, I call it the Neolithic or Indigenous model. Sharing and caring replace individualism and competition. Therefore, A Radical Prescription Understanding these facts requires a radical paradigmatic shift in our thinking and behavior, equivalent to an evolutionary shift in our epistemology where our knowledge/thinking framework shifts: arrogant separateness from and domination over nature (ending a post-Ice Age 10,000 year cycle of thought structure among moderns) morphs to integration with nature, i.e., an eco-consciousness felt deeply in the viscera, more powerful than a cognitive idea. Thus, we re-discover ancient, archetypal Indigenous thought patterns. It requires creative disobedience to and strategic noncooperation with the prevailing political economy, while re-constructing locally reliant communities patterned on instructive models of historic Indigenous and Neolithic villages.

#### Nonviolence is the only political act—the aff is worse than the conservative status quo they critique because they actively empower it—try or die for an ethics of equality

May 7 (Todd May is Professor of Philosophy at Clemson University. He is the author of seven books of philosophy, most recently Gilles Deleuze: An Introduction (Cambridge, 2005) and The Philosophy of Foucault (Acumen, 2006), “Jacques Rancière and the Ethics of Equality,” Project Muse)

In political action, the tapestry of this weaving together of cognitive and affective elements around the presupposition of equality has a name, although that name is rarely reflected upon. It is solidarity. Political solidarity is nothing other than the operation of the presupposition of equality internal to the collective subject of political action. It arises in the ethical character of that collective subject, a subject that itself arises only on the basis of its action. When one joins a picket line, or speaks publicly about the oppression of the Palestinians or the Tibetans or the Chechnyans, or attends a meeting whose goal is to organize around issues of fair housing, or brings one's bicycle to a ride with Critical Mass, one is not—if one is engaged in what Rancière calls politics—doing so from a position above or outside those alongside whom one struggles. Rather, one joins the creation of a political subject (which does not mean sacrificing one's own being to it). One acts, in concert with others, on the presupposition of the equality of any and every speaking being. And here is where the justificatory character of the ethics of political action lies. It cannot lie, as we have seen, in an ethical framework that possesses an ultimate foundation. It lies instead in a principle—the presupposition of equality—that can ground and justify political action only to the extent to which it is accepted by those alongside whom and [End Page 33] against whom one struggles. It is, in that sense, an optional ethical principle. But, as we have also seen, this does not mean that it is an arbitrary one. In our world, the presupposition of equality is embedded deep within the ethical framework of most societies. Even when it is honored in the breach, it remains honored. Political action consists in narrowing the breach. There remain two questions to ask about this ethics. The first one is interpretive and can be answered quickly: What is the relationship of this ethics to a vision of contemporary anarchism? The second is normative, and can only be responded to, at least at this moment, with a theoretical gesture: What, if any, implications for the specifics of political action does this ethical framework have? The interpretive question concerns the relation of the ethics of Rancière's politics to anarchism. I hope that the bond between the two will be obvious to those who have either studied or acted within the framework of anarchism. Anarchism's rejection of an avant-garde politics, its concern with the process of political action, its sensitivity to various forms of domination both in society at large and in political communities themselves, and its orientation toward radical equality, are all accounted for in the ethics and politics of the presupposition of equality. What Rancière's work does politically and implies ethically is of a piece with the deepest concerns of much of contemporary anarchism. Moreover, he offers a coherent way to frame those concerns and to bring them forward theoretically. Unlike traditional Marxism, anarchism, in its concern for equality, has often been reluctant to engage in theoretical reflection. If what has been said here is correct, that reluctance is unwarranted. There is much to be understood in politics, and many who can contribute to that understanding. Among what is to be understood is the second question alluded to above: what, if anything, do the ethics of political action imply for the character of political action itself? I would suggest that the pre-supposition of equality among those who act cannot remain limited to those alongside whom one acts. It must also apply to one's adversaries. If those who have no part are to see themselves as equal to those who have a part, then they must also see those who have a part as equal to them. This has implications for political action. I would suggest that such a presupposition of equality among all parties must orient political action toward non-violent means. One must, insofar as possible, refrain from treating those against whom one struggles as beneath consideration, as open game, or as what Kant would call solely a means to one's own ends. This requires political action to be more than just a struggle for [End Page 34] suppression of the adversary, even where the adversary engages in cynical domination. It must be creative in its expression of the presupposition of equality. Nonviolence in politics is often confused with passivity. This is not the place to explain the nature and possibilities of nonviolent action,7 however it must be understood that nonviolence often lies at the opposite pole from political passivity, further away from it than violent resistance. Violent resistance remains in many cases the norm. One is dominated, so one dominates; one is oppressed, so one oppresses. In that sense, violence is always the easy political option. It reverses the power in a relationship. What nonviolence can achieve is something else: not a reversal of power, but an effacing of the terms in which a context of power has been conceived. In the framework of a political orientation whose task is to declassify, nonviolent action carries with it more radical possibilities for declassification than the simple inversion that is the standard consequence of violent resistance. If this line of thinking is right, or even if it is wrong in a fruitful way, then the perspective that Rancière has opened for us is not so much a framework within which we can fit our political thinking as it is a door through which we must walk in order better to reflect upon that thinking. The presupposition of equality opens political thought to new vistas—vistas that, given the history of the last century, should appear more attractive to us now than they might once have done. In this sense, anarchism lies before us rather than behind us, as a political task to be thought and engaged rather than as a historical footnote to be buried alongside other challenges to the pervasive and multifarious dominations of our world.

### 1NC – Court Capital DA

#### Court Capital

#### Court will uphold treaty power in Bond now but it’s close.

Greve 2013

Michael S., professor at George Mason University School of Law, Straight Up, With Multiple Twists: Bond v. United States, January 21 2013, http://www.libertylawsite.org/2013/01/21/straight-up-with-multiple-twists-bond-v-united-states/

In truth, you don’t have to read Missouri so broadly. The treaty at issue dealt with things that cross international and national borders. There was no daylight between the treaty and the implementing legislation. And the state’s federalism argument was, as Holmes noted, a “thin reed.” There, in a nutshell, you have “proper” bounds of the treaty power. (For more on this, see the exchange between Rick Pildes, Nick Rosenkranz and Ilya Somin on the volokhconspiracy.) Having articulated those bounds, you could then say—as the Bond cert petition argues—that at the very least, courts should read treaties and implementing statutes to avoid constitutional doubts. The exemption for “peaceful” uses indicates that Congress intended to combat the spread of chemical weapons and materials for war-like purposes, as opposed to arming criminal prosecutors with yet another all-purpose club. The argument is more difficult than one might think. The government’s ready reply is that you can’t use a constitutional avoidance canon to create doubt where none exists. Holland isn’t really an issue here because Congress didn’t do anything that it could not also do under the Commerce Clause. Congress in its infinite wisdom decided that it needed a closed and complete regulatory system, just as it does for purposes of, say, the Controlled Substances Act. Under that statute, the plants on your window sill are fair game for the feds, see Raich. Well then: so is the stuff under your kitchen sink. No point in speculating about the outcome. This much, one can say with a tolerable degree of confidence: The justices know this case. Four justices on one side or the other voted to grant because they want to get to the grand themes of Missouri, and they would not have done so if they weren’t reasonably sure of a fifth vote on the merits. The difficulty of obtaining at least an implicit “fifth” precommitment is to my mind the readiest explanation for the multiple relists. (If someone has a better guess, let’s hear it.) If that’s right, the briefing and argument task is to shake or hold that vote, however it cuts. One more point of near-certainty: whichever way the case goes, what the justices say along the way will shape the contours of treaty law and its constitutional boundaries for many, many years to come.

#### Aff is a massive change – kills court capital.

Devins 2010

Neal, Professor of Law at William and Mary, Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1024&context=facpubs

Without question, there are very real differences between the factual contexts of Kiyemba and Bush-era cases. These differences, however, do not account for the striking gap between accounts of Kiyemba as likely inconsequential and Bush-era cases as "the most important decisions" on presidential power "ever., 20 In the pages that follow, I will argue that Kiyemba is cut from the same cloth as Bush-era enemy combatant decision making. Just as Kiyemba will be of limited reach (at most signaling the Court's willingness to impose further limits on the government without forcing the government to meaningfully adjust its policymaking), Bush-era enemy combatant cases were modest incremental rulings. Notwithstanding claims by academics, opinion leaders, and the media, Supreme Court enemy combatant decision making did not impose significant rule of law limits on the President and Congress. Bush-era cases were certainly consequential, but they never occupied the blockbuster status that so many (on both the left and the right) attributed to them. Throughout the course of the enemy combatant dispute, the Court has never risked its institutional capital either by issuing a decision that the political branches would ignore, or by compelling the executive branch to pursue policies that created meaningful risks to national security. The Court, instead, took limited risks to protect its turf and assert its power to "say what the law is." That was the Court's practice during the Bush years, and it is the Court's practice today.

#### Upholding Missouri v Holland is key to treaties but capital is key.

Spiro 2008

Peter J., Professor of Law, Temple University, Resurrecting Missouri v. Holland, Missouri Law Review http://law.missouri.edu/lawreview/files/2012/11/Spiro.pdf

Even with respect to the Children’s Rights Convention, the balance may change. At both levels, the game is dynamic. On the international plane, as more attention is focused on human rights regimes, the costs of nonparticipation rise. Other countries and other international actors (human rights NGOs, for example) will train a more focused spotlight on U.S. nonparticipation.28 From a human rights perspective, it’s low-hanging fruit; the mere fact that the United States finds itself alone with Somalia outside the regime suffices to demonstrate the error of the American stance as a leading example of deplored American exceptionalism. For progressive advocacy groups focusing on children’s rights, the Convention is emerging as an agenda item.29 More powerful actors, including states and such major human rights groups as Amnesty International and Human Rights Watch, may be unlikely to put significant political resources into the effort, but there is the prospect of a drumbeat effect and accompanying stress to U.S. decisionmakers. 30 In the wake of international opprobrium associated with post-9/11 antiterror strategies, U.S. conformity with human rights has come under intensive international scrutiny. That scrutiny is spilling over into other human rights-related issues; there will be no more free passes for the United States when it comes to rights.31 Human rights may present the most obvious flash point along the Holland front, but it will not be the only one. As Antonia Chayes notes, “resentment runs deep” against U.S. treaty behavior.32 International pressure on the United States to fully participate in widely-subscribed international treaty regimes, some of which could constitutionally ride on the Treaty Power alone, will grow more intense. At the same time that the international price of non-participation rises, a subtle socialization may be working to lower the domestic cost of exercising Holland-like powers. Globalization is massaging international law into the sinews of American political culture. The United States may not have ratified the Convention on the Rights of the Child, for example, but it has acceded to Hague Conventions on abduction33 and adoption,34 as well as optional protocols to the Children’s Rights Convention itself,35 and has enthusiastically pursued an agreement on the transboundary recovery of child support.36 As international law becomes familiar as a tool of family law, the Children’s Convention will inevitably look less threatening even against America’s robust sentiments regarding federalism. Regimes in other areas should be to similar effect and will span the political divide. It is highly significant, for instance, that conservative Americans have become vocal advocates of international regimes against religious persecution, a key factor in the aggressive U.S. stance on Darfur.37 To the extent that conservatives see utility in one regime they will lose traction with respect to principled category arguments against others. Which is not at all to say that Holland will be activated with consensus support. A clear assertion of the Treaty Power against state prerogatives would surely provoke stiff opposition in the Senate and among anti-internationalist conservatives, setting the scene for a constitutional showdown.38 The adoption of a treaty regime invading protected state powers would require the expenditure of substantial political capital. Any president taking the Treaty Power plunge would be well advised to choose a battle to minimize policy controversy on top of the constitutional one. A substantively controversial regime depending on Holland’s authority (say, relating to the death penalty) would increase the risk of senatorial rebuke. Perhaps the best strategy would be to plant the seeds of constitutional precedent in the context of substantively obscure treaties, ones unlikely to attract sovereigntist flak. If a higher profile treaty implicating Holland were then put on the table, earlier deployments would undermine opposition framed in constitutional terms. Such was the case with the innovation of congressional-executive agreements, which, before their use in adopting major institutional regimes in the wake of World War II, had been used with respect to minor agreements in the interwar years.39 In contrast to the story of congressional-executive agreements, advocates of an expansive Treaty Power will have the advantage of Holland itself, that is, a Supreme Court decision on point and not superseded by a subsequent ruling. That would lend constitutional credibility to the proposed adoption of any agreement requiring the Treaty Power by way of constitutional support. But it wouldn’t settle the question in the face of the consistent practice described above. Holland is an old, orphaned decision, creating ample space for contemporary rejection. An anti-Holland posture, the decision’s status as good law notwithstanding, would also be bolstered by the highly credentialed revisionist critique.40 That of course begs the question of what the Supreme Court would do with the question were it presented. The Court could reaffirm Holland, in which case its resurrection would be official and the constitutional question settled, this time (one suspects) for good. That result would comfortably fit within the tradition of the foreign affairs differential (in which Holland itself is featured).41 One can imagine the riffs on Holmes, playing heavily to the imperatives of foreign relations and the increasing need to manage global challenges effectively. The opinion might not write itself, but it would require minimal creativity. Recent decisions, Garamendi notably among them,42 would supply an updated doctrinal pedigree. And since the question would come to the Court only after a treaty had garnered the requisite two-thirds’ support in the Senate, the decision would not likely require much in the way of political fortitude on the Court’s part. It would also likely draw favorable international attention, reaffirming the justices’ membership in the global community of courts.43 IV. CONCLUSION:CONSTITUTIONAL LIFE WITHOUT MISSOURI V. HOLLAND Holland’s judicial validation would hardly be a foregone conclusion. The Supreme Court has grown bolder in the realm of foreign relations. Much of this boldness has been applied to advance the application of international norms to U.S. lawmaking, the post-9/11 terror cases most notably among them.44 The VCCR decisions, on the other hand, have demonstrated the Court’s continued resistance to the application of treaty obligations on the states. In Medellín, where the Court found the President powerless to enforce the ICJ’s Avena decision on state courts, that resistance exhibited itself over executive branch objections. The Court rebuffed the President with the result of retarding the imposition of international law on the states and at the risk of offending powerful international actors.

#### Treaties solve extinction

Koh and Smith 2003

Harold Hongju Koh, Professor of International Law, and Bernice Latrobe Smith, Yale Law School; Assistant Secretary of State for Democracy, Human Rights and Labor, “FOREWORD: On American Exceptionalism,” May 2003, 55 Stan. L. Rev. 1479

Similarly, the oxymoronic concept of "imposed democracy" authorizes top-down regime change in the name of democracy. Yet the United States has always argued that genuine democracy must flow from the will of the people, not from military occupation. 67 Finally, a policy of strategic unilateralism seems unsustainable in an interdependent world. For over the past two centuries, the United States has become party not just to a few treaties, but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to break or bend one treaty commitment thus rarely end the matter, but more usually trigger vicious cycles of treaty violation. In an interdependent world, [\*1501] the United States simply cannot afford to ignore its treaty obligations while at the same time expecting its treaty partners to help it solve the myriad global problems that extend far beyond any one nation's control: the global AIDS and SARS crises, climate change, international debt, drug smuggling, trade imbalances, currency coordination, and trafficking in human beings, to name just a few. Repeated incidents of American treaty-breaking create the damaging impression of a United States contemptuous of both its treaty obligations and treaty partners. That impression undermines American soft power at the exact moment that the United States is trying to use that soft power to mobilize those same partners to help it solve problems it simply cannot solve alone: most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, or the renewed nuclear militarization of North Korea.

### 1NC – Warfighting DA

**WARFIGHTING**

#### First link is Lawfare – creates a chillin effect on operations

**Cheng, Heritage Chinese political and security affairs research fellow, 2012**

(Dean, “Winning Without Fighting: Chinese Legal Warfare”, 5-21, lexis, ldg)

On the other hand, the proper conduct of armies and nations, especially in the context of the Laws of Armed Conflict (LOAC), is seen as integral to legal warfare. A brief, non-exhaustive review of American writings suggests that U.S. analysts of legal warfare focus on how charges of violations of the LOAC might be used to frustrate or hinder American military operations, especially in the context of counterinsurgency (COIN) operations. In his landmark 2001 essay on legal warfare, then-Colonel Charles Dunlap observed that a particular form of legal warfare was gaining broader acceptance: "a cynical manipulation of the rule of law and the humanitarian values it represents."[13] Dunlap raised the concern that lawfare was pursued not so much to ensure that nations followed the LOAC, but to "destroy the will to fight by undermining the public support that is indispensable" for successful war-fighting, especially in democracies such as the United States. [14] Dunlap himself has since somewhat modified this view, emphasizing that the concept of legal warfare is neutral rather than pernicious. He has recently described legal warfare as "the strategy of using-or misusing-law as a substitute for traditional military means to achieve an operational objective," eliminating the presumption that it is misuse of the law (while noting that such misuse may nonetheless occur).[15] Even where it is not seen as a deliberate misuse of the law, there are concerns that legal warfare will hamper Western, and especially American, military operations. As a summary of a 2003 Council on Foreign Relations conference observes, "Lawfare can be used to undercut American objectives."[16] Furthermore, the 2005 National Defense Strategy of the United States (NDS) placed lawfare (the use of "judicial processes") alongside terrorism and international fora in its list of American vulnerabilities.[17] In the 2008 NDS, the Department of Defense noted that there is a significant concern with violent extremist movements "hiding behind international norms and national laws when it suits them, and attempting to subvert them when it does not."[18] The 2008 NDS goes on to state that there is a need to address "growing legal and regulatory restrictions that impede, and threaten to undermine, our military readiness."[19] The U.S. remains concerned that Western military commanders will operate under excessive restraint, choosing to err on the side of caution for fear of violating international law-especially the LOAC. Exacerbating this undue caution would be concerns about undercutting public support, both at home and abroad, if military operations were seen as contravening legal standards.

#### Causes terrorism and rogue state proliferation

Yoo 12 (John, professor of law at the University of California, Berkeley, “War Powers Belong to the President,” http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president)

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### Rogue states cause extinction

**Johnson, Forbes contributor and Presidential Medal of Freedom winner, 2013**

(Paul, “A Lesson For Rogue States”, 5-8, <http://www.forbes.com/sites/currentevents/2013/05/08/a-lesson-for-rogue-states/>, ldg)

Although we live in a violent world, where an internal conflict such as the Syrian civil war can cost 70,000 lives over a two-year period, there hasn’t been a major war between the great powers in 68 years. Today’s three superpowers–the U.S., Russia and China–have no conflicts of interest that can’t be resolved through compromise. All have hair-trigger nuclear alert systems, but the sheer scale of their armories has forced them to take nuclear conflict seriously. Thus, in a real sense, nuclear weapons have succeeded in abolishing the concept of a winnable war. The same cannot be said, however, for certain paranoid rogue states, namely North Korea and Iran. If these two nations appear to be prospering–that is, if their nuclear threats are winning them attention and respect, financial bribes in the form of aid and all the other goodies by which petty dictators count success–other prospective rogues will join them. One such state is Venezuela. Currently its oil wealth is largely wasted, but it is great enough to buy entree to a junior nuclear club. Another possibility is Pakistan, which already has a small nuclear capability and is teetering on the brink of chaos. Other potential rogues are one or two of the components that made up the former Soviet Union. All the more reason to ensure that North Korea and Iran are dramatically punished for traveling the nuclear path. But how? It’s of little use imposing further sanctions, as they chiefly fall on the long-suffering populations. Recent disclosures about life in North Korea reveal how effectively the ruling elite is protected from the physical consequences of its nuclear quest, enjoying high standards of living while the masses starve. Things aren’t much better in Iran. Both regimes are beyond the reach of civilized reasoning, one locked into a totalitarian vise of such comprehensiveness as to rule out revolt, the other victim of a religious despotism from which there currently seems no escape. Either country might take a fatal step of its own volition. Were North Korea to attack the South, it would draw down a retribution in conventional firepower from the heavily armed South and a possible nuclear response from the U.S., which would effectively terminate the regime. Iran has frequently threatened to destroy Israel and exterminate its people. Were it to attempt to carry out such a plan, the Israeli response would be so devastating that it would put an end to the theocracy forthwith. The balance of probabilities is that neither nation will embark on a deliberate war but instead will carry on blustering. This, however, doesn’t rule out war by accident–a small-scale nuclear conflict precipitated by the blunders of a totalitarian elite. Preventing Disaster The most effective, yet cold-blooded, way to teach these states the consequences of continuing their nuclear efforts would be to make an example of one by destroying its ruling class. The obvious candidate would be North Korea. Were we able to contrive circumstances in which this occurred, it’s probable that Iran, as well as any other prospective rogues, would abandon its nuclear aims. But how to do this? At the least there would need to be general agreement on such a course among Russia, China and the U.S. But China would view the replacement of its communist ally with a neutral, unified Korea as a serious loss. Compensation would be required. Still, it’s worth exploring. What we must avoid is a jittery world in which proliferating rogue states perpetually seek to become nuclear ones. The risk of an accidental conflict breaking out that would then drag in the major powers is too great. This is precisely how the 1914 Sarajevo assassination broadened into World War I. It is fortunate the major powers appear to have understood the dangers of nuclear conflict without having had to experience them. Now they must turn their minds, responsibly, to solving the menace of rogue states. At present all we have are the bellicose bellowing of the rogues and the well-meaning drift of the Great Powers–a formula for an eventual and monumental disaster that could be the end of us all.

#### The second Link is the NAVY – their lawsuits compromise it

**Cohen, National Center for Public Policy Research senior fellow, 2003**

(Bonner, “Environmental Regulations Impede Pentagon Readiness”, <http://news.heartland.org/newspaper-article/2003/03/01/environmental-regulations-impede-pentagon-readiness>, ldg)

Lawsuits brought by such groups as the Center for Biological Diversity and the Natural Resources Defense Council have sought to impose the Endangered Species Act, Migratory Bird Treaty Act, Marine Mammals Protection Act, and other environmental statutes on military bases. The lawsuits, and the restrictions on training that result from them, have come in direct conflict with military readiness: Wide areas of the ocean beach at the Navy’s amphibious base at Coronado, California have been designated as “critical habitat” for two species of shore birds, the Western plover and the least tern. When Navy Seals practice landing their rubber boats during breeding season, they must disrupt their tactical formations to move in narrow lanes, marked by green tape, to avoid disturbing potential nests. The result is what the Navy calls “negative training”--the development of bad habits that, if repeated in combat, will cause casualties. At Fort Hood, Texas, unit commanders are forced to “work around” 66,000 acres, or one-third of the training area, to protect the habitat of the golden-cheeked warbler and the black-capped vireo. The restrictions placed on soldiers’ training reduce the realism of combat exercises and makes them less prepared to cope with real battlefield situations. At Camp Pendleton near San Diego, California, the U.S. Fish & Wildlife Service proposed designating more than 57 percent of the base’s 125,000 acres as critical habitat for the endangered California gnat-catcher. That designation, coupled with existing environmental restrictions at Camp Pendleton, would have rendered the base virtually unusable for realistic combat training. Ultimately, the Clinton administration decided not to designate new critical habitat at Camp Pendleton--a decision currently being challenged by environmental groups in court. ESA Particularly Problematic These examples, to which dozens more could be added, underscore the problems the armed services are facing. The Endangered Species Act is particularly crippling. The courts have held that, under the ESA, critical habitat is intended for species recovery. Rather than military lands being used for military purposes, once critical habitat is designated, such lands must be used first for species recovery. With each lawsuit filed by an environmental group under the ESA, more military land threatens to come under the jurisdiction of the statute. The Department of Defense manages more than 450 installations on some 25 million acres in the U.S., providing sanctuary to roughly 300 species listed as threatened or endangered. Ironically, it is the Defense Department’s good stewardship of its lands that has attracted the species ... and the lawsuits. This, of course, is the fate private landowners have suffered for decades. Instead of being subjected to the ESA, the Pentagon would like to continue its practice of protecting species on military installations through Integrated Natural Resources Management Plans (INRMPs), which are required under the Sikes Act and developed in close cooperation with the Department of Interior and state wildlife agencies. This approach has been endorsed by both the Clinton and the Bush administrations. The widespread presence of threatened and endangered species on military bases attests to the effectiveness of INRMPs. Environmental groups opposed to the Pentagon’s approach point out the President already has the authority under certain environmental statutes to waive environmental requirements in case of war or national emergency. However, many environmental statutes do not provide for wartime waivers, and in most that do the President may apply national security exceptions only if doing so is deemed to be in the “paramount interest” of the United States--the highest standard in the nation’s laws. Moreover, notes the Pentagon, military readiness requires training and testing at all times-- not just during national emergencies. Rather than expecting the President to micro-manage training decisions at scores of military bases around the country, the Pentagon argues, those decisions are best left in the hands of local commanders.

#### Nuclear war

**England et al., former deputy secretary of defense, 2011**

(Gordon, “The Necessity of U.S. Naval Power”, 7-11, <http://gcaptain.com/necessity-u-s-naval-power?27784>, ldg)

The future security environment underscores two broad security trends. First, international political realities and the internationally agreed-to sovereign rights of nations will increasingly limit the sustained involvement of American permanent land-based, heavy forces to the more extreme crises. This will make offshore options for deterrence and power projection ever more paramount in support of our national interests. Second, the naval dimensions of American power will re-emerge as the primary means for assuring our allies and partners, ensuring prosperity in times of peace, and countering anti-access, area-denial efforts in times of crisis. We do not believe these trends will require the dismantling of land-based forces, as these forces will remain essential reservoirs of power. As the United States has learned time and again, once a crisis becomes a conflict, it is impossible to predict with certainty its depth, duration and cost. That said, the U.S. has been shrinking its overseas land-based installations, so the ability to project power globally will make the forward presence of naval forces an even more essential dimension of American influence. What we do believe is that uniquely responsive Navy-Marine Corps capabilities provide the basis on which our most vital overseas interests are safeguarded. Forward presence and engagement is what allows the U.S. to maintain awareness, to deter aggression, and to quickly respond to threats as they arise. Though we clearly must be prepared for the high-end threats, such preparation should be made in balance with the means necessary to avoid escalation to the high end in the first place. The versatility of maritime forces provides a truly unmatched advantage. The sea remains a vast space that provides nearly unlimited freedom of maneuver. Command of the sea allows for the presence of our naval forces, supported from a network of shore facilities, to be adjusted and scaled with little external restraint. It permits reliance on proven capabilities such as prepositioned ships. Maritime capabilities encourage and enable cooperation with other nations to solve common sea-based problems such as piracy, illegal trafficking, proliferation of W.M.D., and a host of other ills, which if unchecked can harm our friends and interests abroad, and our own citizenry at home. The flexibility and responsiveness of naval forces provide our country with a general strategic deterrent in a potentially violent and unstable world. Most importantly, our naval forces project and sustain power at sea and ashore at the time, place, duration, and intensity of our choosing. Given these enduring qualities, tough choices must clearly be made, especially in light of expected tight defense budgets. The administration and the Congress need to balance the resources allocated to missions such as strategic deterrence, ballistic missile defense, and cyber warfare with the more traditional ones of sea control and power projection. The maritime capability and capacity vital to the flexible projection of U.S. power and influence around the globe must surely be preserved, especially in light of available technology. Capabilities such as the Joint Strike Fighter will provide strategic deterrence, in addition to tactical long-range strike, especially when operating from forward-deployed naval vessels. Postured to respond quickly, the Navy-Marine Corps team integrates sea, air, and land power into adaptive force packages spanning the entire spectrum of operations, from everyday cooperative security activities to unwelcome — but not impossible — wars between major powers. This is exactly what we will need to meet the challenges of the future.

### 1NC – Citizen Suit CP

**CITIZEN SUIT COUNTERPLAN**

#### The federal judiciary should determine that equitable relief be granted under the citizen suit provisions in federal environmental legislation. The federal judiciary should determine that environmental citizen suits are justiciable and in particular that global warming suits have standing.

#### That determination should not apply to the military.

#### It solves the case and avoids the disads

#### equitable relief ruling solves their citizen suit good advantage

Taylor 13 (1AC)

[Archita, J.D., Seattle University School of Law, Lead Article Editor on the Seattle Journal of Environmental Law. Adopting the Principle of Equitable Relief in Clean Water Act Challenges, 5/13/13, <http://www.sjel.org/vol3/adopting-the-principle-of-equitable-relief-in-cwa-challenges>]

I. Introduction Citizen groups have historically had a huge impact in affecting legislation and pushing for just interpretations of the law.1 They have been key players in the realm of environmental law, and they will continue to play a key role as we move forward into an uncertain future with scarce resources and greater threats posed to our environment.2 However, absent citizen suits, environmentally concerned citizens cannot effectively enforce issues concerning environmental and natural resources.3 Specifically, citizen groups have played a critical role in bringing challenges against various entities, including corporations and private businesses, under the Clean Water Act (CWA). In 1987, Congress amended the original legislation and significantly expanded the limitations on citizen suits with the passage of the Water Quality Act of 1987.4 Section 309(g)—the citizen suit portion of the CWA—was added in 1987 upon the passage of the Water Quality Act.5 Section 309(g)(6)(A) of the CWA limits citizen action against violators when an administrative enforcement action by the government has already commenced and is being diligently prosecuted by the government to require compliance by the polluters.6 Nonetheless, the question remains whether this civil penalty bar includes a ban on equitable relief for claims brought under the CWA. Equitable relief granted under the citizen suit provision of the CWA would allow private citizens to act as enforcers, and through the judicial system, receive not just monetary relief, but also equitable relief such as injunctions and specific performance.7 There is a circuit split on this very question with the First and Eighth Circuits deciding that there is a ban on equitable relief, and the Tenth Circuit holding that a civil penalty ban does not also include a ban on equitable relief.8 Since the Tenth Circuit’s decision in Paper Allied-Industrial, Chemical and Energy Workers International Union v. Continental Carbon Co. in 2005, the landscape for environmental legislation has changed significantly and environmental concerns have come to the forefront of the national agenda.9 Growing concerns about our limited natural resources have brought environmental issues to the attention of many policymakers and government officials. The most recent case to address this issue was decided in a District Court in California in July of 2011. The Ninth Circuit, however, has yet to decide whether equitable relief is included in the civil penalty bar under the CWA.10 In this article, I argue that equitable relief should be allowed under Section 309(g) of the CWA, which as written, bars civil penalties. Specifically, I will analyze a case, California Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc., that arose in the Eastern District of California, which was decided on a different issue, but discussed the issue of the equitable relief ban.11 I argue that if California Sportfishing, or any similar case, comes to court again under the civil penalty bar issue the citizen group should not be barred from bringing a claim for equitable relief. Rather than requiring monetary compensation under the CWA, an injunction would allow a court to require the Chico Scrap Metal Company to lower the amount of pollutants it releases into California waters. In this case, an injunction would be particularly effective because it would address the root of the problem. In comparison, a monetary penalty would not directly stop the emission of pollutants by Chico into nearby water systems. While a monetary penalty could certainly serve as a deterrent, there is no guarantee that it would prove to be an effective deterrent. Moreover, until the Supreme Court resolves the issue of whether the civil penalty bar includes claims for equitable relief, these types of cases will remain either unresolved or indeterminate. A Supreme Court decision on this issue would not only bring finality, but it would also clearly display the government’s commitment to addressing growing environmental concerns. Additionally, a Supreme Court decision in favor of allowing equitable relief under the civil penalty ban would preserve the critical role that citizen groups have played in recent history in enforcing environmental legislation, particularly the CWA. In general, citizen groups have historically played a major role in addressing environmental issues.12 Thus, a Supreme Court decision in favor of allowing equitable relief would ensure that citizen groups continue to play a major role in addressing environmental concerns in the future.

### 1NC Environment Advantage

#### ENVIRONMENT

#### The plan bankrupts the DOD .

Palatucci 04 (Scott M. Palatucci, 10 Widener L. Rev. 585, THE EFFECTIVENESS OF CITIZEN SUITS IN PREVENTING THE ENVIRONMENT FROM BECOMING A CASUALTY OF WAR, http://www.temple.edu/lawschool/iilpp/EnvironmentalRoundtableResearchDocs/Palatucci%20-%20Effectiveness%20of%20Citizen.pdf)

The DOD has good reason to fear "citizen suits," not only because they have the power to bring military activities to a screeching halt if the damage caused by such activities warrants injunction, but also because retroactive liability for past acts could be economically devastating. "[R]etroactive liability is a potentially unfunded liability of such enormous magnitude that it could place many government contractors [like the DOD] on the brink of, or actually into, bankruptcy." n27 Because the DOD is one of the nation's largest environmental polluters, unrestricted retroactive liability could consume a substantial portion of the defense budget that would otherwise be used for military readiness and modernization. n28 To illustrate the potential economic ramiﬁcations of liability, in 1995 the DOD estimated there were approximately 19,000 sites at more than 1,700 military installations that needed "clean--up" because of spent munitions and shells left on [\*590] ﬁring ranges. n29 The DOD estimated that if the federal government were to undertake such an effort, it would cost well in excess of twenty--ﬁve billion dollars. n30 Since 1995, matters have become increasingly worse, as a 2001 Congressional Report revealed it may actually take up to 70 years to complete and cost billions more than the DOD originally estimated to effectuate the same clean--up. n31

#### That undermines the Asian pivot – turns their East Asia impact

Barno and Bensahel 12

David Barno, Lieutenant General, Center for a New American Security Senior Advisor and Senior Fellow, Nora Bensahel, Ph.D., CNAS Deputy Director of Studies and Senior Fellow, 1/6/12, You Can't Have It All, www.cnas.org/node/7641

On Thursday, President Barack Obama and his top defense advisers unveiled new strategic guidance to direct the U.S. military as it transitions from a decade of grueling ground wars to an era of new challenges, including a rising China and looming budget cuts. The administration has adopted what is best characterized as a "pivot but hedge" strategy: The United States will pivot to the Asia-Pacific but hedge against unexpected threats elsewhere, particularly in the greater Middle East. This new guidance makes good sense in today's world, but it assumes that the Pentagon will absorb only $487 billion in budget cuts over the next decade. **If** far **deeper cuts occur**, as required by sequestration, **the D**epartment **o**f **D**efense **will not have the resources to execute the guidance**. "**Pivot but hedge" will die in its crib**. The pivot to the Asia-Pacific is essential because the region stands poised to become the centerpiece of the 21st-century global economy. By 2015, East Asian countries are expected to surpass North America and the eurozone to become the world's largest trading bloc. Market opportunities will only increase as the region swells by an additional 175 million people by 2030. As America's economic interests in the Asia-Pacific grow, its diplomatic and military presence should grow to defend against potential threats to those interests. From the perspective of the United States and its Asian allies, China and North Korea represent the most serious military threats to regional security. China's military modernization continues to progress, and its foreign policy toward its neighbors has become increasingly aggressive over the past two years. Meanwhile, the death of Kim Jong Il means that nuclear-armed North Korea has begun a leadership transition that could lead to greater military aggressiveness as his son Kim Jong Un seeks to consolidate his power and demonstrate control. In light of these potential dangers, several Asian nations have asked the United States to strengthen its diplomatic and military presence in the region so it can remain the ultimate guarantor of peace and security. A bolstered U.S. presence will reassure allies who worry about American decline by clearly conveying an unwavering commitment to Asian security. But while the Asia-Pacific is becoming more important, instability across the greater Middle East -- from Tunisia to Pakistan -- still makes it the most volatile region in the world. The Arab Spring unleashed a torrent of political change that has reshaped the region in previously unfathomable ways. Iran continues to pursue nuclear weapons, and it has threatened recently to close the Strait of Hormuz. Trapped in the middle of the upheaval is Israel, a permanent ally and key pillar of America's regional security strategy. Meanwhile, U.S.-Pakistan relations continue to plunge toward a nadir, lessening American influence over a nuclear-armed and terrorist-infested state that is arguably the most dangerous country in the world. Amid these dangers, U.S. interests in the greater Middle East remain largely unchanged: ensuring the free flow of petroleum from a region containing 51 percent of proven global oil reserves, halting nuclear proliferation, and guarding against the diminished but still real threat of Islamist-inspired terror attacks. Protecting these interests will unquestionably require the active involvement of the U.S. military over the next 10 years and beyond, though this certainly does not mean U.S. troops will necessarily repeat the intensive counterinsurgency campaigns of the last decade. The administration's new guidance tries to balance America's rightful new focus on the Asia-Pacific with the continuing reality of deep instability in other areas of the world where U.S. interests are at stake. Yet implementing this "pivot but hedge" strategy successfully depends largely on how much Congress cuts from the Pentagon's budget, something that still remains undecided at the start of a divisive presidential election year. The 2011 Budget Control Act, signed as part of last summer's negotiations over raising the U.S. debt ceiling, contains spending caps that will reduce the Department of Defense's base budget (excluding ongoing war costs in Afghanistan) by at least $487 billion over 10 years, according to Pentagon estimates. This represents a decline of about 8 percent compared to current spending levels. Administration officials have repeatedly described these cuts as painful but manageable. Indeed, Defense Secretary Leon Panetta stated Thursday that these cuts require difficult choices but ultimately involve "acceptable risk." Yet deeper cuts are an entirely different story. Administration officials are extremely concerned about the Budget Control Act's automatic spending reduction process known as sequestration, which was triggered in November by the failure of the deficit reduction "super committee." According to the Congressional Budget Office, this process would roughly double the cuts to the Pentagon's base budget, resulting in nearly $900 billion in total reductions. Current law requires these cuts to take effect in January 2013 unless Congress enacts new legislation that supersedes it. The new guidance says little about what cuts the Department of Defense will make when it releases its fiscal year 2013 budget request next month. But the Pentagon has made clear that its new guidance and budget request assume it will absorb only $487 billion in cuts over the next 10 years. Defense officials have acknowledged that the new guidance cannot be executed if sequestration takes place. When announcing the new strategy, for instance, Panetta warned that sequestration "would force us to shed missions, commitments, and capabilities necessary to protect core U.S. national security interests." Sequestration would likely require the United States to abandon its longstanding global engagement strategy and to incur far greater risk in future military operations. If sequestration occurs, the Pentagon will likely repeat past mistakes by reducing capabilities such as ground forces that provide a hedge against unexpected threats. A pivot to the Asia-Pacific might remain an executable option under these conditions, but the U.S. ability to hedge against threats elsewhere -- particularly in the volatile Middle East -- would be diminished. This is a recipe for high risk in an uncertain and dangerous world. The Pentagon's new strategic guidance presents a realistic way to maintain America's status as a global superpower in the context of shrinking defense dollars. But **further cuts**, especially at the level required by sequestration, **would make this "pivot but hedge" strategy impossible to implement** **and** would **raise serious questions about whether the U**nited **S**tates **can continue to play the central role on the global stage**.

#### --the Environmental impact to HOSTILITIES is uncertain and hard to quantify—this is their 1ac evidence with the tiny parts blown up

Cohan 3 (John Alan – J.D., Loyola Law School, “MODES OF WARFARE AND EVOLVING STANDARDS OF ENVIRONMENTAL PROTECTION UNDER THE INTERNATIONAL LAW OF WAR”, 2003, 15 Fla. J. Int'l L. 481, lexis)

A further problem is that predictions of the extent of damage to an environment are somewhat tentative. The reverberations from environmental harm are quixotic compared to the reverberations from harm done to conventional targets such as a military air field or radar apparatus. The building can be rebuilt, and the impact on the surrounding infrastructure is somewhat straightforward. But in contrast, environmental damage, whether based on collateral damage or direct attacks on the environment itself, is something that has much more complex reverberations. Moreover, environmental damage is often difficult to contain or control, regardless of the intent of the actor. The environmental harm caused by Iraq's actions during Desert Storm continues to have adverse effects in terms of poisoning of the soil and waters, and will continue to have adverse effects on the local region, if not the world's oceans, for many years to come. On the other hand, "many predictions of what Gulf War damage would do to the environment proved exaggerated." n228 Thus, operations in future wars may well need to undergo scrutiny over a period of time before the degree of environmental risk can be established. Often enough, environmental damage may prove irreversible. Destruction or contamination of an area by chemical or biological agents may require the relocation of people and the migration (or extinction) of local species. An example of this, mentioned above, is the Scottish island of Gruinard which to this day remains contaminated with the causative agent of anthrax. Today military leaders and policymakers often display a growing concern for the environment by considering the foreseeability of environmental damage when they calculate proportionality. This is in contrast to wars of, say, fifty years ago, where concern over war's devastating effects on the environment was somewhat remote by comparison. The future will certainly bring us greater abilities to effectively manipulate the potentially dangerous forces that are pent-up in [\*538] the environment. On humanitarian principles, our efforts to develop environmental modification techniques needs to be dedicated to the benefit of humankind and nature. They must be carried out in good faith, facilitated by international understanding and cooperation and in the spirit of good neighborliness. The global environment is being subjected to ever more serious strains by a growing world population that seeks at least the basic necessities of life as well as some of its amenities. In order to help ensure that the increasingly limited resources of our environment are not further reduced by hostile military activities, it is urged that environmental issues in general and those raised by environmental warfare in particular be widely publicized, through schools, the press and by other means, in order to help develop and strengthen cultural norms in opposition to military activities that cause direct or indirect environmental harm.

#### --They cant solve environmental damage from OTHER militaries—their evidence

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

Environmental damage occurs with any adverse, incremental change in the existing status of the environment. n138 What then, is the "environment"? There are many definitions but none is universally accepted. n139 One might define the environment as the sum total of the components and constituents of the atmosphere, [\*460] biosphere, geosphere, hydrosphere, and lithosphere. n140 Another definition is that the environment is anything not made by humans. n141 States have been reluctant to expand the definition of environment to include such things as natural resources, climate modification, biodiversity, and ecosystems for fear of limiting their military options. n142 The U.S. Council on Environmental Quality's definition of the environment is "the natural and physical environment and the relationship of people with that environment." n143 This definition illustrates the problems of breadth, ambiguity, and circularity that plague this most basic concept, viz., exactly what are we attempting to protect. The real controversy lies not in defining "environment" but in identifying the threshold of damage that will give rise to a violation of international law. n144 In the future, armed conflict will continue and the damage from armed conflict, based on current trends, is certain to increase. n145 Modern technology has brought us to the age of new and more powerful precision guided or "smart" weapons, n146 but not every combatant has "smart" weapons in its arsenal and even those powers with "smart" weapons may not use them exclusively. For example, in the Gulf War, the United States mixed laser-guided bomb and missile attacks on Iraqi military installations with "carpet bombing" of the Iraqi Republican Guard. The former were much reported on the nightly television news; the latter was a much greater portion of the total ordnance expended in the air campaign. n147 Despite significant advances, "surgical precision" in the delivery of weapons is not yet [\*461] the norm even among the best of modern armed forces. n148 Significant collateral damage to the environment must therefore be anticipated even when precision guided munitions are used. In some cases, decidedly "low-tech" weapons such as contact naval mines remain militarily useful and plentiful. n149 They also have the advantage of being affordable by poor nations and nations without the capability to employ sophisticated weapons systems. Other powerful "poor man's" weapons of mass destruction include gas-enhanced explosives, biological and chemical weapons. n150 As the level of a weapon's sophistication decreases and as the reach of its effects increases, collateral damage to the environment also increases. In order to protect the environment, legal restraints on the use of all weapons are needed. Moral restraints have been ineffective. Tolerance of environmental damage during war is deep-rooted. n151 Many ethical traditions including Judeo-Christian, Muslim, Greek, and Taoist value nature. But none of these ancient cultural norms have operated in any significant way to limit environmental destruction in wartime. n152 Indeed, tolerance for environmental damage may be growing despite advancing military technologies that promise a lessening of adverse environmental impact. n153

#### --The have ZERO internal link to biodiversity loss through species extinctions—battlefield environmental damage is site-specific, they have NO CLAIM that this wipes out entire species

#### --Alt causes to base kick out—again, this is their tiny text blown up

Scoville 6 (Ryan M. – Stanford Law School, “A Sociological Approach to the Negotiation of Military Base Agreements” 2006, 14 U. Miami Int'l & Comp. L. Rev. 1, lexis)

Over the past half century, the United States has relied on its overseas military bases to protect its interests and meet a range of national security goals. n1 Bases in East Asia, for example, were indispensable during both the Korean War and Vietnam. n2 U.S. facilities in the Pacific facilitated intelligence gathering, operated as logistics and command centers, and enabled rapid deployment to conflict zones. n3 In Europe, too, an expansive network of bases abetted the U.S. effort to foster stability and contain Soviet influence during the Cold War. n4 Extensive U.S. reliance on foreign bases, however, did not diminish with the fall of the Soviet Union. According to the Department of Defense, the United States currently owns or rents a total of 860 military installations in approximately 40 foreign countries. n5 Motivated [\*3] by strategic demands related to the war on terrorism, the Pentagon is today developing a basing strategy that will establish several new foreign installations while reducing reliance on others. n6 Poland, Bulgaria, and Romania will reportedly house new U.S. facilities before long. n7 The Bush administration may also establish several permanent military bases in Iraq and Afghanistan. n8 Facilities in Central Asia will facilitate the war on terrorism. n9 Newly established bases in the Middle East and Eastern Europe, in addition to others that the Bush administration will soon establish, are elements of a massive transformation in the layout of U.S. military installations overseas, a transformation so dramatic that it constitutes a "big bang" in forward deployment strategy. n10 Not since the beginning of the Cold War has the United States so drastically restructured its network of foreign bases. n11 In the short term, these bases are supposed to facilitate the war on terrorism and increase U.S. influence over states such as Iran and Syria. In the long term, the bases may contain a rising [\*4] China, much like bases in Germany, Greece, and Japan contained the Soviet Union years ago. Despite the United States's continuing reliance on foreign military bases, it cannot set up new installations abroad or maintain its current installations without imposing substantial burdens on receiving states. n12 Noisy military aircraft, base-related crime, environmental degradation, and the threat of attack from enemies of the United States are all significant drawbacks to housing U.S. forces, and these problems have consistently generated discontent in host nations. Residents of Okinawa, for example, have opposed the presence of U.S. forces in their prefecture since the early post-World War II period, n13 and citizens of the Philippines did similarly until the removal of U.S. bases in 1991. n14 Antibase protests have also become increasingly strident among South Korean citizens in recent years. n15 In each of these countries and several others, angry citizens have coalesced to form social movements. These citizens have picketed, petitioned, held referenda, and demanded reform. These social movements should matter to the United States. Anti-U.S. military base movements reflect the legitimate grievances of foreign citizens who host U.S. forces, and they affect the United States's ability to station its troops abroad. Organized opposition to bases in the Philippines required the Philippine government to alter its negotiating strategy with the United States on base-related issues and eventually led to the expiration of the two countries' military base agreement. n16 Anti-American sentiment in Saudi Arabia during the U.S. war in Afghanistan [\*5] prevented Saudi officials from allowing the United States to fly sorties from their territory. n17 Today, the United States is repositioning its forces in South Korea in part because of widespread Korean discontent. n18 Given that bases are and will likely remain an important component of U.S. foreign policy, and given that anti-base movements have constrained the United States's ability to operate bases overseas, it is important to consider the conditions that enable anti-base movements to achieve their aims. Clearly, not all movements are successful. For example, while opposition to U.S. military bases in the Philippines precipitated U.S. force withdrawal in 1991, bases remain in Okinawa, even though citizens there have protested the U.S. presence for decades. Being able to explain why some anti-base movements fail while others succeed would help the United States to proactively adapt base agreements to the political contexts of receiving states--an outcome that could both increase the sustainability of the U.S. forward deployment strategy and reduce the burden that that strategy places on host nations. Being able to anticipate effective anti-base movements would also allow the United States to manage its configuration of bases more efficiently by reducing the need for diplomatically costly, post hoc amendments to base agreements, and by helping to identify proactively local populations that will most require appeasement.

#### --No iran impact- US is not committed to the STRATEGY of containment-- AGAIN, their tiny text blown up

**London** **10** (Herbert – President Emeritus of Hudson Institute and Professor Emeritus of New York University, The Coming Crisis in the Middle East, Family Security Matters, 6/23, http://www.hudson.org/index.cfm?fuseaction=publication\_details&id=7101&pubType=HI\_Opeds)

The gathering storm in the Middle East is gaining momentum. War clouds are on the horizon and like conditions prior to World War I all it takes for explosive action to commence is a trigger. Turkey’s provocative flotilla - often described in Orwellian terms as a humanitarian mission - has set in motion a flurry of diplomatic activity, but if the Iranians send escort vessels for the next round of Turkish ships, it could present a casus belli. It is also instructive that Syria is playing a dangerous game with both missile deployment and rearming Hezbollah. According to most public accounts Hezbollah is sitting on 40,000 long, medium and short range missiles and Syrian territory has served as a conduit for military material from Iran since the end of the 2006 Lebanon War. Should Syria move its own scuds to Lebanon or deploy its troops as reinforcement for Hezbollah, a wider regional war with Israel could not be contained. In the backdrop is an Iran with sufficient fissionable material to produce a couple of nuclear weapons. It will take some time to weaponize missiles, but the road to that goal is synchronized in green lights since neither diplomacy nor diluted sanctions can convince Iran to change course. Iran is poised to be the hegemon in the Middle East. It is increasingly considered the “strong horse” as American forces incrementally retreat from the region. Even Iraq, ironically, may depend on Iranian ties in order to maintain internal stability. From Qatar to Afghanistan all political eyes are on Iran. For Sunni nations like Egypt and Saudi Arabia regional strategic vision is a combination of deal making to offset the Iranian Shia advantage and attempting to buy or develop nuclear weapons as a counter weight to Iranian ambition. However, both of these governments are in a precarious state. Should either fall, all bets are off in the Middle East neighborhood. It has long been said that the Sunni “tent” must stand on two legs, if one, falls, the tent collapses. Should that tent collapse and should Iran take advantage of that calamity, it could incite a Sunni-Shia war. Or feeling its oats and no longer dissuaded by an escalation scenario with nuclear weapons in tow, war against Israel is a distinct possibility. However, implausible it may seem at the moment, the possible annihilation of Israel and the prospect of a second holocaust could lead to a nuclear exchange. The only wild card that can change this slide into warfare is an active United States’ policy. Yet curiously, the U.S. is engaged in both an emotional and physical retreat from the region. Despite rhetoric which suggests an Iran with nuclear weapons is intolerable, it has done nothing to forestall that eventual outcome. Despite the investment in blood and treasure to allow a stable government to emerge in Iraq, the anticipated withdrawal of U.S. forces has prompted President Maliki to travel to Tehran on a regular basis. And despite historic links to Israel that gave the U.S. leverage in the region and a democratic ally, the Obama administration treats Israel as a national security albatross that must be disposed of as soon as possible. As a consequence, the U.S. is perceived in the region as the “weak horse,” the one that is dangerous to ride. In every Middle East capital the words “unreliable and United States” are linked. Those seeking a moderate course of action are now in a distinct minority. A political vacuum is emerging, one that is not sustainable and one the Iranian leadership looks to with imperial exhilaration.

#### --Japan prolif inevitable- THEIR CARD,

Mauro 7 (Ryan – geopolitical analyst for Tactical Defense Concepts and for the Northeast Intelligence Network, founder of WorldThreats.com, national security advisor to the Christian Action Network, and an intelligence analyst with the Asymmetrical Warfare and Intelligence Center (AWIC), “The Consequences of Withdrawal from Iraq”, 5/7, http://www.worldthreats.com/?p=27)

Consequences in Asia American forces would be less able to block the shipment of drugs, banned goods, and WMD technology from North Korea to the Middle East. This increased revenue would help shore up North Korea’s oppressive regime, and allow them to arm our enemies. China’s rise in power would become inevitable and accelerated, as our Asian allies doubted our commitments, and would decide on appeasement and entering China’s sphere of influence, rather than relying upon America. The new dynamics in Asia, with allies of America questioning our strength, would result in a nuclear arms race. Japan would have no option but to develop nuclear weapons (although she may do so regardless). Two scenarios would arise: China would dominate the Pacific and America’s status as a superpower would quickly recede, or there would be a region wide nuclear stalemate involving Burma, China, India, Pakistan, North Korea, South Korea, Japan, and possibly Taiwan and Australia.

**No extinction from biodiversity**

Easterbrook 3(Gregg, senior fellow at the New Republic, “We're All Gonna Die!”, <http://www.wired.com/wired/archive/11.07/doomsday.html?pg=1&topic=&topic_set>=)

If we're talking about doomsday - the end of human civilization - many scenarios simply don't measure up. A single nuclear bomb ignited by terrorists, for example, would be awful beyond words, but life would go on. People and machines might converge in ways that you and I would find ghastly, but from the standpoint of the future, they would probably represent an adaptation. Environmental collapse might make parts of the globe unpleasant, but considering that the biosphere has survived ice ages, it wouldn't be the final curtain. Depression, which has become 10 times more prevalent in Western nations in the postwar era, might grow so widespread that vast numbers of people would refuse to get out of bed, a possibility that Petranek suggested in a doomsday talk at the Technology Entertainment Design conference in 2002. But Marcel Proust, as miserable as he was, wrote *Remembrance of Things Past* while lying in bed.

#### Adaptation solves environment

Ian **Thompson et al. 9**, Canadian Forest Service, Brendan Mackey, The Australian National University, The Fenner School of Environment and Society, College of Medicine, Biology and Environment, Steven McNulty, USDA Forest Service, Alex Mosseler, Canadian Forest Service, 2009, Secretariat of the Convention on Biological Diversity “Forest Resilience, Biodiversity, and Climate Change” Convention on Biological Diversity

While resilience can be attributed to many levels of organization of biodiversity, the genetic composition of species is the most fundamental. Molecular genet- ic diversity within a species, species diversity within a forested community, and community or ecosystem diversity across a landscape and bioregion represent expressions of biological diversity at different scales.

The basis of all expressions of biological diversity is the genotypic variation found in populations. The individuals that comprise populations at each level of ecological organization are subject to natural se- lection and contribute to the adaptive capacity or re- silience of tree species and forest ecosystems (Mull- er-Starck et al. 2005). Diversity at each of these levels has fostered natural (and artificial) regeneration of forest ecosystems and facilitated their adaptation to dramatic climate changes that occurred during the quaternary period (review by: DeHayes et al. 2000); this diversity must be maintained in the face of antici- pated changes from anthropogenic climate warming. Genetic diversity (e.g., additive genetic variance) within a species is important because it is the basis for the natural selection of genotypes within popu- lations and species as they respond or adapt to en- vironmental changes (Fisher 1930, Pitelka 1988, Pease et al. 1989, Burger and Lynch 1995, Burdon and Thrall, 2001, Etterson 2004, Reusch et al. 2005, Schaberg et al. 2008). The potential for evolutionary change has been demonstrated in numerous long- term programmes based on artificial selection (Fal- coner 1989), and genetic strategies for reforestation in the presence of rapid climate change must focus on maintaining species diversity and genetic diversi- ty within species (Ledig and Kitzmiller 1992). In the face of rapid environmental change, it is important to understand that the genetic diversity and adap- tive capacity of forested ecosystems depends largely on in situ genetic variation within each population of a species (Bradshaw 1991). Populations exposed to a rate of environmental change exceeding the rate at which populations can adapt, or disperse, may be doomed to extinction (Lynch and Lande 1993, Burger and Lynch 1995). Genetic diversity deter- mines the range of fundamental eco-physiological tolerances of a species. It governs inter-specific competitive interactions, which, together with dispersal mechanisms, constitute the fundamental de- terminants of potential species responses to change (Pease et al. 1989, Halpin 1997). In the past, plants have responded to dramatic changes in climate both through adaptation and migration (Davis and Shaw 2001). The capacity for long-distance migration of plants by seed dispersal is particularly important in the event of rapid environmental change. Most, and probably all, species are capable of long-distance seed disper- sal, despite morphological dispersal syndromes that would indicate morphological adaptations primarily for short-distance dispersal (Cwyner and MacDon- ald 1986, Higgins et al. 2003). Assessments of mean migration rates found no significant differences be- tween wind and animal dispersed plants (Wilkinson 1997, Higgins et al. 2003). Long-distance migration can also be strongly influenced by habitat suitabil- ity (Higgins and Richardson 1999) suggesting that rapid migration may become more frequent and vis- ible with rapid changes in habitat suitability under scenarios of rapid climate change. The discrepancy between estimated and observed migration rates during re-colonization of northern temperate forests following the retreat of glaciers can be accounted for by the underestimation of long-distance disper- sal rates and events (Brunet and von Oheimb 1998, Clark 1998, Cain et al. 1998, 2000). Nevertheless, concerns persist that potential migration and ad- aptation rates of many tree species may not be able to keep pace with projected global warming (Davis 1989, Huntley 1991, Dyer 1995, Collingham et al. 1996, Malcolm et al. 2002). However, these models refer to fundamental niches and generally ignore the ecological interactions that also govern species dis- tributions.

#### No Iranian escalation

**Alcaro, European Foreign and Security Policy Studies research fellow, 2012**

(Riccardo, “Avoiding the Unnecessary War. Myths and Reality of the West-Iran Nuclear Standoff”, March, online pdf, ldg)

There are at least three countries that might feel compelled to catch up with Iran: Turkey, Egypt, and Saudi Arabia. However, no automatism should be presumed. Turkey is part of a nuclear-armed military alliance, NATO, hosts US nuclear weapons in its bases, and has recently agreed to install parts of a US-built and NATO-run ballistic missile defence system on its soil. These are all good reasons for Turkey to remain a non-nuclear-weapon state.34 Saudi Arabia has developed over time a deep relationship with the United States ranging from counter-terrorism cooperation to Saudi massive presence in American financial markets - which would work as a US-imposed brake to Saudi potential nuclear ambitions. Furthermore, the nuclear dispute with Iran has prompted the United States to undertake a military build-up in the Persian Gulf, coupled with pledges of US military aid packages not only to Saudi Arabia but also to the smaller Gulf states. On one occasion, US Secretary of State Hillary Rodham Clinton even went as far as to predict the extension of the US “nuclear umbrella” over its allies in the Gulf if Iran indeed went nuclear.35 Similarly to Turkey, Saudi Arabia has at least as many good reasons to forgo the nuclear military path than do otherwise. Egypt is a more complicated case. The Egyptians have historically struggled to resist the temptation of the atomic bomb. A key factor behind their restraint has been massive US assistance (worth over one billion dollars a year, most of which in military aid), which is to continue to have a moderating effect even on a post-Arab Spring Egypt. In fact, whatever government emerges from the unwieldy political process ongoing in Egypt would be ill-advised if it added yet another complication to the mountain of political and economic problems it is set to cope with. Egypt’s dire need for foreign assistance, both political and financial, would not be well served if the new government in Cairo were to flirt with dreams of an indigenous nuclear arsenal. In addition, all three aforementioned countries are compliant parties to the NonProliferation Treaty. US security guarantees, financial assistance, and “moral” persuasion are to be factored in when assessing the motivations that Turkey, Saudi Arabia or Egypt might have to remain committed to the treaty. But they are part of a broader strategic calculus extending beyond the bargain with the United States. The NPT has been an effective, if imperfect, means to avoid uncontrolled proliferation of nuclear weapon states for over forty years. While Iran’s withdrawal would deal a severe blow to this fundamental pillar of international security, a nuclear arms race in the Gulf would all but vanquish its residual authority. Together with US pledges of aid and security guarantees, the unwillingness of Turkey, Egypt and Saudi Arabia to take responsibility for the near collapse of the international non-proliferation regime make a nuclear arms race an unlikely prospect.

### 1NC Citizen Suit Advantage

#### CITIZEN SUIT

#### No extinction-from warming – empirically denied

**Carter et al., James Cook University adjunct research fellow, 2011**

(Robert, “Surviving the Unpreceented Climate Change of the IPCC”, 3-8, <http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html>, ldg)

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos *et al*., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records." Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world." In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate.

#### Not try or die

**Aikman, Australian correspondent, 2011**

(Amos, “Climate forecasts 'exaggerated': Science journal”, 11-25, <http://www.theaustralian.com.au/news/health-science/climate-forecasts-exaggerated-science-journal/story-e6frg8y6-1226205464958>, DOA: 3-16-13, ldg)

DRAMATIC forecasts of global warming resulting from a doubling of atmospheric carbon dioxide have been exaggerated, according to a peer-reviewed study by a team of international researchers. In the study, published today in the leading journal Science, the researchers found that while rising levels of CO2 would cause climate change, the most severe predictions - some of which were adopted by the UN's peak climate body in its seminal 2007 report - had been significantly overstated. The authors used a novel approach based on modelling the effects of reduced CO2 levels on climate, which they compared with proxy-records of conditions during the last glaciation, to infer the effects of doubling CO2 levels. They concluded that current worst-case scenarios for global warming were exaggerated. "Now these very large changes (predicted for the coming decades) can be ruled out, and we have some room to breathe and time to figure out solutions to the problem," the study's lead author, Andreas Schmittner, an associate professor at Oregon State University, said. Scientists have struggled for many years to understand how to quantify "climate sensitivity" - how Earth will respond to projected increases in atmospheric carbon dioxide. In 2007, the UN's peak climate body, the Intergovernmental Panel on Climate Change, warned that a doubling of CO2 from pre-industrial levels would warm the Earth's surface by an average of 2C to 4.5C, although some studies have claimed the impact could be 10C or higher. Professor Schmittner said it had been very difficult to rule out these extreme "high-sensitivity" scenarios, which were very important for understanding risks associated with climate change. The study found high-sensitivity models led to a "runaway effect" under which the Earth would have been covered in ice during the last glacial maximum, about 20,000 years ago, when CO2 levels were much lower. "Clearly that didn't happen, and that's why we are pretty confident that these high climate sensitivities can be ruled out," he said. Professor Schmittner said taking his results literally, the IPCC's average or "expected" value of a 3C average temperature increase for a doubling of CO2 ought to be regarded as an upper limit. "Many previous climate-sensitivity studies have looked at the past only from 1850 through to today, and not fully integrated paleoclimate data, especially on a global scale," he said. "If these paleoclimatic constraints apply to the future, as predicted by our model, the results imply less probability of extreme climatic change than previously thought.

Status quo solves warming

Baltimore Sun 12 (“EPA's climatic victory” http://www.baltimoresun.com/news/opinion/editorial/bs-ed-epa-climate-20120627,0,7041174.story)

Tuesday's victory by the U.S. Environmental Protection Agency in federal appeals court in the District of Columbia has once again demonstrated that the science of climate change, while famously "inconvenient," is virtually impossible for fair and reasonable people to deny. In upholding the agency's right to regulate the emission of greenhouse gases, including carbon dioxide, under a handful of cases, the three-judge panel recognized climate change as the legitimate threat to public health and safety that it is, and that the Clean Air Act gives the agency appropriate authority to regulate it. This shouldn't have come as much surprise to opponents, as the decision is in line with the Supreme Court's 2007 decision affirming the EPA had that power. It would be nice, of course, if we lived in a world where coal and other fossil fuels could be burned without regard to the pollution they emit, but that's not real life. Unfortunately, the longer the U.S. and other developed countries wait to address climate change, the less chance they can do much about it. We would be sympathetic to polluters' complaints that climate change should be addressed by Congress and not by a regulatory agency if those same opponents had not worked so hard to thwart that very effort two years ago. They now must reap what they sowed: a less political and more science-driven regulatory process. The court's decision means the EPA can move forward with clean car standards that are, incidentally, already supported by industry and labor, and the issuance of restrictive permits to power plants and other major industrial polluters. There are, of course, winners and losers in this transition. Coal-producing states like West Virginia will be hurt economically as they gradually lose a market for their product. But until power plants and other major users of coal develop a reliable and economical method to capture carbon emissions (or at least offset them), this is unavoidable. Yet that setback for coal is a potential boon for alternative sources of energy. Much of the attention now will be on generating power from natural gas, which is less harmful to the environment (though hardly carbon-free), and on improving biofuels, solar and wind technologies. Conservatives can grouse all they want that the transition will inevitably cause consumer prices to rise. Coal was relatively cheap compared to the alternatives — if the harmful effects of greenhouse gas emissions are not factored into its price. Mitt Romney is already running ads in critical states like Ohio attacking the EPA, always a favorite Republican whipping boy, and promising to strip the agency of its authority to regulate carbon. But Mr. Romney may also find himself politically vulnerable on this issue. He has admitted in the past that the earth's climate is changing, that humans are contributing to the problem and that he favored reducing greenhouse gas emissions. Yet his refusal to endorse the EPA's regulatory role would seem to put him in a political no-man's land of recognizing that global warming is real and distressing but declining to do anything worthwhile about it. Even with the mountain of evidence supporting the reality of climate change and now a growing number of court opinions endorsing it, it's hard to believe a politically gridlocked Congress is capable of taking appropriate action on its own. Thus, the EPA represents the best hope for responsible behavior — and for the U.S. to set an example for countries that have been similarly reluctant to embrace reforms. This week's ruling may yet be appealed to the Supreme Court, but experts say there's little chance of reversal there, particularly given the high court's related 2007 decision and the slam-dunk nature of the appeals court's unanimous findings. Opponents would be better served putting their energy where it should have been in the first place — in developing methods to reduce greenhouse gas emissions. From Western fires and Southern flooding to severe weather, threatened animal and plant species and melting ice caps, the impact of global warming is real and distressing. A recent study from the U.S. Geological Survey suggests the East Coast is a "hot spot," as sea levels are rising more rapidly than previously thought. All of which strongly suggests it's time Washington stopped bickering over global warming and started supporting the EPA's efforts.

#### Even if it did, no extinction

Green 11 (Roedy, PHD from British Colombia, “Extinction of Man”, http://mindprod.com/environment/extinction.html//umich-mp)

Mankind is embarking on a strange ecological experiment. Over a couple of centuries, man is burning the carbon accumulated over millions of years by plants. The CO₂ levels are now at the level of the Permian extinction. There have been two mass extinctions in earth history, the Permian, 230 million years ago, was the worst. 70% of all species were lost. It was caused by natural global warming when volcanoes released greenhouse gases. (The other extinction event more familiar to most people was the more recent KT Cretaceous-Tertiary Mass Extinction event, 65 million years ago. It was caused when an asteroid plunged into the earth at Chicxulub Mexico wiping out the dinosaurs and half of earth’s species.) We are re-experiencing the same global warming conditions that triggered the more devastating Permian extinction, only this time it is man made. When it gets too hot, plants die. When it gets too hot and dry, massive fires ravage huge areas. When plants die, insects and herbivores die. When insects die, even heat-resistant plant’s don’t get pollinated and die. Birds die without insects to eat. Carnivores die without herbivores to eat, all triggered by what seems so innocuous — heat. Similarly, in the oceans, when they get just a few degrees too warm, corals expel their symbiotic algae and die soon thereafter. When coral reefs die, the fish that live on them die, triggering extinction chains. Satellites can chart the loss of vegetation over the planet. We are losing 4 species per hour, a rate on the same scale as the Permian and KT extinction events. Man has no ability to live without the support of other species. We are committing suicide and killing the family of life on earth along with us. The question is, will we wipe ourselves out along with the rest of the planet’s ecology? Man (sic) is very adaptable. He (sic) will destroy his food supply on land and in the oceans as a result, but some people will survive. That is not complete extinction.

#### Soft power doesn’t solve

**Miller, Wilson Center distinguished scholar, 2013**

(Aaron, “Speak No Evil”, 5-28, <http://www.foreignpolicy.com/articles/2013/05/28/speak_no_evil_obama_drone_speech>, ldg)

I'll take the word of those who argue that drones are the poster child for the anger Arabs and Muslims feel toward America. I can see why. But the grievances toward the United States in this region run deep, and the source of that anger is not only drones. Don't forget: The Middle East was exasperated with Washington long before droning, and it remains eager to blame America for just about everything. The list of the Arab world's grievances go on and on: America is blamed for supporting the authoritarian Arab kings, blindly backing Israel, not talking to Hamas, not intervening militarily in Syria, intervening militarily in Iraq and Afghanistan, and, according to Egyptian liberals, for supporting Egypt's Muslim Brotherhood. And that's even before we discuss the small but determined minority of Muslims who do, in fact, hate us because of who we are -- not just because of what we do. No nuanced modulation of our approach on drone strikes or the closure of Gitmo is going to change any of that.

## \*\*\*2NC

### \*\*\*Court Politics

#### Key to the chemical industry – patchwork regulation.

ACC 2013

American Chemistry Council, leading chemical manufacturing industry trade group, BRIEF FOR AMICUS CURIAE THE AMERICAN CHEMISTRY COUNCIL IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/08\_16\_13-American-Chemistry-Council-Amicus-Brief\_115164106\_1.pdf

Like the federal statute considered by this Court in Gonzales v. Raich, 545 U.S. 1 (2005), Section 229 is a component of a “comprehensive framework” for prohibiting the “production, distribution, and possession,” id. at 24, of chemical weapons. That the statute may reach the intrastate production, transfer, possession, or use of such weapons in order to extinguish the interstate market for them is of no constitutional significance. Congress could reasonably have concluded that eradicating the interstate and foreign markets in chemical weapons required prohibiting intrastate activity. As this Court has determined, “[t]he notion that … a discrete activity … [may be] hermetically sealed off from the larger interstate … market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected.” Id. at 30. That is decidedly the case here: Like the possession or consumption of homegrown marijuana, the intrastate manufacture, possession, or use of chemicals for illicit purposes could easily affect interstate or foreign markets. To be sure, many chemicals within the ambit of the CWC and Section 229 are “dual-use”: they have the potential to be used as chemical weapons or as precursors to chemical weapons, but they also have extensive beneficial uses in manufacturing, agriculture, industry, education, and the arts. That fact, however, does nothing to alter that Section 229 is a pillar in a comprehensive scheme to eradicate the national and international market in chemicals for illicit purposes. Under this Court’s Commerce Clause precedents, it does not matter that Congress is attempting to suppress a market for the manufacture, transfer, and possession of certain chemicals only for particular purposes and not commerce in such chemicals altogether. Section 229, moreover, is not merely part of a larger regulatory framework aimed at eradicating a commercial market; it is also squarely aimed at fostering the lawful national and international trade in chemicals for their beneficial uses. Petitioner’s narrow focus on the disarmament objectives of the CWC ignores this vital commerce-enhancing objective. See Wickard v. Filburn, 317 U.S. 111, 128 (1942) (“The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon.”); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 36- 37 (1937). Indeed, the text and history of the CWC and its implementing legislation make clear that one of its principal goals was the promotion of “free trade in chemicals.” Conv. pmbl. ¶¶ 9, 10 (Pet. App. 147). Encouraging that commerce, the signatories (“States Parties”) agreed, required a comprehensive prohibition on the use, production, or acquisition of chemicals for illicit purposes, not only by signatory nations but also by corporations and individuals. Otherwise, the everyday commerce in chemicals would be in constant jeopardy of piecemeal trade-restricting measures aimed at securing what only uniform controls could accomplish. Such was the importance of the prohibition’s scope that “[v]arious chemical industry spokespersons consider[ed] the CWC a trade enabling regime that could counteract trends in the future, in which U.S. chemical trade and investment could be constricted under even tighter export controls.

” Convention on Chemical Weapons: Hearing Before the S. Comm. on Foreign Relations, 104th Cong. 25 (1996) (statement of Sen. Lugar) (emphasis added). Petitioner is thus wrong to insist that her conduct is far afield from the goals of the CWC and its implementing legislation. Even one misuse of a toxic chemical for malicious purposes—and certainly such misuses when viewed in the aggregate—could prompt a patchwork of severe domestic or international restrictions on the lawful trade in chemicals. Only by imposing comprehensive criminal controls on the diversion of chemicals into illicit channels and on the subsequent misuse of such chemicals could the CWC fully achieve its objectives. Just as Congress may regulate local wheat production to help stabilize the interstate market in wheat (per Wickard), Congress may regulate local misuses of chemicals that could lead to the impairment of lawful interstate or international trade in chemicals for their beneficial uses

#### The chemical industry solves extinction

Baum 1999 (Rudy, C&EN Washington, MILLENNIUM SPECIAL REPORT, Volume 77, Number 49 CENEAR 77 49 pp.46-47, <http://pubs.acs.org/cen/hotarticles/cenear/991206/7749spintro2.html>)

Here is the fundamental challenge we face: The world's growing and aging population must be fed and clothed and housed and transported in ways that do not perpetuate the environmental devastation wrought by the first waves of industrialization of the 19th and 20th centuries. As we increase our output of goods and services, as we increase our consumption of energy, as we meet the imperative of raising the standard of living for the poorest among us, we must learn to carry out our economic activities sustainably. There are optimists out there, C&EN readers among them, who believe that the history of civilization is a long string of technological triumphs of humans over the limits of nature. In this view, the idea of a "carrying capacity" for Earth—a limit to the number of humans Earth's resources can support—is a fiction because technological advances will continuously obviate previously perceived limits. This view has historical merit. Dire predictions made in the 1960s about the exhaustion of resources ranging from petroleum to chromium to fresh water by the end of the 1980s or 1990s have proven utterly wrong. While I do not count myself as one of the technological pessimists who see technology as a mixed blessing at best and an unmitigated evil at worst, I do not count myself among the technological optimists either. There are environmental challenges of transcendent complexity that I fear may overcome us and our Earth before technological progress can come to our rescue. Global climate change, the accelerating destruction of terrestrial and oceanic habitats, the catastrophic loss of species across the plant and animal kingdoms—these are problems that are not obviously amenable to straightforward technological solutions. But I know this, too: Science and technology have brought us to where we are, and only science and technology, coupled with innovative social and economic thinking, can take us to where we need to be in the coming millennium. Chemists, chemistry, and the chemical industry—what we at C&EN call the chemical enterprise—will play central roles in addressing these challenges. The first section of this Special Report is a series called "Millennial Musings" in which a wide variety of representatives from the chemical enterprise share their thoughts about the future of our science and industry. The five essays that follow explore the contributions the chemical enterprise is making right now to ensure that we will successfully meet the challenges of the 21st century. The essays do not attempt to predict the future. Taken as a whole, they do not pretend to be a comprehensive examination of the efforts of our science and our industry to tackle the challenges I've outlined above. Rather, they paint, in broad brush strokes, a portrait of scientists, engineers, and business managers struggling to make a vital contribution to humanity's future. The first essay, by Senior Editor Marc S. Reisch, is a case study of the chemical industry's ongoing transformation to sustainable production. Although it is not well known to the general public, the chemical industry is at the forefront of corporate efforts to reduce waste from production streams to zero. Industry giants DuPont and Dow Chemical are taking major strides worldwide to manufacture chemicals while minimizing the environmental "footprint" of their facilities. This is an ethic that starts at the top of corporate structure. Indeed, Reisch quotes Dow President and Chief Executive Officer William S. Stavropolous: "We must integrate elements that historically have been seen as at odds with one another: the triple bottom line of sustainability—economic and social and environmental needs." DuPont Chairman and CEO Charles (Chad) O. Holliday envisions a future in which "biological processes use renewable resources as feedstocks, use solar energy to drive growth, absorb carbon dioxide from the atmosphere, use low-temperature and low-pressure processes, and produce waste that is less toxic." But sustainability is more than just a philosophy at these two chemical companies. Reisch describes ongoing Dow and DuPont initiatives that are making sustainability a reality at Dow facilities in Michigan and Germany and at DuPont's massive plant site near Richmond, Va. Another manifestation of the chemical industry's evolution is its embrace of life sciences. Genetic engineering is a revolutionary technology. In the 1970s, research advances fundamentally shifted our perception of DNA. While it had always been clear that deoxyribonucleic acid was a chemical, it was not a chemical that could be manipulated like other chemicals—clipped precisely, altered, stitched back together again into a functioning molecule. Recombinant DNA techniques began the transformation of DNA into just such a chemical, and the reverberations of that change are likely to be felt well into the next century. Genetic engineering has entered the fabric of modern science and technology. It is one of the basic tools chemists and biologists use to understand life at the molecular level. It provides new avenues to pharmaceuticals and new approaches to treat disease. It expands enormously agronomists' ability to introduce traits into crops, a capability seized on by numerous chemical companies. There is no doubt that this powerful new tool will play a major role in feeding the world's population in the coming century, but its adoption has hit some bumps in the road. In the second essay, Editor-at-Large Michael Heylin examines how the promise of agricultural biotechnology has gotten tangled up in real public fear of genetic manipulation and corporate control over food. The third essay, by Senior Editor Mairin B. Brennan, looks at chemists embarking on what is perhaps the greatest intellectual quest in the history of science—humans' attempt to understand the detailed chemistry of the human brain, and with it, human consciousness. While this quest is, at one level, basic research at its most pure, it also has enormous practical significance. Brennan focuses on one such practical aspect: the effort to understand neurodegenerative diseases like Alzheimer's disease and Parkinson's disease that predominantly plague older humans and are likely to become increasingly difficult public health problems among an aging population. Science and technology are always two-edged swords. They bestow the power to create and the power to destroy. In addition to its enormous potential for health and agriculture, genetic engineering conceivably could be used to create horrific biological warfare agents. In the fourth essay of this Millennium Special Report, Senior Correspondent Lois R. Ember examines the challenge of developing methods to counter the threat of such biological weapons. "Science and technology will eventually produce sensors able to detect the presence or release of biological agents, or devices that aid in forecasting, remediating, and ameliorating bioattacks," Ember writes. Finally, Contributing Editor Wil Lepkowski discusses the most mundane, the most marvelous, and the most essential molecule on Earth, H2O. Providing clean water to Earth's population is already difficult—and tragically, not always accomplished. Lepkowski looks in depth at the situation in Bangladesh—where a well-meaning UN program to deliver clean water from wells has poisoned millions with arsenic. Chemists are working to develop better ways to detect arsenic in drinking water at meaningful concentrations and ways to remove it that will work in a poor, developing country. And he explores the evolving water management philosophy, and the science that underpins it, that will be needed to provide adequate water for all its vital uses. In the past two centuries, our science has transformed the world. Chemistry is a wondrous tool that has allowed us to understand the structure of matter and gives us the ability to manipulate that structure to suit our own purposes. It allows us to dissect the molecules of life to see what makes them, and us, tick. It is providing a glimpse into workings of what may be the most complex structure in the universe, the human brain, and with it hints about what constitutes consciousness. In the coming decades, we will use chemistry to delve ever deeper into these mysteries and provide for humanity's basic and not-so-basic needs.

### 2NC – Bond Loses Now

#### SCOTUS will likely rule against Bond now but it’s uncertain.

Bashman 2013

Howard J., nationally known attorney and appellate commentator, Looking Ahead: October Term 2013, Cato Supreme Court Review http://howappealing.law.com/BashmanCatoEssayFinal-091713.pdf

No lawyer worth his or her salt would ever advise a client to attempt to use dangerous chemicals to poison a rival for the romantic attention of the client’s spouse. Nevertheless, having a client who engaged in that legally prohibited conduct appears to be the recipe for periodic visits to address the justices in the Supreme Court’s courtroom—at least if you’re a superstar Supreme Court advocate. In the forthcoming term, the case captioned Bond v. United States makes its return visit to the Court.27 In its previous incarnation, the Supreme Court held that the woman charged with attempting to poison her romantic rival for her husband’s affections had standing to object to Congress’s enactment of legislation alleged to violate the Tenth Amendment’s limitations on federal power.28 On remand to the U.S. Court of Appeals for the Third Circuit, Bond argued that Congress had overstepped the bounds of its authority to make criminal the purely local poisoning attempt at the heart of the criminal charges against her. Relying on dictum from the Supreme Court’s ruling in Missouri v. Holland—which suggests that Congress has the power to enact implementing legislation in furtherance of a lawfully approved treaty even if that legislation broadens Congress’s constitutional power—the Third Circuit rejected Bond’s challenge.29 Now, on its return visit to the Supreme Court, Bond is asking the justices to hold that the federal government’s approval of a treaty— here an international chemical weapons convention—does not authorize it to assume police powers to turn what otherwise would have been an offense under state law—here, assault or attempted murder—into a federal crime. Although the structural limitations on federal power are important, as the Supreme Court recognized most recently in NFIB v. Sebelius, 30 this case appears to present an especially vexing question. State and local governments are of course powerless to enter into international treaties. Because the treaty power of necessity resides exclusively with the federal government, perhaps the states can be understood to have ceded to the federal government the ability to encroach on what would otherwise ordinarily be state prerogatives where necessary to implement a lawful treaty. Or perhaps the Supreme Court will hold that federalism principles render the federal government unable to fully implement treaties that require such encroachment on state power. One thing is for sure: the case is bound to be very well argued, as former Solicitor General Paul Clement will represent Bond in this appeal, just as he did in his client’s previous victorious visit to the Court. Although the outcome of this case is far from clear, my suspicion is that a majority consisting of the ordinarily pragmatic justices are likely to prevail in holding that the Constitution’s treaty power does give Congress the ability to encroach on state prerogatives where necessary to implement a treaty. Yet even such a holding, however broad, would do little to justify the seemingly aberrant decision of federal prosecutors to treat Mrs. Bond’s bizarre offenses as federal crimes.

### 2NC – Roberts PC High

#### Roberts has capital now – ACA decision.

Rosen 2013

Jeff, Law Prof @ George Washington, Can the Judicial Branch be a Steward in a Polarized Democracy? https://www.amacad.org/publications/daedalus/spring2013/13\_spring\_daedalus\_Rosen.pdf

Against this background of partisan divisions, many observers expected the Roberts Court to strike down the Affordable Care Act, the centerpiece of President Obama’s domestic agenda, by a 5-4 vote. In the landmark health care decision in 2012, however, Chief Justice Roberts did precisely what he said he would do. He joined the four liberal justices in holding that the Affordable Care Act’s individual mandate is justified by Congress’s taxing power, even though he joined the four conservative justices in holding that the mandate is not justified by Congress’s power to regulate interstate commerce. For placing the bipartisan legitimacy of the Court above his own ideological agenda, Roberts deserves praise not only from liberals but from all Americans who believe that it is important for the Court to stand for something larger than politics. Seven years into his chief justiceship, the Supreme Court finally became the Roberts Court. To question the combination of legal arguments that Roberts embraced would be beside the point: Roberts’s decision was above all an act of judicial statesmanship. On both the left and the right, commentators praised his “political genius” in handing the president the victory he sought even as he laid the groundwork for restricting congressional power in the future. That is not to say that Roberts has reinvented himself as a liberal. He has strong views that he is unwilling to compromise, and with his strategic maneuvering in the health care case, he increased the political capital that will allow him to continue to move the Court in a conservative direction. Marshall achieved a similar act of judicial jujitsu in Marbury v. Madison, when he refused to confront President Jefferson over a question of executive privilege but laid the groundwork for expanding judicial power in the future. All this suggests that, as long as the composition of the Court remains balanced between five conservatives and four liberals, partisan divisions on the Roberts Court will continue. But in the most highly visible cases, in which the Court’s institutional legitimacy is at stake, the Chief Justice may occasionally break ranks with his conservative colleagues.

### Yes spill over

#### Will spillover and sets a precedent

Graham et al 2013

Thomas, served as Special Representative of the President for Arms Control, Non-Proliferation and Disarmament, senior negotiator at the CWC, writing with 9 other experts spanning academia, law, diplomacy, and the military, BRIEF OF AMICI CURIAE CHEMICAL WEAPONS CONVENTION NEGOTIATORS AND EXPERTS IN SUPPORT OF RESPONDENT http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/Amicus-Brief1.pdf

Bond argues that failure to prosecute her individual case would not bring down any international consequences on the United States. That might be true if her case were taken in isolation; after all, the Convention requires the adoption of suitable penal legislation, but it does not preclude the appropriate exercise of prosecutorial discretion in individual cases. See CWC art. VII(1). But judicially carving out a whole category of cases from the scope of the Convention’s implementing legislation, as Bond’s counsel proposes, would be another matter altogether. The strategy adopted by the CWC negotiators was to adopt broad, general prohibitions as much as possible to avoid the need for line-drawing in particular cases. The point of having an all-encompassing treaty was to minimize the existence of borderline cases and judgment calls that could lead to circumvention. As this Court has explained, where Congress has enacted a “comprehensive legislation”—in this case, to implement a globally-agreed prohibition—the Court cannot “excise individual components” without undermining the integrity of the larger scheme. Gonzales v. Raich, 545 U.S. 1, 22 (2005). The fact that any one defendant’s “own impact” may be “trivial by itself” is “not a sufﬁcient reason for removing [her] from the scope of federal regulation.” Id. at 20 (quoting Wickard v. Filburn, 317 U.S. 111, 127 (1942)). If this Court were to create an unwritten exception to the Convention’s implementing legislation for non-terrorists, revenge-takers or “local” criminals, then the Convention’s carefully negotiated and clear-cut test, and the statute that adopts that test, will be replaced with a difﬁcult line-drawing exercise that has no basis in the Convention or its implementing legislation. Perhaps even more damaging, allowing a judicially crafted exception in this case would open the door for parties to seek creative expansions of that exception, or wholly new exceptions, in future cases in the U.S. and abroad.

### 2NC – War Powers Link

#### Intervening in presidential powers during wartime decks court capital – gives a perception of siding with the enemy

Cole 2011 - Professor, Georgetown University Law Center (Winter, David, “WHERE LIBERTY LIES: CIVIL SOCIETY AND INDIVIDUAL RIGHTS AFTER 9/11,” 57 Wayne L. Rev. 1203, Lexis)

Indeed, a court concerned about conserving its own institutional power might be more likely to defer during times of crisis. One cannot be certain how the public will respond to a decision. Ruling for "the enemy" during wartime could be a risky proposition. A court primarily concerned about maintaining its institutional capital might therefore make the strategic choice to defer in times of crisis so as to avoid showdowns that could undermine its legitimacy, thereby preserving its power for ordinary [\*1252] times. n273 Accordingly, it is not obvious that the Supreme Court's own institutional interests in times of crisis push it in the direction of intervention, rather than deference or avoidance.

#### Institutional integrity is key to implementation and legitimacy overall – courts get unpopular when they have to take a side in exec/legislative disagreements

DiPaulo 2010 – assistant professor of constitutional law at Middle Tennessee State(Amanda, “Zones of Twilight, Wartime Presidential Powers and Federal Court Decision Making” Lexington Books, Google Books)

Institutional integrity is important for the courts because if the courts have the force of the federal government behind them, the courts will also have the people and "[a]pproval of the Court within the mass public leads to better implementation of its decisions, reduces chances that the other branches will limit or reverse those decisions, and deters action by the legislature and executive against the Court itself (Baum. 2006: 63). The Judiciary is concerned, therefore, with "making sure the Court remains a credible force in American politics" (Epstein and Knight. 1998; 46). While the Judiciary is looked to for settling societal disputes, both legal and political, when it comes to the war powers, the courts are careful not to jeopardize its institutional integrity that it could lose if it makes a ruling that the elected branches of government found unacceptable for the defense of the nation. Instead of having the legitimacy of the Judiciary or the Constitution called into question, the courts create a principled approach to judicial decision making that places the onus on the elected branches to justify the curtailment of liberties and at the same time creates less jeopardy of individual liberties being limited in times of peace based on decisions made during times of armed conflict. In other words, agreement by the elected branches of government during armed hostilities does not necessarily create legitimacy, but rather protects it. Legal reasoning matters because no matter what the issue and how the federal courts go about making its war-powers decisions, the effort is constant with the courts looking for agreement between Congress and the Executive and the Constitution is protected.

#### Breaking PQD kills court capital – lack of expertise

Litwak 2012

Brian, UNC JD Candidate “PUTTING CONSTITUTIONAL TEETH INTO A ¶ PAPER TIGER: HOW TO FIX THE WAR POWERS RESOLUTION”, National Security Law Brief, Vol. 2, No. 2, 2012

The court’s exercise of the political question doctrine, excusing itself from deciding the differing positions of the Executive and Congress, combines multiple aligning considerations. First, as a practical matter, courts lack the institutional capacity to decide the presence of hostilities.50 Second, ¶ the Constitution delegates foreign affairs decisions to the two political branches, not the courts.51¶ Third, deciding the issue of hostilities in foreign affairs would take the courts into “uncharted ¶ legal terrain,” where no law exists and applicable standards are wanting.52 Given the omission of a ¶ definition of “hostilities” in the WPR53 and the absence of a workable legal standard, courts would have an extremely difficult time navigating this “uncharted terrain” in foreign affairs. Consequently, ¶ courts have opted to leave the resolution of the disputes to those elected branches both capable and ¶ constitutionally committed to making decisions concerning the use of force abroad.54 Although not ¶ the only tool invoked by courts to skirt tough decisions concerning the separation of war powers,55¶ the political question doctrine is an oft-accepted argument by courts in justifying the dismissal of ¶ claims made pursuant to the WPR.56

#### Bickering over foreign policy causes great power war

Haass 13 (Richard N. Haass, President, Council on Foreign Relations, “What is the effect of U.S. domestic political gridlock on international relations?” http://www.cfr.org/us-strategy-and-politics/effect-us-domestic-political-gridlock-international-relations/p30725)

There is a well-known adage that politics stops at the water's edge, but this tends to be more hope than reality. American history is filled with examples in which political disagreement at home has made it difficult for the United States to act, much less lead, abroad. Division within Congress or between the legislative and executive branches can make it impossible for individuals to be placed in senior positions. Such divisions can also make it impossible to conclude treaties, appropriate funds for foreign assistance, or pass specific reforms, such as the current proposed reform for immigration policy. A lack of consensus also can undermine investment in the foundations of American power, from resources for defense and diplomacy to education and infrastructure. Gridlock at home can also work against the ability of the United States to set an example that other societies will want to emulate. And it makes the United States less predictable, something that can unnerve allies and others who depend on this country, and embolden adversaries. All this tends to contribute to global disorder—one reason I titled my new book Foreign Policy Begins at Home.

### AT: ideology

#### Unpopular decisions constrain future court decision making.

Clark 2009

Tom, Assistant Professor of Political Science at Emory, The Separation of Powers, Court Curbing, and Judicial Legitimacy, American Journal of Political Science, Vol. 53, No. 4, October 2009 http://userwww.service.emory.edu/~tclark7/constitutional.pdf

This theoretical model and empirical analyses presented in this article provide a new interpretation of the separation of-powers model that has been the focus of much scholarship in the area of judicial-congressional relations. The evidence from interviews with Supreme Court justices and former law clerks suggests students of Court-Congress relations must account for the role of judicial legitimacy in the Court’s decision calculus. Judicial legitimacy is an important mechanism that drives judicial sensitivity to congressional preferences. Moreover, it can be a condition that gives rise to constrained judicial decision making. Indeed, scholars have long recognized the importance of institutional legitimacy for the Supreme Court (Baum 2006; Caldeira 1987; Caldeira and Gibson 1992; Lasser 1988; see also Staton 2006; Vanberg 2005); however, this study unites this literature with scholarship on congressional constraints on judicial behavior in a previously unappreciated way. By recasting the separation-of-powers model as a strategic interaction in which responses to Supreme Court decisions are not limited to congressional overrides but also include consequences for the Court’s institutional integrity, this model of judicial independence presents a fuller, more nuanced and dynamic interpretation of the judicial decision-making environment. The analysis of judicial-congressional relations as an interaction in which concerns for institutional legitimacy are integral to the Court’s decision-calculus unites two important bodies of judicial politics scholarship, and may reorient empirical scholarship that has focused largely on the relative explanatory power of the two dominant models of judicial decision making (the attitudinal model and the SOP model). As a first step in this empirical direction, the analysis of Court curbing and its relationship to the use of judicial review to invalidate federal legislation provides promising evidence. As the analysis above demonstrates, the relationship between the frequency of judicial review and congressional hostility provides strong, direct support for the theoretical model. When the Court fears it will lose public support, it will adjust its behavior in light of congressional signals about the Court’s level of public support. However, the magnitude of that effect is mediated by the political context in which those signals are sent. Instead of responding to Court curbing more strongly when it is facing its ideological opponents, the Court responds most strongly when the Court curbing comes from its ideological allies. Moreover, the constraining effect of Court curbing increases as the Court becomes more pessimistic about its public support. Notably, these interactive relationships run against the intuition following from the conventional wisdom that Court curbing’s effect on the Court is due to its threat of enactment. They are, however, predicted by the public-Congress-Court interaction analyzed here.

### \*\*\*Citizen Suit Counterplan

### 2NC CP Solves

#### Warming suits rest on shaky ground – standing and political questions key

Guarino 11 -- Exec Editor @ Boston College Enviro Affairs Law Review, Edwards Wildman Palmer LLP Associate (Katherine A., 2011, "NOTE: THE POWER OF ONE: CITIZEN SUITS IN THE FIGHT AGAINST GLOBAL WARMING," 38 B.C. Envtl. Aff. L. Rev. 125, L/N)

I. THE JUSTICIABILITY AND STANDING BARRIERS Since their inception, global warming suits have faced challenging legal barriers. n26 The most significant barriers have been justiciability of a global warming claim and standing to sue for a crisis affecting millions. n27 A. The Political Question Doctrine One of the most challenging obstacles facing global warming plaintiffs is justiciability, or the political question doctrine. n28 Under Article III of the Constitution, the federal courts only have jurisdiction over questions, issues, cases, and controversies that are "justiciable." n29 A matter is "'justiciable' when it is constitutionally capable of being decided by a federal court." n30 Conversely, "nonjusticiability" or a "political question" exists when a matter has been committed exclusively to the political branches by the Constitution or by federal law. n31 In that case, a federal court would not have jurisdiction over the matter. n32 When a matter is justiciable, however, a federal court has an obligation to exercise [\*129] jurisdiction over it. n33 The policy behind this duty is to prevent a court from dismissing an action because it has political implications. n34 In practice, dismissal for nonjusticiability has been rare; since Baker v. Carr in 1962, discussed below, the Supreme Court has only dismissed two cases as political questions. n35 The Court has yet to rule explicitly on the justiciability of a global warming claim. n36 1. The Baker Factors Until the 1960s, determining which matters were better left to other branches of the government was a confusing and disorderly task. n37 Baker v. Carr rescued the doctrine of justiciability from irregular application by proposing a list of six "formulations" that describe a political question: n38 [(1)] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [(2)] a lack of judicially discoverable and manageable standards for resolving it; or [(3)] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [(4)] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [(5)] an unusual need for unquestioning adherence to a political decision already made; or [(6)] the potentiality of embarrassment from multifarious pronouncements by various departments on one question. n39 [\*130] The Baker Court ensured that these factors would not be used to block legitimate cases from federal court by setting a high standard for non-justiciability. n40 The effect has been rare assertion of the political question doctrine in most cases, n41 including common law tort claims. n42 However, the political question doctrine has presented a challenge for plaintiffs in the nascent area of global warming. n43 The Supreme Court later added a threshold requirement to the Baker analysis: "whether and to what extent the issue is textually committed" to a political branch. n44 In Nixon v. United States, the Court set out a two-pronged test for determining whether this threshold was met: (1) identification of the issues that the plaintiff's claims pose and (2) interpreting the constitutional text in question to determine the extent to which the issues are "textually committed" to a political branch. n45 2. Global Warming Claims are Held Justiciable The first global warming case to apply the Baker factors was Connecticut v. American Electric Power Co. (AEP). n46 When AEP was brought before the District Court for the Southern District of New York, the court conservatively chose to view the global warming issue as too complex and too entwined with politics to be justiciable. n47 However, by the time the case reached the Second Circuit on appeal, the first global warming case, Massachusetts v. EPA, had been handed down by the Supreme [\*131] Court. n48 Although that case did not explicitly address the justiciability issue, it stands for the principle that federal courts have jurisdiction to hear cases alleging global warming as an injury. n49 By upholding a state's standing to sue for injury deriving from the EPA's failure to regulate greenhouse gas emissions, the Supreme Court had endorsed, for the first time, global warming suits in general. n50 In the wake of Massachusetts v. EPA's recognition of global warming as an adequate injury for standing--and in effect, nonjusticiability n51 --the Second Circuit reversed. n52 Applying the Baker factors, the Second Circuit in AEP rejected the power companies' argument that the plaintiffs' use of a federal common law nuisance cause of action to reduce domestic carbon dioxide emissions would "impermissibly interfere with the President's authority to manage foreign relations." n53 The court countered that the plaintiffs were not asking the court "to fashion a comprehensive and far-reaching solution to global climate change." n54 Instead, they were seeking to limit the emissions of only the six defendant plants based upon their contention that these defendants are causing them injury. n55 Assessing the second Baker factor, the court reasoned that complex federal public nuisance cases have been commonplace during the past century of legal history, n56 and that "well-settled principles of tort and public nuisance law" have frequently been used to analyze a variety of new and complex problems. n57 [\*132] As to the third Baker factor, defendants argued that the complexities surrounding global warming give way to "unmanageable policy questions a court would then have to confront" in deciding the case. n58 The court disagreed, holding that a federal court deciding a common law nuisance cause of action, "brought by domestic plaintiffs against domestic companies for domestic conduct, does not establish a national or international emissions policy." n59 The court added that the plaintiffs "need not await an 'initial policy determination' in order to proceed on this . . . claim," n60 and that Congress's hesitancy to pass a law regulating greenhouse gas emissions does not equal an intent "to supplant the existing common law in that area." n61 In assessing the final three Baker factors, the court recognized that the United States does not have a "unified" global warming policy. n62 Thus, by deciding this case, it is impossible for the court to "demonstrate any lack of respect for the political branches, contravene a relevant political decision already made, or result in multifarious pronouncements that would embarrass the nation." n63 The defendants themselves cited legislation indicating that the United States intends to create legislation in the future, which will reduce the emission of greenhouse gases. n64 In sum, the court held that the district court erred in its dismissal of the plaintiffs' claim on justiciability grounds. n65 B. Standing Another hurdle for global warming plaintiffs is standing. n66 This prerequisite to suit limits the jurisdiction of federal courts to certain delineated "Cases" and "Controversies" under Article III, Section 2 of the U.S. Constitution. n67 There are two basic forms of standing: state--or [\*133] parens patriae--standing n68 and individual standing. n69 As parens patriae, or "parent of the country," a state asserts a "quasi-sovereign interest" in protecting the health and well-being of its citizens, as well as its own "interest independent of and behind the titles of its citizens, in all the earth and air within its domain." n70 The Supreme Court has allowed states a lowered bar, or special solicitude, for standing given their unique status. n71 An individual, in contrast, sues for his or her own personal injury without the benefit of a lowered bar to standing. n72 In the case of global warming plaintiffs, standing is problematic in three ways: (1) the uncertainty of the injury; (2) the sufficiency of scientific evidence linking global warming with its effects; and (3) the redressability of a world-wide problem. n73 1. Modern Standing: The Lujan Cases In the 1980s, the Reagan Administration's policies to stem the flow of citizen suits and limit the EPA's enforcement capabilities narrowed the standing doctrine. n74 These policies resulted in two landmark standing decisions, both written by Justice Scalia: n75 Lujan v. National Wildlife Federation (Lujan I) and Lujan v. Defenders of Wildlife (Lujan II). n76 The Lujan cases turned the modern standing doctrine into a strict test. a. The Modern Standing Test In Lujan I, decided in 1990, the Supreme Court identified two requirements that an individual must establish in order to bring suit: (1) [\*134] some specific harm caused by the defendant; and (2) either a "legal wrong" caused by the challenged action, or that the plaintiff is "adversely affected or aggrieved . . . within the meaning of a relevant statute." n77 In that case, the plaintiffs' claim failed to satisfy the standing test due to lack of specificity and certainty of injury. n78 If there was any question that Lujan I had altered the standing doctrine, Justice Scalia affirmed that the doctrine was indeed narrowed two years later in Lujan II. n79 In his plurality opinion, Justice Scalia synthesized a three-part "irreducible constitutional minimum of standing" from past cases: (1) injury in fact, which is (a) "concrete and particularized" and (b) "actual or imminent"; (2) "a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." n80 The Court held that a nebulous future intent to observe endangered species in a foreign country did not constitute actual or imminent injury. n81 Also, redressability could not be obtained because even if the Court granted the "injunction requiring the Secretary to publish [the plaintiffs'] desired regulation," it would not be binding on the agencies and thus ineffective in producing the desired result. n82 In his concurrence, Justice Kennedy foreshadowed the global warming cases of the new millennium with a broad proclamation: "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." n83 b. Burden of Proof for Standing and the Merits Another important part of the Lujan II decision is its discussion of the requisite burden of proof of standing for each stage in the litigation. n84 When a plaintiff seeks to assert standing at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to [\*135] support the claim.'" n85 Summary judgment, on the other hand, requires an assertion of specific facts. n86 Finally, when proving a claim on the merits, the facts must be adequately supported by the evidence. n87 At this point in the litigation, the burden of proof is a preponderance of the evidence. n88 Thus, proof of standing at the pleading stage requires a lower burden than proof on the merits. n89 2. Global Warming Suits a. The Broadening of the Standing Doctrine for Global Warming Plaintiffs The first global warming case to be decided by the Supreme Court, Massachusetts v. EPA, changed the course of the standing doctrine, broadening it to allow more plaintiffs standing to sue under a cause of action based on global warming. n90 The case is considered a landmark decision in environmental law because of its bold grant of standing for a seemingly untraceable and unparticularized injury. n91 Massachusetts sought review of the EPA's decision not to regulate greenhouse gas emissions from motor vehicles under the Clean Air Act. n92 In its capacity as parens patriae, the Commonwealth claimed both present and future injuries, such as loss of coastline due to rising sea levels and more intense storm events, "severe and irreversible changes to natural ecosystems," and an increase in the spread of disease. n93 The Court could have [\*136] followed Lujan II and rejected the claim of injury for lack of particularity, imminence, or traceability. n94 Instead, the Court reached back to turn-of-the-century precedent, Georgia v. Tennessee Copper, Co., for the notion that states deserve "special solicitude" in the standing analysis when invoking a quasi-sovereign interest. n95 In a 5-4 decision, the Court held that Massachusetts had alleged: (1) particularized injury, because of its ownership of substantial property that had already been swallowed by rising seas; n96 (2) causation, because defendants had contributed significantly to the plaintiff's injuries by refusing to regulate greenhouse gas emissions; n97 and (3) redressability, because even an incremental improvement in the plaintiff's harm would help redress the injury. n98 Massachusetts v. EPA gave plaintiffs with pending global warming cases new hope by opening up the courts to their claims for the first time. n99 However, the decision on standing was surprising to the legal community, as evidenced by Chief Justice Roberts's vigorous dissent. n100 The dissent accused the majority of using "the dire nature of global warming . . . as a bootstrap for causation and redressability." n101 It further argued that the plaintiff's alleged injury was neither imminent nor actual, but "pure conjecture," going so far as to deny that global warming could ever constitute a particularized injury. n102 In spite of these concerns, the majority of the Supreme Court placed its imprimatur on global warming suits in general, n103 giving future global warming litigants positive authority to cite in their arguments. n104 [\*137] b. The Second Circuit Grants Non-State Entities Standing for Global Warming AEP, a public nuisance action for global warming injury brought by a group of states, land trusts, and a city, solidified the new broader standing analysis of Massachusetts v. EPA and extended it to non-state parties. n105 In that case, the plaintiffs sued electric power plants for injuries arising from defendants' contribution to global warming by burning fossil fuels. n106 The states and city asserted a litany of present and future injuries, including temperature increase leading to a decrease in mountain snowpack used for drinking water, earlier spring melting, flooding, and sea level rise, which had already begun to inundate their coastal property and would continue without abatement. n107 The trusts claimed the following "special" future injuries: a decrease in the ecological value of their properties, permanent inundation of some of their property, and destruction of wildlife habitat from smog and salinization. n108 At the district court level, the plaintiffs' claims were dismissed as nonjusticiable. n109 The district court judge refused to analyze the issue of standing because it "would involve an analysis of the merits of Plaintiffs' claims." n110 However, on appeal, the Second Circuit vacated the lower court's decision, holding that the state plaintiffs had asserted concrete, particularized, and redressable injury that was "fairly traceable" to the actions of defendants, thus meeting the standing test under Lujan II. n111 For the first time, non-state plaintiffs--New York City and the land trusts--were also granted standing for asserting similar injuries. n112 Since the court vacated and remanded back to the district court, it never addressed the merits of the case. n113 In December of 2010, the Supreme Court granted certiorari to American Electric Power Co. n114 This will be the first opportunity for the Supreme Court to rule on the legitimacy of public nuisance [\*138] claims against greenhouse-gas-emitting companies for global warming injuries. n115

#### **This card also says the CP solves**

#### **Courts model the plan and rule in favor of environmental citizen’s suits – forces US emissions reductions**

Guarino 11 -- Exec Editor @ Boston College Enviro Affairs Law Review, Edwards Wildman Palmer LLP Associate (Katherine A., 2011, "NOTE: THE POWER OF ONE: CITIZEN SUITS IN THE FIGHT AGAINST GLOBAL WARMING," 38 B.C. Envtl. Aff. L. Rev. 125, L/N)

IV. COMER V. MURPHY OIL USA: A TEST CASE FOR FUTURE GLOBAL WARMING PLAINTIFFS In the words of T.S. Eliot, the end of Comer v. Murphy Oil USA came, "[n]ot with a bang, but with a whimper." n211 In the wake of the startling dismissal of Comer based on a procedural technicality and the subsequent denial of the unorthodox writ of mandamus, the Supreme Court has granted its sister case, American Electric Power Co. (AEP), certiorari. n212 Because the Comer plaintiffs opted for a procedural resolution to their case instead of the usual certiorari, they essentially relegated the merits to the earlier-filed American Electric Power, Co. n213 That case will answer the same questions posed by Comer, namely whether parties injured by the effects of global warming have standing and whether global warming issues are justiciable. n214 As the Supreme Court examines, for the first time, the merits of a public nuisance suit against greenhouse-gas-emitting companies, it will likely be influenced by the developing trend in lower courts toward acceptance of public nuisance as a vessel for litigating global warming tort suits. n215 The fate of cases like AEP may be read through the lens of Comer. n216 [\*149] Global warming plaintiffs should turn to the "lost" Fifth Circuit panel decision in Comer in forming their arguments. However, a complete victory on the merits for such global warming plaintiffs is dubious. Part IV.A, below, predicts that the Supreme Court, in AEP, will probably follow the Fifth Circuit panel's original holding in Comer on the issues of standing, justiciability, and use of tort causes of action. As support for this decision, the Court will look to public nuisance pollution precedent and Massachusetts v. EPA. n217 Part IV.B foresees difficulty on the issue of causation when the merits are finally decided. n218 The chain of causation from injury to greenhouse gas emissions by individual defendants is simply too attenuated to satisfy proximate cause. n219 A. In Future Global Warming Tort Suits, the Supreme Court Will Likely Resurrect the Lost Fifth Circuit Panel Decision on the Issues of Standing, Justiciability, and Tort Causes of Action The only global warming case the Supreme Court has litigated is Massachusetts v. EPA. n220 Although in that case the Supreme Court addressed a different claim--the ability of a state to challenge a rulemaking decision by the EPA--that case is pivotal in predicting how the Court will rule in AEP. n221 The Court also has an interest in deciding this issue before it results in a flood of climate change suits. n222 Even though no plaintiff has actually recovered for global warming injury, recent appellate decisions allowing such plaintiffs to have their day in court has opened a door that was once closed. Private citizens can now choose an energy plant at random to blame for storm damage or flooding in their coastal home. n223 In light of this new judicial tolerance of global warming suits, it is likely that many plaintiffs will initiate such suits until the Supreme Court rules on the issue. n224 [\*150] 1. Justiciability Based on its own interpretations of the political question doctrine, the Supreme Court will likely uphold the justiciability of a state tort claim like the one in AEP. n225 Since Massachusetts v. EPA did not deal directly with justiciability, global warming plaintiffs will have to rely on the political question standard as set out in Baker v. Carr and Nixon v. United States. n226 The Fifth Circuit failed to apply the Baker factors at all because it found that the defendants had not proven that the plaintiffs' state tort claim was textually committed to a political branch of government. n227 The Court may find that the Fifth Circuit misread its political question doctrine precedent. n228 Since Baker states that finding any one of its factors "inextricable from the case at bar" would implicate the political question doctrine, the Supreme Court may have implied that the factors should be analyzed as a whole. n229 However, the stronger argument seems to be that the 1993 case, Nixon, clarified the Supreme Court's intent as to the 1962 Baker factors. In Nixon, the Supreme Court recognized that before the Baker factors could be applied, a preliminary assessment of whether the issue was textually committed to a political branch was necessary. n230 This is a logical interpretation of Baker because the policy behind the Baker factors is in favor of upholding justiciability. n231 This purpose is strengthened by the fact that, since Baker, the Supreme Court has only dismissed two cases for nonjusticiability, one of which was Nixon. n232 The Fifth Circuit panel in Comer cited extensive precedent for the notion that federal courts may not abstain from deciding a case once they have jurisdiction, and that the political question doctrine is a limited exception to that rule. n233 The Supreme Court has held that a federal court cannot avoid its responsibility to decide a case merely because [\*151] it has political implications, n234 lies outside the scope of a federal judge's expertise, or because it is difficult, complex, novel, or esoteric. n235 Global warming certainly has political implications because the government is currently deciding whether to pass legislation regarding greenhouse gas emissions. n236 Tort recovery for injury from global warming is novel and possibly complex, but both of those qualities do not make it nonjusticiable. n237 Therefore, in evaluating the justicability of the AEP claims, the Supreme Court will likely agree with the Fifth Circuit's panel opinion in Comer that the state tort claim for injury from global warming is justiciable because there is no constitutional or statutory provision committing the issue to a political branch. n238 2. Standing In a global warming case like AEP, the Supreme Court will likely hold that the plaintiffs have standing to sue for tort injury from global warming because of its similar holding for global warming plaintiffs in Massachusetts v. EPA. n239 Although Massachusetts v. EPA dealt with a statutory claim under the Clean Air Act, the Court still went through the same Article III standing analysis. n240 This is because standing is a prerequisite for all suits. n241 The main difference between Massachusetts v. EPA and AEP is that in the former case, the plaintiff was a state. n242 However, the plaintiffs in AEP include both states and private land trusts, and thus may cite Massachusetts v. EPA as a case in which the Court granted state global warming plaintiffs special solicitude in the standing analysis. n243 Justices Scalia, Thomas, and Alito, and Chief Justice Roberts will almost certainly vote to deny standing based on their dissenting opinion in Massachusetts v. EPA. n244 There, Chief Justice Roberts recognized [\*152] the catastrophic implications of global warming, but, in the interest of efficiency, would have denied standing because it is a crisis that may ultimately affect "nearly everyone on the planet." n245 Private individuals may also achieve standing based on Massachusetts v. EPA. The majority opinion contains no holding that says citizen plaintiffs cannot assert injury from global warming for standing purposes. n246 On the contrary, it treats the Commonwealth as an injured property owner. n247 The best argument for individual plaintiffs will be that the Massachusetts v. EPA decision granted parens patriae standing and proprietary standing concurrently, thus implying that Massachusetts would have achieved standing even if it were not a state. n248 It is true that in making the subsidiary determination of proprietary standing, the Court exceeded its narrow duty of only ruling on the necessary issues. n249 This type of analysis also made Massachusetts v. EPA a confusing decision to interpret n250 --it was thoroughly criticized by Chief Justice Roberts's dissent. n251 [\*153] However, the message of Massachusetts v. EPA is clear: injury from global warming is a cognizable claim for standing purposes. n252 Based on the Supreme Court's acceptance of standing based on global warming injury, global warming plaintiffs will likely satisfy the injury prong of standing. n253 Since the Court already decided in Massachusetts v. EPA that loss of coastline from rising tides brought on by global warming is a "concrete" and "particular" injury under the Lujan test, n254 it would likely agree with the Fifth Circuit that damage from increased storm severity, another effect of global warming, is a sufficiently particularized injury. n255 In fact, the Massachusetts Court specifically recognized the connection between rising ocean temperatures from global warming and an increase in the "ferocity of hurricanes." n256 Proving redressability by money damages in a future case may be more difficult. n257 The AEP plaintiffs will not encounter this problem, as they seek an injunction, n258 but money damages were requested in Comer [\*154] and could be a part of future climate change cases. Since Massachusetts v. EPA granted the Commonwealth merely a procedural remedy--the ability to challenge the EPA's denial of their rulemaking petition--if future climate change plaintiffs request money damages, the Court may hold that the injury of global warming plaintiffs cannot be redressed by money damages. n259 However, for standing purposes, the Court does not need to actually give the plaintiffs money; it simply must decide whether money would alleviate their injury in some way. n260 Although, arguably, money will not lessen the effects of global warming, it will allow the plaintiffs the ability to rebuild and restore the property they lost. n261 No court has ever granted money damages for injury from global warming. However, the Supreme Court need only look to the whole of tort law for the principle that an award of money damages can and does redress injuries from a myriad of sources. n262 Massachusetts v. EPA also stands for the principle that any contribution to global warming through greenhouse gas emissions is sufficient to prove causation in the standing analysis. n263 The Fifth Circuit panel in Comer relied directly on the Supreme Court's words in Massachusetts v. EPA that the EPA's "meaningful contribution" to global warming by refusing to regulate greenhouse gases sufficiently proved traceability. n264 The defendants' alternative argument that "the causal link between emissions, sea level rise, and Hurricane Katrina is too attenuated," was also dismissed because of its similarity to a failed argument in Massachusetts v. EPA. n265 The Fifth Circuit relied also on the Supreme Court's acceptance of the link between greenhouse gas emissions and global warming. n266 It recognized that not only had the Court accepted "a causal chain virtually identical" to that of the plaintiffs, but it had gone one step further and recognized injury stemming from the EPA, an [\*155] agency that did not directly emit the greenhouse gases. n267 It is clear from this comparison that the Fifth Circuit agreed with the Supreme Court's treatment of the standing issue for global warming cases. n268 Because of the stark similarity between the injury and causation alleged in AEP, Comer, and Massachusetts v. EPA, it is likely that the Supreme Court would agree with the Fifth Circuit panel's 2009 ruling when it hears AEP. n269 B. The Final Barrier: Proof of Causation Despite the recent successes of global warming plaintiffs on the preliminary issues of justiciability and standing, they have yet to encounter the most formidable barrier of all: proof on the merits. n270 The difference between the burden of proof for standing at the pleading stage and the burden for proof on the merits is significant. n271 At the pleading stage, the plaintiffs only need to make general allegations of harm, as yet unsupported by specific facts. n272 The plaintiffs in Comer succeeded before the Fifth Circuit panel based on this lowered bar to standing. n273 However, the court stopped short of addressing the merits of the claims, and thus, of awarding damages at this stage. n274 On the merits, global warming plaintiffs would be forced to support their claims by a preponderance of the evidence. n275 Proximate cause would have presented the greatest obstacle to the Comer plaintiffs because the chain of causation from defendants' emission of greenhouse gases, to global warming, to increased storm intensity, to Hurricane Katrina, to damaged property, was extremely attenuated. n276 [\*156] In fact, the Fifth Circuit judge in Comer intimated that he would have affirmed a dismissal on proximate cause grounds. n277 Similarly, District Court Judge Senter foresaw "daunting evidentiary problems" for the plaintiffs if they sought to prove causation by a preponderance of the evidence. n278 The Supreme Court, in addressing proximate cause in the AEP case, will likely recognize that the early pollution cases analogized by global warming plaintiffs are in fact quite different when it comes to causation. n279 In Georgia v. Tennessee Copper Co., for example, the chain of causation extended directly from the defendants' isolated emission of "noxious gas" to the effect the gas had on the neighboring state. n280 In contrast, global warming stems from an incalculable number of sources and affects the entire planet in ways that are still not fully understood by scientists. For global warming plaintiffs, the defendants' emission of greenhouse gases is not the "but-for" cause of the injury-causing effect of global warming. n281 For example, in Comer that was Hurricane Katrina. n282 Hurricanes are natural processes that would occur even without global warming. n283 The Comer plaintiffs' contribution argument, while sufficient for standing, would likely be insufficient to prove tort proximate cause. n284 Since no global warming claim brought under a tort cause of action has yet been litigated on the merits, global warming plaintiffs will be left without a means of supporting their tenuous claims. CONCLUSION Within the span of nine months, the Fifth Circuit flung open and then slammed shut the doors of the court on plaintiffs seeking money damages from contributors to global warming. n285 But all is not yet lost. As one of the Comer plaintiffs mused, [\*157] Although the victory was taken away from these citizens in the most unusual and unfortunate of ways, the refusal of the United States Supreme Court to take action in no way erases the words so eloquently written by Judge James Dennis, nor does it diminish this first effort as a guide and an inspiration for the future. n286 Should the Supreme Court accept the challenge that thirteen Fifth Circuit judges shirked, and choose to resurrect the lost panel decision for American Electric Power, Co. (AEP) and its progeny, it could mean a flood of citizen litigation for climate change. n287 In the past two decades, the effects of global warming have grown increasingly more bothersome, swallowing coastlines with rising tides, raising temperatures in already arid regions, and creating some of the most ferocious storms in history. n288 These effects have caused injury to millions of people and their property, and will only continue to wreak further havoc. n289 Once upon a time, the standing analysis was strict. n290 Plaintiffs could not gain access to the courts with an attenuated claim of causation. n291 However, the Supreme Court's landmark decision in Massachusetts v. EPA turned the tables in favor of global warming plaintiffs. n292 In recognizing a seemingly endless chain of causation as sufficient to confer standing, the Supreme Court gave its imprimatur to future global warming suits. n293 The problem is, standing does not end the inquiry. Once global warming plaintiffs drag their long chains of causation into a merits battle, their arguments may not have the same force. Under a higher proximate cause standard, "fair traceability" is no longer a viable connection between the defendants' actions and the [\*158] plaintiffs' harm. n294 The chain will break under the strain of tort causation. n295 For the meantime, the Supreme Court has not ruled on any tort global warming cases. AEP still stands as a triumphant beacon of judicial activism, lighting the way for cases like Comer that came closer than ever to victory against global warming contributors. n296 The Second Circuit in AEP marked a departure from the strict standing test of Lujan, as would Comer, had the 2009 panel decision been left intact. n297 Ultimate resolution of global warming tort suits in favor of the plaintiffs would likely encourage more victims of hurricanes and coastal inundation to bring suit against local greenhouse-gas-emitting villains. n298 The time has come for the courts to choose the role they will play in defending the Earth from global warming.

### \*\*\*A2: Civil Suit Advantage

### US Cheats Suits

#### No base kickout-elites always side with the US

**Yeo, Catholic politics professor, 2010**

(Andrew, “Anti-Base Movements in South Korea: Comparative Perspective on the Asia-Pacific”, <http://www.japanfocus.org/-Andrew-Yeo/3373>, ldg)

Although anti-base movements may successfully mobilize, as witnessed in Maehyangri and Pyeongtaek, they may not be equally successful in shaping policy outcomes. More often than not, activists face significant structural constraints. In all anti-base movements, whether in Okinawa, South Korea, Guam or the Philippines, activists face great challenges when confronting U.S. base issues because political elites tend to prioritize robust alliance relations with the U.S. Whether a progressive or conservative-leaning government, regardless of who comes to power, political leaders in Tokyo and Seoul generally accept in principle the necessity for U.S. forces to provide regional stability in the mid- to long-term. A pro-U.S. consensus among political leaders and bureaucracies, particularly within the defense and foreign policy establishments, drowns out activist calls for an alternative security framework centered on a reduction of U.S. forces. This ideological constraint makes it difficult for anti-base movements to shift public discussion on U.S. base issues. Moreover, host governments constantly receive a mixture of political pressure and economic incentives to support U.S. alliance obligations. While some government elites are genuinely sympathetic to the plight of local residents, in most cases political and economic forces prevent these actors from executing policy changes that would significantly eliminate or ameliorate the negative effects of U.S. military presence. For example, after the May 2006 clashes between activists and government forces, Prime Minister Han Myeong-Sook, a former activist herself, issued a much anticipated public statement in a live national broadcast. In her televised speech, she expressed regret and sadness for the previous weeks’ violence, and sympathy and concern for residents forced to relocate. However, taking the same position as the MND, the Prime Minister reiterated the importance of base relocation for maintaining positive bilateral relations with the United States.24

#### No kickout SOFAs preempt application of the plan and the US just refuses pay even when it DOES lose suits—their card!

Weyand 12 (Matt –Executive Online Editor, Indiana Journal of Global Legal Studies, “Department of Defense, Inc.: The DoD's Use of Corporate Strategies to Manage U.S. Overseas Military Bases”, 2012, 19 Ind. J. Global Leg. Stud. 391, lexis)

The United States also is able to usually avoid costs by contracting out of liability for any pollution associated with its overseas military bases. Prior to building or using an overseas military base, the United States negotiates a contract with the host nation. n109 This contract, which creates an "alliance" between the United States and the host nation, is a "short, straightforward treat[y] that express[es] 'common objectives' related to 'national security' and 'international threats to the peace.'" n110 Once the United States has formed an "alliance" with the host nation, it negotiates a Status of Forces Agreement (SOFA). The SOFA "establishes the framework under which armed forces operate within a foreign country" n111 ; it ensures that U.S. personnel present in a host nation have rights and legal protections. n112 Although the United States shares jurisdiction with some countries, it primarily uses the SOFA to retain exclusive jurisdiction, and to "put any U.S. forces stationed in the host country as far beyond its domestic laws as possible." n113 SOFAs undermine the host nation's sovereignty, n114 and thus inevitably "give rise to explosive political disputes." n115 Host nations must also engage in "burden sharing" with the United States. n116 Under "burden sharing," host nations pay the United States to support its presence in their country. n117 In 2002, Japan, which spends the largest amount of any country, paid $ 4.4 billion. Many host nations, including major players such as Germany and Japan, are becoming increasingly frustrated with the U.S. military's "above the law" attitude. Under Germany's SOFA with the United States, the United States is responsible for environmental and noise pollution. n118 [\*406] Nevertheless, the U.S. military has polluted the land around its bases in Germany and has refused to clean it up. Germany's ire with the U.S. military has kicked off a race to the bottom among the poorer countries in Eastern Europe, such as Bulgaria, Poland, and Romania, which have less stringent environmental regulations. n119 These countries are "poor and desperate enough to be willing . . . to let the Americans pollute as they wish, cost free, in order to get what economic benefits they can." n120 The United States has polluted in Japan. The U.S. military has used the reservoir of the Fukuchi Dam, which provides water to the residents of Okinawa, for training exercises, and "significant amounts of discarded munitions have been discovered in the surrounding watershed area." n121 However, Japan is powerless to prevent this pollution or to compel the United States to remediate the environmental damage it causes. In their SOFA with Japan, the United States explicitly contracted away liability for any environmental damage its military bases might cause. n122 According to Article 18 (5)(3) of the SOFA, Japanese citizens have the power to sue and collect damages from the United States. n123 However, despite this provision in the SOFA, Japanese citizens are also powerless to hold the United States liable for its environmental degradations. Although many successful suits have been brought (including one assessing more than $ 24 million in damages), the United States will not pay. n124 From the United States' perspective, "it is 'strange' that the American military should have to pay damages for practicing warfare to protect Japan." n125 IV. The Dark Side of Efficiency: The End of Cooperation The DoD's twenty-first century global posture, which "emphasiz[e]s long-term military access to countries," relies heavily on the cooperation [\*407] and goodwill of host nations. n126 However, the DoD's overseas military bases create many negative externalities, which host nations are ultimately forced to absorb. Consequently, countries worldwide have become increasingly hostile toward U.S. overseas military bases. n127 In order for the DoD to continue to economically manufacture security using the corporate strategies of rightsizing, outsourcing, and offshoring, a balance must be struck between efficiency and diplomacy. This section consists of two subsections. The first subsection describes how the DoD's current basing and diplomatic posture has negatively impacted diplomatic relationships with host nations and how U.S. responses to these negative externalities have caused diplomatic relations to further deteriorate. The second subsection suggests how the DoD can improve and sustain diplomatic relations by striking the proper balance between efficiency and diplomatic decency. A. Negative Externalities Overseas military bases create negative social externalities in host nations. Perhaps the most representative example of these negative social externalities is the history of military violence against the women of Okinawa, Japan. n128 Since the U.S. occupation at the end of WWII, Okinawan women have been the victims of military violence. Between WWII and the Korean War, sexual and physical violence against Japanese women was "rampant and indiscriminate." n129 In recent years, date-rape violence has been increasing. n130 The most notorious and reprehensible incident of rape occurred in September 1995 when two Marines and a sailor "abducted a twelve-year-old girl they picked out at random, beat and raped her, and left her on a beach." n131 After the rape, the United States invoked Article 17 of their Japanese SOFA-which gives the United States jurisdiction over crimes committed by U.S. troops in Okinawa-and refused to surrender the soldiers to Japanese authorities. n132 The rape and the U.S. military's response to it shocked the people of Okinawa, incited massive anti-American [\*408] demonstrations, n133 and spearheaded a movement to expel U.S. troops from the island. n134 In 2005, after ten years of unrest and continuing military violence against Okinawan women, the United States agreed to transfer, over a six-year period, thousands of U.S. troops from Okinawa to Guam. Overseas military bases also create negative environmental externalities. Perhaps the most representative example of these negative environmental externalities is the history of U.S. military pollution in Vieques, Puerto Rico. For sixty years, the island of Vieques was the home of a U.S. Navy live-bombing range and an ammunition facility, n135 and over those sixty years, the U.S. Navy's pollution greatly damaged the local ecosystem. n136 On the western side of the island, the U.S. Navy disposed of nearly "[two] million pounds of military and industrial waste." n137 In 2005, the Environmental Protection Agency listed the Navy's live-bombing range, which was located on the eastern side of Vieques, as one of the most hazardous waste sites in the United States. n138 The land and water surrounding the range have been extensively polluted: "[c]oral reefs and sea-grass beds have sustained significant damage from bombing, sedimentation, and chemical contamination. The groundwater has been contaminated by nitrates and explosives." n139 Furthermore, the range has been "seriously contaminated by heavy metals" such as depleted uranium, and "studies have documented that those metals have entered the food chain." n140 In May 2003, after years of protests and demonstrations, the U.S. Navy was expelled from Vieques. n141 The United States has not responded diplomatically to complaints about the negative externalities caused by its overseas-basing. In response to the rape of the twelve-year-old Okinawan girl, General Richard Meyers, commander of U.S. forces in Japan, said "this was a singular tragedy caused by 'three bad apples' even though he knew that sexually violent crimes committed by U.S. soldiers against Okinawans were running at the rate of two per month." n142 And, Admiral Richard Macke, commander of U.S. forces in the Pacific, said: "I think [\*409] that [the rape] was absolutely stupid. For the price they paid to rent the car [with which to abduct their victim], they could have had a girl." n143 These impolitic comments only served to fuel the fire of outrage in Okinawa. High-ranking officers responded to the claims of the Vieques movement by arguing, in effect, that the United States military is the victim, not the people of Vieques. According to the U.S. military, civilian encroachment on the military installations on Vieques undermined the military's ability to use these installations for training. n144 B. The Balance between Efficiency and Diplomacy: Respect Allies and Follow the Law It will be difficult for the DoD to find the balance between efficiency and diplomacy. On one hand, the DoD's new overseas-basing strategy and its use of rightsizing, outsourcing, and offshoring to manage its overseas military bases have reduced overhead and allowed the DoD to manufacture security more economically. On the other hand, the DoD's overseas-basing strategy and the negative externalities caused by overseas bases have resulted in the United States military being expelled from many countries. It is tempting for the DoD to continue to cut diplomatic corners; however, cutting corners has cost the DoD the cooperation of allies, and in order for the DoD to continue manufacturing security, it will need the cooperation of foreign countries more than ever. If the DoD does not redress the wrongs created by overseas military bases and work to prevent similar wrongs from occurring in the future, it will not be able to fully actualize and maintain its overseas-basing posture, and will therefore not be able to provide security to American citizens. Because the DoD is closing many overseas bases and creating smaller bases with no permanent troop presence, many of the issues associated with overseas military bases, such as pollution and rape, might become moot. Nevertheless, the DoD will still maintain major bases in foreign countries, and if the DoD does not find the balance between efficiency and diplomacy, the continued presence of these bases will be jeopardized. Consequently, to achieve the necessary balance between efficiency and diplomacy, the United States must: 1) discontinue the use of SOFAs, or at the very least, engage in fair bargaining practices and forge bilateral SOFAs with all host nations; 2) consistently and transparently prosecute U.S. troops for crimes committed in host [\*410] nations; and 3) clean up overseas military bases and prevent pollution from occurring in the future. SOFAs allow the DoD to impose its will on host nations, to undermine the host nation's sovereignty, and to cause diplomatic strife. Thus, SOFAs inherently undermine the alliance between the United States and the host nation. In an ideal world, the United States would discontinue the use of SOFAs. However, this may not be possible or practical. Consequently, the United States must, at the very least, engage in a meaningful SOFA-bargaining process with host nations: it must form a true alliance with the host nation, an alliance based on mutual trust and assurances. As part of this bargaining process, burden sharing can be used as a bargaining chip. For example, a host nation may allow the United States to opt out of some liability for pollution if the United States pledges to minimize pollution and does not require the host nation to engage in burden sharing. Moreover, to ensure goodwill and continued cooperation, the DoD should forge bilateral SOFAs with all host nations, not just with countries that have the power to bargain for them. The United States must carefully guard its reputation abroad-if prospective host nations know that the United States has a history of polluting, it will be more difficult to enlist them as our allies. If the United States is going to continue to demand immunity for its American troops overseas, at the very least, it must consistently prosecute troops who commit crimes in a host nation. U.S. troops must be held accountable for any criminal acts they commit in host nations, and the United States High Command should establish a top-down policy of instructing troops that they will be prosecuted for crimes they commit. By putting U.S. soldiers on notice, the United States will increase the likelihood that they will not commit crimes. Collaborating with the host nation's law enforcement, and transparently prosecuting U.S. troops will ensure that the host nation's citizens will feel that justice has been served. Because the DoD's new defense strategy is so dependent upon the cooperation of host nations, the United States must actively foster goodwill and trust. If the United States does not win the hearts and minds of the local populace, it will continue to risk being expulsed from host nations, as it was in Japan. Although cleaning up overseas military bases will be expensive, not doing so will jeopardize relations with host nations. If the DoD pollutes, it must cleanup after itself. Prevention is often cheaper than remediation, so the DoD should establish procedures for the proper disposal of military and industrial waste. The DoD could design these procedures based on U.S. environmental law or the laws of the host nations. As a sign of good will, the DoD should follow the more stringent [\*411] of either its laws or the laws of the host nation. Countries will be more willing to allow the United States to build bases on their soil if the United States has a record of not polluting or, at the very least, a record of cleaning up after itself. n145

### Congress Rollback

#### Congress will find a way to circumvent the aff

Palatucci 04 (Scott M. Palatucci, 10 Widener L. Rev. 585, THE EFFECTIVENESS OF CITIZEN SUITS IN PREVENTING THE ENVIRONMENT FROM BECOMING A CASUALTY OF WAR, http://www.temple.edu/lawschool/iilpp/EnvironmentalRoundtableResearchDocs/Palatucci%20-%20Effectiveness%20of%20Citizen.pdf)

Citizen suit provisions are designed to hold the federal government accountable for the violation of an environmental law in the same way they would hold public or private entities liable for the same infraction. As such, the provisions provide for an express waiver of the federal government's sovereign [\*588] immunity from prosecution for a violation of the respective environmental law. n17 In virtually every environmental statute, however, Congress has inserted a subsequent provision expressly authorizing "the President to exempt an activity from compliance, if to do so is in the 'paramount interest' of the United States." n18 This exemption, although rarely invoked, gives the military a viable way to circumvent citizen suits, since it can be argued that most of its activities are performed "in the paramount interest of the United States." n19 The exemption aside, the military is otherwise slowly becoming more and more immune to "citizen suits." Recently, in a ﬁfty--seven--to--one vote, Congress passed the Bob Stump Defense Authorization Act for the Fiscal Year 2003 (BSDAA). n20 In this Act, the military received exemptions from pertinent parts of the Endangered Species Act and the Migratory Bird Treaty Act. n21 These exemptions represent an enormous win for the military, and have effectively served to nullify several court rulings that previously enjoined harmful military operations. n22 The exemptions contained in the BSDAA have the Department of Defense (DOD) excited with the new found freedom they provide. n23 In fact, it can be said that these exemptions have encouraged the DOD to continue to seek [\*589] blanket exemptions from many other environmental laws. n24 The DOD justiﬁes these exemptions by stating: The ability of the Department of Defense to fulﬁll its primary mission to safeguard national security has been dramatically challenged -- and in some instances diminished -- due to its obligations to satisfy several important federal environmental laws. [For example, t]he land, waters and space in which the Department can train its solders, sailors, airmen, and Marines have been restricted or lost due to the presence of endangered species, complaints about noise, urban encroachment and so forth. n25 Holding the military accountable for environmental damage by way of the citizen suit may soon be an impossible feat given the legislature's propensity to grant the military blanket exemptions from environmental laws. In fact, according to the House Armed Services Committee, the only reason that the military did not receive additional exemptions to other environmental laws in the BSDAA was because the DOD and the military did not give legislators enough time to consider their requests. n26

## \*\*\*1NR

### \*\*\*A2: Soft Power Impact

#### Soft power fails

Layne 2011

Christopher, Professor and Robert M Gates Chair in National Security in the George HW Bush School of Government and Public Service, Texas A & M University, “The unipolar exit: beyond the Pax Americana”, Cambridge Review of International Affairs,Volume 24, Number 2, June 2011

Curiously, Brooks and Wohlforth (and other analysts, notably Fareed Zakaria) believe that notwithstanding US relative decline, the Pax Americana can be maintained (Zakaria 2008). Specifically, they believe that international institutions can help perpetuate US dominance. By strengthening these institutions, they say, the United States can ‘lock in’ the hegemonic order that it built after World War II and thereby ensure that it persists after unipolarity ends (Brooks and Wohlforth 2008; Ikenberry 2001; Keohane 1984). Brooks and Wohlforth also assert that unipolarity affords the United States a 20 year window of opportunity to recast the international system in ways that will bolster the legitimacy of its power and advance its security interests (Brooks and Wohlforth 2008, 216–218). There are four reasons why this ‘institutional lock-in’ argument is wrong. First, America’s liberal preferences—which underpin the US commitment to multilateralism and international institutions—have been dealt a telling blow by the Great Repression. Institutions have failed to produce a coordinated response to the financial and economic crisis. Moreover, through the actions of national governments, the state has been brought back in to economic policy, and states have responded to the crisis by adopting nationalistic and neo-mercantilist policies rather than by pursuing international cooperation. Second, because of the perception that its hard power is declining, and the hit its soft power has taken because of the meltdown, there is a real question about whether the United States retains the credibility and legitimacy to take the lead in institutional reform. As Financial Times columnist Martin Wolf (2008) says, ‘The collapse of the western financial system, while China’s flourishes, marks a humiliating end to the “unipolar moment.” As western policy makers struggle, their credibility lies broken. Who still trusts the teachers?’ Third, rather than locking themselves into the ebbing Pax Americana, rising powers such as China need to wait only a decade or so to reshape the international system themselves and construct a new order that will reflect their interests, norms, and values (Jacques 2009). Finally—and most important—the institutional lock-in argument misses a fundamental point: the entire fabric of world order that the United States established after 1945—the Pax Americana—rested on the foundation of US military and economic preponderance. Remove the foundation and the structure crumbles. The decline of American power means the end of US dominance in world politics and the beginning of the transition to a new constellation of world power. Without the ‘hard’ power (military and economic) upon which it was built, the Pax Americana is doomed to wither in the early twenty-first century.

#### US fails at shaping international norms and doesn’t want to – empirics.

Legro 2011

Jeffrey W., Randolph P Compton Professor at the University of Virginia, The mix that makes unipolarity: hegemonic purpose and international constraints, Cambridge Review of International Affairs, Volume 24, Number 2, June 2011

This record seems straightforward: the United States has only undertaken limited efforts to reshape the dominant international institutions that structure global politics and largely failed when it has tried to do so. The main initiatives have either been regional pacts (for example, NAFTA) or been based on old institutions (for example, NATO, GATT/the World Trade Organization (WTO)). The Bush administration did successfully create the Proliferation Security Initiative, but this was a partial exception that proves the rule. The US record of diffidence and underachievement, moreover, has come at a time when there seems to be demand for change. International institutions today appear dysfunctional (Mahbubani 2005; Ikenberry 2005; Maull 2006). Scholars such as John Ikenberry and policymakers like Douglas Hurd (UK foreign secretary from 1989 to 1995) have argued that the United States had an ideal opportunity to ‘remake the world, update everything, the UN, everything’ after the end of the Cold War (Sarotte 2009, 4). But of course this did not happen. Brooks and Wohlforth’s answer to this shortfall puts the blame on the George W Bush administration. It was inept. Instead of pursuing systemic activism based on military force, it should have pursued a policy that aimed at the global economy or international standards that define legitimacy. Moreover, Bush did it with amisguided diplomacy that paid too little attention to the ways power can be used to leverage legitimacy and the rules of the global economy. Instead, the Bush team disavowed itself of the need to reshape institutions and focused too narrowly on justifying policies to the American public. They may indeed be right about the Bush-43 era but ‘bad policy’ is a residual category for their argument—it is not part of either their main negative argument or even the opaque positive argument. It also does not address the puzzle of limited US ambition for the ten years before 9/11.

### \*\*\*Warfighting

### 1NR A2: NEPA Flex

#### NEPA is overly cumbersome and permeates all department decisions

Lamar Smith, 7-17-2012, Congressman, represents the 21st Congressional District of Texas, Chairman of the Science, Space, and Technology Committee, which has jurisdiction over programs at NASA, the Department of Energy, the Environmental Protection Agency, the National Science Foundation, the Federal Aviation Administration, and the National Institute of Standards and Technology, “RAPID ACT,” http://www.gpo.gov/fdsys/pkg/CRPT-112hrpt596/pdf/CRPT-112hrpt596-pt1.pdf

III. PROJECT DELAYS DUE TO THE NEPA PROCESS It has long been alleged that NEPA is overly cumbersome, causing a lengthy decision-making process for Federal agencies. The cause of delay falls into two categories: preparation of the documents required by NEPA (e.g., an EIS) and litigation challenging the documents’ adequacy. Generally, stakeholders express that EISs have become far too lengthy and technical, and that litigation—and the mere threat of litigation during the 6-year statute of limitations period—deters breaking ground on a project even after all permits have been approved.33 The deWitt study, which ‘‘appears to be the only true quantitative analysis of the time required to complete an EIS,’’ found that ‘‘between January 1, 1998 and December 31, 2006, 53 Federal executive branch entities made available to the public 2,236 final EIS documents; the time to prepare an EIS during this time ranged from 51 days to 6,708 days (18.4 years). The average time for all Federal entities was 3.4 years, but most of the shorter EIS documents occurred in the earlier years of the analysis; EIS completion time increased by 37 days each year.’’ 34 In the 109th Congress, the U.S. House of Representatives Committee on Resources Task Force on Improving and Updating the National Environmental Policy Act received testimony regarding delays in environmental review and permitting, including delays that cost jobs by causing projects to fail, and made suggestions to improve the NEPA process in its Final Report.35 Stakeholders believe this ‘‘paralysis by analysis’’ results in lost jobs when project sponsors and capital withdraw their support in the face of lengthy delays. In March 2011, as part of its Project No Project initiative the U.S. Chamber of Commerce published a study of 351 proposed energy projects—solar, wind, wave, bio-fuel, coal, gas and nuclear—that have been delayed or cancelled altogether due to extensive delays in the Federal permitting process.36 ‘‘[I]f these projects had been built, there would have been direct investment in the 2010 timeframe of $576 billion in direct investment; that trickle-down effect or the multiplier effect would have been a $1.1 trillion boost to the economy and it would h ave created 1.9 million jobs through the 7 years of construction.’’ 37

### 1NR A2: Better Decisions

#### Court action is too slow AND encourages extreme position taking which hurts future foreign affairs cooperation

Entin 12 (Jonathan L. Entin Associate Dean for Academic Affairs (School of Law), David L. Brennan Professor of Law, and Professor of Political Science, Case Western Reserve University. “War Powers, Foreign Affairs, and the Courts: Some Institutional Considerations,” http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.21.Article.Entin.pdf)

Whatever the merits of the decisions discussed in the previous section, those rulings should give pause to those who might rely on the judiciary as a check on what they regard as executive overreaching. When combined with the procedural and jurisdictional obstacles discussed in Part I, a more general lesson emerges: the judiciary cannot resolve all the questions that might arise in connection with war powers and foreign affairs. Nonetheless, the substantive and procedural limitations of judicial review provide an opportunity for greater civic and political engagement in decisions that can have profound consequences for our nation and the world. If the courts cannot resolve these matters, questions of war and diplomacy, it should come as no surprise that they are getting worked out largely through political accommodation and negotiation. These accommodations and negotiations necessarily reflect the differing constitutional views of the legislative and executive branches as well as of the persons and groups that engage on these issues. Although many lament the quality of current political discourse, excessive reliance on the judicial process has undesirable consequences. The Supreme Court has had difficulty rendering consistent or principled decisions about legislative-executive relationships.110 Sometimes the Court has taken a formalistic approach that emphasizes the need to maintain clear lines between the branches.111 At other times, the Court has used a functional approach that emphasizes the importance of checks and balances to prevent the accumulation of excessive power in any particular branch.112 In other words, judicial review does not always provide clear answers to complex questions. The complexity of those questions is particularly evident in the military and diplomatic arenas. Reliance on the political process recognizes the uncertainties and contingencies involved in many of these matters.113 Moreover, interbranch negotiation rather than litigation recognizes that an effective government requires a degree of comity that is inconsistent with frequent reliance on the judiciary.114 Our system rests on a rich set of subtle understandings and an implicit sense of political limits.115 As a result, structural and institutional factors often dampen the inevitable conflicts that arise between Congress and the president. Excessive reliance on the judiciary tends to raise the stakes of conflict by clearly identifying winners and losers and by encouraging the assertion of extreme positions for short-term litigation advantage that might complicate the resolution of future disagreements.116 In addition, the litigation process takes time. Of course, the Pentagon Papers case was resolved in less than three weeks after the New York Times published its first article on the subject.117 Ordinarily, however, the judicial process proceeds at a much statelier pace. Consider another landmark case, albeit one that dealt with domestic issues. Cooper v. Aaron118 was decided approximately one year after President Eisenhower dispatched federal troops to enforce the desegregation of Little Rock Central High School in the face of massive resistance encouraged by Arkansas Governor Orval Faubus.119 Often, disputes over military and diplomatic matters are timesensitive. Expedited judicial review might help, but events on the ground might well frustrate orderly judicial disposition.

#### PQD is to key to chain of command—plan destroys effective operations

**Fenster et al., Mckenna Long & Aldridge LLP, 2010**

(Herbert, Phillip Carter, “Brief Of The Veterans Of Foreign Wars Of The United States As Amicus Curiae In Support Of Defendants And Dismissal”, http://ccrjustice.org/files/Amicus\_Curiae\_Brief\_of\_VFW.pdf)

“Unity of command,” and its corollary, “unity of effort,” are fundamental principles of warfare which are central to the effectiveness of Western militaries. See Carl von Clausewitz, On War 200-210 (Michael Howard & Peter Paret, ed. and trans., Princeton University Press 1976) (1832) (hereinafter “Clausewitz”). There “is no higher and simpler law of strategy” than to apply this principle in order to concentrate a nation’s military power its adversaries’ “center of gravity.” Id. at 204. This principle was first embraced by the American military during the 19th Century, and has subsequently shaped the organizational structure of American warfighting through two world wars and countless other conflicts. See James F. Schnabel, History of the Joints Chiefs of Staff, Vol. 1 at 80-87 (1996); Russell F. Weigley, History of the United States Army at 422-423 (Bloomington: Indiana University Press, 1984). Unity of command requires the integration of all combat functions into a single organizational element, with command authority vested in a single individual. See U.S. Joint Chiefs of Staff, Joint Pub. 3-0, Joint Operations at Appx. A, p. A-2 (2010), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_0.pdf. The U.S. military implements “unity of command” through its chain of command—a hierarchical organizational structure which transmits command authority from the President through the Secretary of Defense, through subordinate military officers, down to the lowest ranking soldier, sailor, airman or Marine on the frontlines of America’s armed conflicts. This chain of command serves important organizational purposes, by vesting command authority in individual officers who are responsible for specific missions, and are empowered to command their personnel to achieve those missions. The chain of command also supports important normative and legal policy purposes, such as the doctrine of “command responsibility,” which renders battlefield commanders responsible for all their units do or fail to do, whether they knew about such conduct, or should have known about it. See Application of Yamashita, 327 U.S. 1, 14-16 (1946); see also Army Field Manual 27-10, The Law of Land Warfare at ¶ 501 (1956) (stating U.S. Army doctrine on “command responsibility”). “Everything in war is very simple,” Clausewitz noted “Everything in war is very simple,” Clausewitz noted, “but the simplest thing is difficult.” Clausewitz at 119. The dangers of war, the fatigue of close combat, and the uncertainty which lurks within the fog of war, all combine to create a kind of “friction” which impedes the progress of armies. Id. A more contemporary author and veteran describes this fog: For the common soldier, at least, war has the feel, the spiritual texture, of a great ghostly fog, thick and permanent. There is no clarity. Everything swirls. The old rules are no longer binding, the old truths no longer true. Right spills over into wrong. Order blends into chaos, love into hate, ugliness into beauty, law into anarchy, civility into savagery. The vapor sucks you in. You can’t tell where you are, or why you’re there, and the only certainty is overwhelming ambiguity . . . . You lose your sense of the definite, hence your sense of truth itself. Tim O’Brien, The Things They Carried 88 (1990). The military chain of command is designed to counteract this fog and friction of war, by providing clarity of orders and purpose to individual soldiers and their units. Similarly, this organizational structure exists to impose some order on the behavior and actions of soldiers and units, aligning their conduct with national goals, framing their actions in the context of strategic and operational campaigns, and focusing their efforts on the missions which support these broader endeavors. It is this structure which differentiates the armed forces of a nation from an armed group of thugs, and which ensures that national armed forces conduct themselves in accordance with the laws of armed conflict. Cf. Annex to the Convention, Hague Convention No. IV Respecting the Laws and Customs of War on Land, art. 1, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277; Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 4, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364. Our nation’s military personnel depend on their chain of command to provide them with certainty, clarity and authority in the heat of battle. Into this ordered system, Plaintiff wishes to inject the uncertainty of the American adversarial litigation process, by seeking, inter alia, that this Court declare there is no armed conflict in Yemen, and that orders issued by the President in response to that conflict should be enjoined. Not only would this force the court to go far beyond the “limited institutional competence of the judiciary” by involving it in sensitive matters of national security, cf. Arar v. Ashcroft, 585 F.3d 559, 576 (2d Cir. 2009) (citations omitted), but this also would undermine the chain of command by literally interposing this Court between the President and his subordinate officers, thereby contravening the core doctrinal principle of “unity of command,” which has served American military forces in good stead since the Civil War. In asking the Court to hear this case, and to entertain the extraordinary remedy of injunctive relief against the President and his cabinet, the Plaintiff is asking the court to overturn the political judgment of the President and Congress that the nation is at war; that this war is an armed conflict against Al Qaeda; and that it is appropriate to use a blend of military, intelligence and diplomatic force to wage this war. All three branches of Government have decided that “[w]e are [] at war with al Qaeda and its affiliates.” Remarks of the President on National Security, May 21, 2009; see also Authorization for Use of Military Force (“AUMF”), Pub. L. No. 107-40, 115 Stat. 224 (2001); Hamdan v. Rumsfeld, 548 U.S. 557, 628-31 (2006). Political leaders from both political parties, over the course of two presidencies and five elected Congresses, have agreed upon, authorized, and appropriated funds for this war against Al Qaeda. It is a fundamental axiom among American strategists that, “[a]s a nation, the United States wages war employing all instruments of national power – diplomatic, informational, military, and economic.” U.S. Joint Chiefs of Staff, Joint Pub. 1, Doctrine for the Armed Forces of the United States at I-1 (2009), available at http://www.dtic.mil/doctrine/new\_pubs/jp1.pdf. Plaintiff would seek to overturn the considered judgment of this nation’s political leaders in choosing the national strategy for this war, including the Attorney General of the United States, who has written that, in this war against Al Qaeda, “we must use every weapon at our disposal . . . [including] direct military action, military justice, intelligence, diplomacy, and civilian law enforcement.” See Letter from Attorney General Eric H. Holder, Jr. to Sen. Mitch McConnell, February 3, 2010 (emphasis added). The relief requested by plaintiff is both extraordinary and inappropriate, and completely inconsistent with the strategic imperative for “unified action [which] ensures unity of effort focused on [national] objectives and leading to the conclusion of operations on terms favorable to the United States.” See Joint Pub. 1 at I-1.

### 1NR A2: Alliances Solve

#### its not a question of yes/no intervention, just a question of speed and effectiveness

Posner and Vermeule 11(Eric, Kirkland & Ellis Professor of Law, The University of Chicago, and Adrian, John H. Watson Professor of Law, Harvard Law School “DEMYSTIFYING SCHMITT,” http://www.law.uchicago.edu/files/file/333-eap-Schmitt.pdf)

Schmitt believed that constitution-writing assemblies and legislatures cannot enact substantive laws that govern the executive during emergencies; the most the rulemaker can specify in advance is who will exercise emergency powers.30 The argument falls out of the rules/standards analysis. Emergencies are, by their nature, unique. Every threat to the nation is different. If emergencies are unique, then their features cannot be predicted on the basis of the past, which means that legislatures will not be able to use rules to govern the executive’s behavior during them. The cost of predicting the nature of the next security threat is too high; and given their busy agendas, legislatures have little motivation to invest the resources in trying to predict the future. Instead of enacting rules that govern the executive during emergencies, legislatures enact standards, in effect delegating to the executive the power to take aggressive actions to defend the nation under ill-defined conditions and subject to ill-defined constraints. In the United States, most emergency legislation takes the forms of standards; and it exists alongside a constitutional understanding that the executive has the primary responsibility for fending off foreign attacks and addressing other threats, and may draw on military and law enforcement resources to do so. If Congress cannot regulate in advance of emergencies, might it not be able to regulate once the emergency begins? The problem is that in the early stages of the emergency, the legislature is hampered by its many-headed structure. Large bodies of people deliberate and act slowly (unless they act as mobs). The best that the legislature can do is ratify the executive’s actions by blessing it with a retroactive authorization, or call a halt to the executive’s response by defunding it. As the emergency matures, the legislature continues to be hampered. Crises unfold in an unpredictable fashion; secrecy will be at a premium. Public deliberation compromises secrecy; the unpredictability of the threat eliminates the value of lawmaking. The legislature’s role in the emergency is marginal. It can grant or withhold political support; and it can legislate along the margins. The legislature may be able to undermine the executive response by defunding it, but it will rarely do so because some response is always better than none. The problem for the legislature is that it cannot make policy in a fine-grained way; its choice—broad support or none at all—is no choice at all. Anticipating a body of literature in positive political theory, Schmitt noted that “the extraordinary lawmaker [i.e. the President of the Reich] can create accomplished facts in opposition to the ordinary legislature. Indeed, especially consequential measures, for example, armed interventions and executions, can, in fact, no longer be set aside.”31 The President’s first-mover role – the “presidential power of unilateral action”32 – implies that he can create a new status quo that constrains Congress’ subsequent response, both in practical terms and because the President can use his veto powers to block legislative attempts to restore the status quo ante. Courts face similar problems. Detailed statutes enacted before the emergency will seem antiquated and inapt. Courts will feel pressure to interpret them loosely or use procedural obstacles to avoid their application. For this reason, violations of FISA and the Anti-Torture Act never led to prosecutions. Vague statutes enacted before and after the emergency provide no rule of decision, and courts are reluctant to substitute their views about policy for those of the executive, which has far more expertise and resources. Commentators have urged courts to use constitutional norms or even international law to control the executive, but these norms also prove to be ambiguous standards rather than clear-cut rules. To apply such standards, courts would have to engage in judicial policymaking. But judges do not believe that they have the information or expertise to make policy during emergencies and so they have seldom taken this approach. The upshot is that the Madisonian theory is a poor description of how modern democratic governments operate during emergencies and in anticipation of emergencies. Congress cannot realistically enact rules in advance, and cannot commit to enforce them if violated, so the policymaking authority during emergencies rests with the executive. Indeed, because the executive has responsibility for protecting the country during emergencies, only the executive has motivation to prepare for emergencies, which it does by putting into place institutions and agencies, and the legal authority that they will rely on. It is the executive that has constructed the national security state; Congress has mostly ratified the policies adopted by a series of presidents. Congress retains a very crude veto power; it can interfere executive policymaking during emergencies only by withdrawing funds and, in effect, calling the emergency off. But Congress is highly constrained by the nature of the threat, and can use this blunt instrument only in extreme circumstances. The current system, then, is better described as one of executive primacy than separation of powers. The president makes and executes policy subject to weak vetoes by Congress and the courts, which can be exercised only after the president has committed the country to a response to the perceived threat, and hence have little practical effect.

### \*\*\*Naval Power DA

### 1NR Impact Overview

#### 1. Magnitude-preventing great power is key to avoid extinction-it is not obsolete

**Dyer, University of London Military and Middle Eastern History PhD, 2006**

(Gwynne, War: the Lethal Custom, pg 1, ldg)

The only kind of international violence that worries most people in the developed countries is terrorism: from imminent heart attack to a bad case of hangnail in fifteen years flat. We are very lucky people- but we need to use the time we have been granted wisely, because total war is only sleeping. All the major states are still organized for war, and all that is needed for the world to slide back into a nuclear confrontation is a twist of the kaleidoscope that shifts international relations into a new pattern of rival alliances. That time may not come for another decade or so, but unless we can build institutions that move us decisively away from the old great-power game, sooner or later it surely will. And then at some later point, great-power war will also return: the megatons will fall, the dust will rise, the sun’s light will fail, and the race may perish. We may inhabit the Indian summer of human history, with nothing to look forward to but the “nuclear winter” that closes the account.

#### 2. Probability-naval power is key to reassure allies and maintain power projection-the alternative is hotspot escalation

**Kagan, Carnegie senior associate, 2007**

(Robert, “End of Dreams, Return of History” Policy Review, 2007, http://www.hoover.org/publications/policyreview/8552512.html#n10, ldg)

This is a good thing, and it should continue to be a primary goal of American foreign policy to perpetuate this relatively benign international configuration of power. The unipolar order with the United States as the predominant power is unavoidably riddled with flaws and contradictions. It inspires fears and jealousies. The United States is not immune to error, like all other nations, and because of its size and importance in the international system those errors are magnified and take on greater significance than the errors of less powerful nations. Compared to the ideal Kantian international order, in which all the world's powers would be peace-loving equals, conducting themselves wisely, prudently, and in strict obeisance to international law, the unipolar system is both dangerous and unjust. Compared to any plausible alternative in the real world, however, it is relatively stable and less likely to produce a major war between great powers. It is also comparatively benevolent, from a liberal perspective, for it is more conducive to the principles of economic and political liberalism that Americans and many others value. American predominance does not stand in the way of progress toward a better world, therefore. It stands in the way of regression toward a more dangerous world. The choice is not between an American-dominated order and a world that looks like the European Union. The future international order will be shaped by those who have the power to shape it. The leaders of a post-American world will not meet in Brussels but in Beijing, Moscow, and Washington. The return of great powers and great games If the world is marked by the persistence of unipolarity, it is nevertheless also being shaped by the reemergence of competitive national ambitions of the kind that have shaped human affairs from time immemorial. During the Cold War, this historical tendency of great powers to jostle with one another for status and influence as well as for wealth and power was largely suppressed by the two superpowers and their rigid bipolar order. Since the end of the Cold War, the United States has not been powerful enough, and probably could never be powerful enough, to suppress by itself the normal ambitions of nations. This does not mean the world has returned to multipolarity, since none of the large powers is in range of competing with the superpower for global influence. Nevertheless, several large powers are now competing for regional predominance, both with the United States and with each other. National ambition drives China's foreign policy today, and although it is tempered by prudence and the desire to appear as unthreatening as possible to the rest of the world, the Chinese are powerfully motivated to return their nation to what they regard as its traditional position as the preeminent power in East Asia. They do not share a European, postmodern view that power is passé; hence their now two-decades-long military buildup and modernization. Like the Americans, they believe power, including military power, is a good thing to have and that it is better to have more of it than less. Perhaps more significant is the Chinese perception, also shared by Americans, that status and honor, and not just wealth and security, are important for a nation. Japan, meanwhile, which in the past could have been counted as an aspiring postmodern power -- with its pacifist constitution and low defense spending -- now appears embarked on a more traditional national course. Partly this is in reaction to the rising power of China and concerns about North Korea's nuclear weapons. But it is also driven by Japan's own national ambition to be a leader in East Asia or at least not to play second fiddle or "little brother" to China. China and Japan are now in a competitive quest with each trying to augment its own status and power and to prevent the other 's rise to predominance, and this competition has a military and strategic as well as an economic and political component. Their competition is such that a nation like South Korea, with a long unhappy history as a pawn between the two powers, is once again worrying both about a "greater China" and about the return of Japanese nationalism. As Aaron Friedberg commented, the East Asian future looks more like Europe's past than its present. But it also looks like Asia's past. Russian foreign policy, too, looks more like something from the nineteenth century. It is being driven by a typical, and typically Russian, blend of national resentment and ambition. A postmodern Russia simply seeking integration into the new European order, the Russia of Andrei Kozyrev, would not be troubled by the eastward enlargement of the EU and NATO, would not insist on predominant influence over its "near abroad," and would not use its natural resources as means of gaining geopolitical leverage and enhancing Russia 's international status in an attempt to regain the lost glories of the Soviet empire and Peter the Great. But Russia, like China and Japan, is moved by more traditional great-power considerations, including the pursuit of those valuable if intangible national interests: honor and respect. Although Russian leaders complain about threats to their security from NATO and the United States, the Russian sense of insecurity has more to do with resentment and national identity than with plausible external military threats. 16 Russia's complaint today is not with this or that weapons system. It is the entire post-Cold War settlement of the 1990s that Russia resents and wants to revise. But that does not make insecurity less a factor in Russia 's relations with the world; indeed, it makes finding compromise with the Russians all the more difficult. One could add others to this list of great powers with traditional rather than postmodern aspirations. India's regional ambitions are more muted, or are focused most intently on Pakistan, but it is clearly engaged in competition with China for dominance in the Indian Ocean and sees itself, correctly, as an emerging great power on the world scene. In the Middle East there is Iran, which mingles religious fervor with a historical sense of superiority and leadership in its region. 17 Its nuclear program is as much about the desire for regional hegemony as about defending Iranian territory from attack by the United States. Even the European Union, in its way, expresses a pan-European national ambition to play a significant role in the world, and it has become the vehicle for channeling German, French, and British ambitions in what Europeans regard as a safe supranational direction. Europeans seek honor and respect, too, but of a postmodern variety. The honor they seek is to occupy the moral high ground in the world, to exercise moral authority, to wield political and economic influence as an antidote to militarism, to be the keeper of the global conscience, and to be recognized and admired by others for playing this role. Islam is not a nation, but many Muslims express a kind of religious nationalism, and the leaders of radical Islam, including al Qaeda, do seek to establish a theocratic nation or confederation of nations that would encompass a wide swath of the Middle East and beyond. Like national movements elsewhere, Islamists have a yearning for respect, including self-respect, and a desire for honor. Their national identity has been molded in defiance against stronger and often oppressive outside powers, and also by memories of ancient superiority over those same powers. China had its "century of humiliation." Islamists have more than a century of humiliation to look back on, a humiliation of which Israel has become the living symbol, which is partly why even Muslims who are neither radical nor fundamentalist proffer their sympathy and even their support to violent extremists who can turn the tables on the dominant liberal West, and particularly on a dominant America which implanted and still feeds the Israeli cancer in their midst. Finally, there is the United States itself. As a matter of national policy stretching back across numerous administrations, Democratic and Republican, liberal and conservative, Americans have insisted on preserving regional predominance in East Asia; the Middle East; the Western Hemisphere; until recently, Europe; and now, increasingly, Central Asia. This was its goal after the Second World War, and since the end of the Cold War, beginning with the first Bush administration and continuing through the Clinton years, the United States did not retract but expanded its influence eastward across Europe and into the Middle East, Central Asia, and the Caucasus. Even as it maintains its position as the predominant global power, it is also engaged in hegemonic competitions in these regions with China in East and Central Asia, with Iran in the Middle East and Central Asia, and with Russia in Eastern Europe, Central Asia, and the Caucasus. The United States, too, is more of a traditional than a postmodern power, and though Americans are loath to acknowledge it, they generally prefer their global place as "No. 1" and are equally loath to relinquish it. Once having entered a region, whether for practical or idealistic reasons, they are remarkably slow to withdraw from it until they believe they have substantially transformed it in their own image. They profess indifference to the world and claim they just want to be left alone even as they seek daily to shape the behavior of billions of people around the globe. The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying -- its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War I and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War ii would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe's stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger ofworld war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that 's not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War ii, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world's great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Eastern states. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China 's neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. In Europe, too, the departure of the United States from the scene -- even if it remained the world's most powerful nation -- could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe -- if it adopted what some call a strategy of "offshore balancing" -- this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances. It is also optimistic to imagine that a retrenchment of the American position in the Middle East and the assumption of a more passive, "offshore" role would lead to greater stability there. The vital interest the United States has in access to oil and the role it plays in keeping access open to other nations in Europe and Asia make it unlikely that American leaders could or would stand back and hope for the best while the powers in the region battle it out. Nor would a more "even-handed" policy toward Israel, which some see as the magic key to unlocking peace, stability, and comity in the Middle East, obviate the need to come to Israel 's aid if its security became threatened. That commitment, paired with the American commitment to protect strategic oil supplies for most of the world, practically ensures a heavy American military presence in the region, both on the seas and on the ground. The subtraction of American power from any region would not end conflict but would simply change the equation. **In the Mid**dle **East**, competition for influence among powers both inside and outside the region has raged for at least two centuries. The rise of Islamic fundamentalism doesn't change this. It only adds a new and more threatening dimension to the competition, which neither a sudden end to the conflict between Israel and the Palestinians nor an immediate American withdrawal from Iraq would change. **The alternative to** **American predominance** in the region **is not balance and peace. It is further competition.** The region and the states within it remain relatively weak. A diminution of American influence would not be followed by a diminution of other external influences. One could expect deeper involvement by both China and Russia, if only to secure their interests. 18 And one could also expect the more powerful states of the region, particularly Iran, to expand and fill the vacuum. It is doubtful that any American administration would voluntarily take actions that could shift the balance of power in the Middle East further toward Russia, China, or Iran. The world hasn 't changed that much. An American withdrawal from Iraq will not return things to "normal" or to a new kind of stability in the region. It will produce a new instability, one likely to draw the United States back in again. The alternative to American regional predominance in the Middle East and elsewhere is not a new regional stability. In an era of burgeoning nationalism, the future is likely to be one of intensified competition among nations and nationalist movements. Difficult as it may be to extend American predominance into the future, no one should imagine that a reduction of American power or a retraction of American influence and global involvement will provide an easier path.

#### 3, Navy is key to cooperation and containment of piracy-that’s England. Piracy collapses global trade and finances terror networks

**Middleton, Chatham House Royal Institute of Economic Affairs consultant researcher, 2008**

(Roger, “Piracy in Somalia”, October, <http://www.chathamhouse.org/sites/default/files/public/Research/Africa/1008piracysomalia.pdf>, ldg)

Clearly a company whose cargo is prevented from reaching its destination on time will lose money. Add to this the cost of paying ransoms and already the damaging economic effect of Somali piracy can be seen. The consequences are not limited only to companies whose vessels are hijacked; of wider concern is the growth of insurance premiums for ships that need to pass through the Gulf of Aden. The danger means that war risk insurance premiums must now be paid: premiums are reported to have risen tenfold in a year.32 If the cost of extra insurance becomes prohibitive, or the danger simply too great, shipping companies may avoid the Gulf of Aden and take the long route to Europe and North America around the Cape of Good Hope. Indeed this option is mentioned by shipping industry insiders as a very real possibility. The extra weeks of travel and fuel consumption would add considerably to the cost of transporting goods. At a time when the price of oil is a major concern, anything that could contribute to a further rise in prices must be considered very serious indeed. Large oil tankers pass through the Gulf of Aden and the danger exists that a pirate attack could cause a major oil spill in what is a very sensitive and important ecosystem. During the attack on the Takayama the ship’s fuel tanks were penetrated and oil spilled into the sea. The consequences of amore sustained attack could be much worse. As pirates become bolder and use ever more powerful weaponry a tanker could be set on fire, sunk or forced ashore, any of which could result in an environmental catastrophe that would devastate marine and bird life for years to come. The pirates’ aim is to extort ransom payments and to date that has been their main focus; however, the possibility that they could destroy shipping is very real. The other worst-case scenario is that pirates become agents of international terrorism. It should be emphasized that to date there is no firm evidence of this happening. However, in a region that saw the attacks on the USS Cole, seaborne terrorism needs to be taken very seriously. For example, a large ship sunk in the approach to the Suez Canal would have a devastating impact on international trade. Terrorism at sea could take many forms: direct attacks on naval or commercial shipping, such as the 6 October 2002 attack on the MV Limburg,33hostages from pleasure boats being used as bargaining chips for terrorists or high-profile victims of an atrocity, and hijacked ships being used as floating weapons. Terrorist networks could also use the financial returns of piracy to fund their activities around the world. The potentially massive consequences of this scenario must be taken into account along with the more likely scenario that piracy money is being routed to Al-Shabaab.34 As has been seen over the last year, pirates in Somalia have become ever more dangerous, but it is impossible to tell what will happen next. It is best to act to prevent the worst-case scenarios rather than try to solve the problem once it has escalated.

#### Trade decline causes war-the impact is linear

**Hillebrand, Kentucky diplomacy professor, 2010**

(Evan, “Deglobalization Scenarios: Who Wins? Who Loses?”, Global Economy Journal, Volume 10, Issue 2, ebsco, ldg)

A long line of writers from Cruce (1623) to Kant (1797) to Angell (1907) to Gartzke (2003) have theorized that economic interdependence can lower the likelihood of war. Cruce thought that free trade enriched a society in general and so made people more peaceable; Kant thought that trade shifted political power away from the more warlike aristocracy, and Angell thought that economic interdependence shifted cost/benefit calculations in a peace-promoting direction. Gartzke contends that trade relations enhance transparency among nations and thus help avoid bargaining miscalculations. There has also been a tremendous amount of empirical research that mostly supports the idea of an inverse relationship between trade and war. Jack Levy said that, “While there are extensive debates over the proper research designs for investigating this question, and while some empirical studies find that trade is associated with international conflict, most studies conclude that trade is associated with peace, both at the dyadic and systemic levels” (Levy, 2003, p. 127). There is another important line of theoretical and empirical work called Power Transition Theory that focuses on the relative power of states and warns that when rising powers approach the power level of their regional or global leader the chances of war increase (Tammen, Lemke, et al, 2000). Jacek Kugler (2006) warns that the rising power of China relative to the United States greatly increases the chances of great power war some time in the next few decades. The IFs model combines the theoretical and empirical work of the peac ethrough trade tradition with the work of the power transition scholars in an attempt to forecast the probability of interstate war. Hughes (2004) explains how he, after consulting with scholars in both camps, particularly Edward Mansfield and Douglas Lemke, estimated the starting probabilities for each dyad based on the historical record, and then forecast future probabilities for dyadic militarized interstate disputes (MIDs) and wars based on the calibrated relationships he derived from the empirical literature. The probability of a MID, much less a war, between any random dyad in any given year is very low, if not zero. Paraguay and Tanzania, for example, have never fought and are very unlikely to do so. But there have been thousands of MIDs in the past and hundreds of wars and many of the 16,653 dyads have nonzero probabilities. In 2005 the mean probability of a country being involved in at least one war was estimated to be 0.8%, with 104 countries having a probability of at least 1 war approaching zero. A dozen countries12, however, have initial probabilities over 3%. The globalization scenario projects that the probability for war will gradually decrease through 2035 for every country—but not every dyad--that had a significant (greater than 0.5% chance of war) in 2005 (Table 6). The decline in prospects for war stems from the scenario’s projections of rising levels of democracy, rising incomes, and rising trade interdependence—all of these factors figure in the algorithm that calculates the probabilities. Not all dyadic war probabilities decrease, however, because of the power transition mechanism that is also included in the IFs model. The probability for war between China and the US, for example rises as China’s power13 rises gradually toward the US level but in these calculations the probability of a China/US war never gets very high.14 Deglobalization raises the risks of war substantially. In a world with much lower average incomes, less democracy, and less trade interdependence, the average probability of a country having at least one war in 2035 rises from 0.6% in the globalization scenario to 3.7% in the deglobalization scenario. Among the top-20 war-prone countries, the average probability rises from 3.9% in the globalization scenario to 7.1% in the deglobalization scenario. The model estimates that in the deglobalization scenario there will be about 10 wars in 2035, vs. only 2 in the globalization scenario15. Over the whole period, 2005-2035, the model predicts four great power wars in the deglobalization scenario vs. 2 in the globalization scenario.16 Deglobalization in the form of reduced trade interdependence, reduced capital flows, and reduced migration has few positive effects, based on this analysis with the International Futures Model. Economic growth is cut in all but a handful of countries, and is cut more in the non-OECD countries than in the OECD countries. Deglobalization has a mixed impact on equality. In many non-OECD countries, the cut in imports from the rest of the world increases the share of manufacturing and in 61 countries raises the share of income going to the poor. But since average productivity goes down in almost all countries, this gain in equality comes at the expense of reduced incomes and increased poverty in almost all countries. The only winners are a small number of countries that were small and poor and not well integrated in the global economy to begin with—and the gains from deglobalization even for them are very small. Politically, deglobalization makes for less stable domestic politics and a greater likelihood of war. The likelihood of state failure through internal war, projected to diminish through 2035 with increasing globalization, rises in the deglobalization scenario particularly among the non-OECD democracies. Similarly, deglobalization makes for more fractious relations among states and the probability for interstate war rises.

#### Terrorism causes nuclear war

**Speice, William and Mary JD, 2006**

(Patrick, “Negligence And Nuclear Nonproliferation: Eliminating The Current Liability Barrier To Bilateral U.S.-Russian Nonproliferation Assistance Programs”, lexis, ldg)

The potential consequences of the unchecked spread of nuclear knowledge and material to terrorist groups that seek to cause mass destruction in the United States are truly horrifying. A terrorist attack with a nuclear weapon would be devastating in terms of immediate human and economic losses. n49 Moreover, there would be immense political pressure in the United States to discover the perpetrators and retaliate with nuclear weapons, massively increasing the number of casualties and potentially triggering a full-scale nuclear conflict. n50

### 1NR Link

#### The plan would be catastrophic for readiness

**NDM 2001**

(National Defense Magazine, “Environmental Regulations Limit Training of U.S. Troops “, July, <http://www.nationaldefensemagazine.org/archive/2001/July/Pages/Environmental6997.aspx>, ldg)

Such factors as urban sprawl, endangered species and regulatory restrictions on live-fire training are beginning to interfere with military readiness, Pentagon officials told the 27th Environmental Symposium and Exhibition, held recently in Austin, Texas. The event was sponsored by the National Defense Industrial Association. "Range encroachment is a significant challenge in the United States today," said Curtis M. Bowling, assistant deputy undersecretary of defense for force protection. "It cuts across all elements of the Defense Department. The causes are many and complex, and the impact is broad." The issue is attracting growing attention on Capitol Hill. "Defense Department training ranges here and overseas are under siege," said Rep. Dan Burton, R.-Ind., chairman of the House Committee on Government Reform. The situation is "affecting the ability of our forces to fight, and this administration needs to tackle this problem before it gets out of control." In all, the Defense Department owns 519 fixed installations, located on 18 million acres of land in more than 140 countries, making the department the federal government’s third-largest property owner, after the Interior and Agriculture Departments. Among the Pentagon’s holdings are literally thousands of firing ranges, where generations of U.S. troops have learned to use their weapons before going to war. They vary from small facilities for pistol practice–found on nearly every major base–to Nevada’s 3 million-acre Nellis Air Force Range, where combat pilots receive advanced training. The Navy maintains ranges at San Clemente, Calif.; Vieques Island, Puerto Rico, and Farallon De Medinilla, near Guam. They are the only U.S.-owned locations on the east and west coasts and in the Western Pacific Ocean where Navy ships can conduct live-fire training before being deployed, said Rear Adm. Larry C. Baucom, director of environmental protection, safety and occupational health for the Navy Department. This live-fire training, however, is coming under increasing public attack. After a civilian security guard was killed by an errant bomb at Vieques, in 1999, protesters occupied the site, and Puerto Rico’s governor called for an immediate halt to live fire. The practice is a danger not only to the 9,300 human residents of Vieques, opponents said, but also to sea turtles, which nest on the island’s beaches and are protected by the Endangered Species Act. Navy officials respond that live fire is not a threat to humans outside of the range, which is located more than eight miles from the nearest town. As for the range’s sea turtles, they are being managed carefully, Vice Adm. James F. Amerault, deputy chief of naval operations, told a recent Senate hearing. "The Navy’s practice has been to relocate turtle eggs during amphibious landings and other military exercises," Amerault said. A decade ago, the Navy built a sea-turtle hatchery on Vieques. Since then, more than 17,000 turtles have been hatched and successfully introduced into the environment. The Navy has been conducting training at Vieques since 1941, and it wants to continue to do so. "Vieques is a superb training range, the best in the entire Atlantic," according to Pentagon spokesman Rear Adm. Craig Quigley. It is "absolutely essential" to the readiness of U.S. forces preparing to deploy, he said. To settle the dispute, island voters are scheduled to vote in a referendum on Nov. 6, 2001, to decide whether to end all training and have the Navy leave the island by May 1, 2003. Meanwhile, the Navy is looking for alternative training sites in the Atlantic region, thus far without success. The Navy has agreed to provide $40 million in economic aid to Vieques and promises another $50 million if islanders will permit the resumption of live-fire training. Until the vote is taken, training continues on Vieques, but without live fire. In April of this year, sailors and Marines from the USS Enterprise carrier battle group–on their way to the Arabian Gulf–conducted a short exercise there, using inert bombs and shells. More than 100 demonstrators tried unsuccessfully to block the exercise. Range Management During the nation’s early history–when it had a vast western frontier–the services had little need for training ranges. Just in the past century or so have they been used, said Army Maj. Gen. Robert T. Van Antwerp, assistant chief of staff for installation management. For most of this period, the ranges were managed with little concern for environmental issues, he said. "Only over the last 30 years has the United States begun to understand and regulate the potential environmental impacts of a wide variety of civil and industrial practices," Van Antwerp said. During the 1970s, Congress passed a number of laws aimed at protecting the environment, including the Clean Water and Clean Air Acts and the Endangered Species Act. Over time, Congress and the courts have made it clear that these laws apply to federal agencies–including the armed services–just as they do to everybody else. The services have implemented programs to comply, and they have had some success. Since 1993, according to a spokesman for the Defense Department’s Office for Environmental Security, the department has: To reduce the contamination on firing ranges, the services also are switching to lead-free bullets, known as green ammunition. This year, the Army plans to produce 50 million 5.56 mm rounds for the M-16 family of rifles and the Squad Automatic Weapon. Some of these actions, however, "have come at the expense of training capabilities," said Van Antwerp. As an example, he cited the Army’s Fort Hood, in Texas. Erosion control practices designed to comply with the Clean Water Act prohibit digging on more than two thirds of the base’s 185,000 acres of ranges and training land, he explained. "This means," he said, "no digging for vehicle fighting positions, survivability positions, maneuver obstacles or individual fighting positions–all of which are required to meet doctrinal training standards for many units on Fort Hood." To comply with the Clean Air Act, no smoke, flares, chemical grenades or pyrotechnics are allowed on about 25 percent of the base’s training acreage. From March through August each year, vehicle and dismounted maneuver training is restricted to established trails, and halts in restricted areas are limited to two hours in designated endangered species core areas. Artillery firing, smoke generation and chemical grenades are prohibited within 100 meters of those areas. Fort Hood’s training areas also contain more than 2,400 archeological and culturally significant sites, where digging is prohibited. On more than 1,000 acres, artillery and Multiple Launch Rocket Systems cannot be fired because of noise regulations. In all, only about 17 percent of Fort Hood’s training lands are available for use without restriction, Van Antwerp said. Cease Fire Army leaders are "very concerned," he noted, about the recent cessation of all live-fire training at the Massachusetts Military Reserve. Compliance cost the 22,000-acre reserve an estimated $60 million. If similar restrictions were applied to a major training facility, such as Fort Hood, he said, "the results could be catastrophic, both from a fiscal and a readiness perspective." In fiscal year 2001, he explained, Army units at Fort Hood were authorized to fire 35.4 million rounds of ammunition at its 33 small-arms ranges, 24 major-weapons facilities and several field-artillery and mortar firing points. Live-fire training is necessary, "to provide soldiers the opportunities to practice their skills in combat-like conditions," Van Antwerp said. "The fact that the Army’s mission increasingly includes peacekeeping operations does not reduce the need for combat training. "In fact, ‘policing’ requires soldiers to be highly proficient with pinpoint target identification and engagement procedures," he explained. "This only can be accomplished by practicing with the actual weapon in specifically designed training exercises on our ranges and training areas designed for that purpose."

#### Plan compromises training that is key to Naval effectiveness

**Young, former chair of the appropriations and defense committees, 2012**

(Bill, “Representative Young Casts Another Vote to Protect Florida's Gulf Coast from Drilling”, States News Service, 7-25, lexis, ldg)

"I rise today to express my continued support for the restrictions placed on oil and gas leasing in the Eastern Gulf of Mexico under the Gulf of Mexico Energy Security Act of 2006. I am pleased that H.R. 6082 continues this moratorium and recognizes an area not only critical to the protection of Florida's beautiful beaches and unique environment but to the training of our nation's sailors, Marines and pilots who conduct training exercises there on a regular basis. As you know, I have been working on the issue of drilling in the Eastern Gulf of Mexico since 1983, when the oil industry proposed drilling off the Gulf Coast of Florida. That year, I offered an amendment to a 1983 supplemental appropriations bill to create the first buffer zone to protect Florida's Gulf Coast from offshore oil drilling. Congress did not implement this buffer zone only to protect the economic or environmental interests of the State of Florida; rather we also recognized the potential conflict that exists between drilling and naval and aviation **military activities**. The importance of this area to our military training was affirmed in 2000, when the Department of Defense requested that no above-surface structures be built in the Eastern Gulf of Mexico, officially establishing the Military Mission Line within which no drilling can occur. This decision **proved timely when the Air Force and Army were forced to end training exercises in Vieques, Puerto Rico** **and had to find a new site to undertake** these **specialized training** activities. The Eastern Gulf of Mexico **was the only site available where this training could continue** because this naval and aviation training is incompatible with drilling platforms and drilling ships. Since the first amendment in 1983, I negotiated with my colleagues to include this moratorium in appropriations bills year after year, until a bipartisan compromise was reached in 2006 that balanced increased domestic energy production with the critical military activities conducted in the Eastern Gulf of Mexico. This carefully crafted agreement opened 8.3 million acres south of the Florida Panhandle to drilling, an area previously under a ban, while barring new oil and gas leases off Florida's coastline until June 30, 2022, and codifying the ban on drilling within the Military Mission Line. Prior to the enactment of the current moratorium, then Secretary of Defense Donald Rumsfeld stated that "in those areas east of the Military Mission Line, drilling structures and associated development would be incompatible with military activities, such as missile flights, low-flying drone aircraft, weapons testing and training." By maintaining the drilling ban in the Eastern Gulf of Mexico, H.R. 6082 **continues to protect an area that holds the U.S. military's largest training and testing area**. Mr. Speaker, I am pleased to support this measure that will responsibly increase our domestic oil production while maintaining the important protections against drilling in the Eastern Gulf of Mexico, in order to ensure that our military readiness and training capabilities are not compromised."

#### Plan compromises key Naval training-no replacement exists

**Jackson, Emerald Coast Magazine writer, 2012**

(Scott, “Is Offshore Drilling Affecting National Security?”, 11-17, atd.agranite.com/emerald-coast/living/national-security-affected-by-offshore-platforms/, ldg)

Beyond the wondrous vista of the shimmering and pristine coastal waters of the Gulf of Mexico reside two of our nation’s most precious resources – the oil and gas reserves below and the airspace above. While the value of further oil and gas exploration to the nation’s security is commonly known, the value of the airspace is not. The traditional pillars of economic growth normally incorporate land, labor and capital. But in Northwest Florida, there is another pillar that is equally valuable – airspace. It allows not only the flow of commercial aviation for business and tourism but military training and testing. Supersonic dogfights, training missions and weapons testing are conducted by F-15 Eagle and F-22 Raptor fighter jets, as well as other military aircraft, in specified blocks of airspace. Such exercises occur at carefully scheduled times to allow pilots unfettered concentration to scream through the air and hone their combat skills in a deliriously swirling amalgamation of blue skies, white clouds and emerald waters. Without undue interference, their mindset is rechanneled to the challenge – kill or be killed. But the waters below this airspace are also coveted for their rich oil and gas reserves by a country seeking energy independence. Eglin Air Force Base’s Air Armament Center conducts test and evaluation missions of new weapons involving full-size target drone aircraft in the skies over the 130,000-square-mile test and training range in the eastern Gulf – an area larger than the state of New Mexico. Between Oct. 1, 2007, and Sept. 30, 2008, more than 3,400 test missions were flown in this airspace. **Any civilian encroachment** on this training area could reduce the military value of Eglin’s mission to test and evaluate new weapon systems. **It isn’t the type of testing that can be** efficiently **performed** anywhere else in the continental United States. “**The Eglin Water Test Range has more airspace available** for testing new and legacy weapons **than the combined airspace of all U.S. land ranges,**” said Bob Arnold, chief of Eglin’s Mission Enhancement Committee. “This is important due to the increasing safety footprint size of our new fighter aircraft conducting air-to-air missile tests and training missions. The increased speed of these aircraft, coupled with the added range of the missiles, requires larger ‘clear areas’ for target debris resulting from our testing.” This range provides training areas for military pilots sharpening their combat skills from Air Force runways at Eglin, Tyndall Air Force Base and Hurlburt Field. And the future addition of the new F-35 Lightning II, a state-of-the-art supersonic fighter scheduled to arrive at Eglin in 2010, will demand even more use of the airspace. The Naval Surface Warfare Center at Panama City also uses the Gulf waters for testing and evaluation in the areas of mine warfare, special warfare, diving and life support. The combined economic impact of these four installations is $8.9 billion for Okaloosa and Bay counties, according to the Florida Defense Fact Book published by the University of West Florida’s Haas Business Center. Oil and gas drilling operations in the waters of the range cannot co-exist with ongoing Air Force testing without coordination and a firm understanding between them. These behemoth rigs cost upwards of $1 billion and incorporate a logistics lifeline to the mainland. “Our concern over oil/gas activity is related to the possible damage to oil/gas platforms associated with permanent production activity,” Arnold said. Moreover, the additional boat and helicopter support activity would require safe passage, and the radio emissions from the oil and gas platforms could interfere with military missions. As part of Eglin’s test and evaluation mission, a fleet of 50 Vietnam-era QF-4 fighter jets are used as remotely piloted, full-sized target drones, along with smaller drones for missile training and evaluation by the 82nd Aerial Targets Group operating from Tyndall Air Force Base. “Above-surface oil/gas platforms are incompatible with our military operations in areas of the Gulf of Mexico where we shoot down things like unmanned drone aircraft,” Arnold said. “Debris from these types of operations pose a serious safety hazard for the platforms and personnel who operate them, so obviously, this is not a situation we can allow to occur.” According to Arnold, the downing of a 25-ton QF-4 can produce tens of thousands of pieces of debris, with the wreckage hitting the water with the force of a minivan collision at 45 mph.

#### The plan would obliterate military training

**Knickerbocker, CSM staff writer, 2001**

(Brad, “Military readiness vs. the environment”, 10-4, <http://www.csmonitor.com/2001/1004/p13s1-usmi.html>, ldg)

The controversy is likely to heat up, particularly as the armed services push for more land on which to test and train with advanced weapons systems. In congressional testimony earlier this year, senior officers complained of "encroachment" that is hampering their military readiness. "The most challenging legal requirements to Navy readiness are the Marine Mammal Protection Act, Endangered Species Act, Migratory Bird Act, and the Clean Air Act," Vice Admiral James Amerault, deputy chief of naval operations for fleet readiness and logistics, told the House Armed Services Committee in May. Dangers of encroachment Speaking of the "encroachment" on target ranges and other training facilities, Maj. Gen. Edward Hanlon, USMC, warned senators in March that "we are training a generation of marines who will have less experience in the intricacies of combat operations." "If encroachment continues, many of today's junior leaders may initially face the full challenges of combat not during training, but during combat," said General Hanlon, commanding general of Camp Pendleton in California, which includes habitat for 17 threatened and endangered species. Meanwhile, a philosophical debate within the armed services considers whether the means and methods of actual warfare - not just training - should take into account the long-range environmental impact. That is, should the guy in the tank or the bomber, in the heat of combat, really care about whether he's destroying some pristine wilderness or wetlands?

#### Plan will result in a mess of local case law and regulations that hamper effectiveness

**Moxness, Harvard National Security Journal, 2011**

(James, “Regulatory Obstacles to Military Operational Readiness” 10-13, <http://harvardnsj.org/2011/10/regulatory-obstacles-to-military-operational-readiness/>, ldg)

The U.S. Navy probably faces the most profound example of regulation threatening military readiness. Each year, the Navy trains in American territorial waters, in foreign territorial waters, and on the high seas. Broadly, the training fulfills two critical purposes: it prepares the Navy to handle sea-based threats and serves as a global force-projection of the protective and offensive capabilities of the Navy. The former has renewed importance in the face of foreign development of stealth submarine technology, a fact that demands that the Navy stay at the forefront of Anti-Submarine Warfare (ASW) capabilities. The current regulatory regime affecting Naval training at sea includes significant legislation, including the Coastal Zone Management Act (CZMA), the Marine Mammal Protection Act (MMPA), and the National Environmental Policy Act (NEPA). Each of these places protection and reporting requirements on Naval training. Over time, the effects, particularly of the CZMA and the MMPA, have expanded from their intended scope. These expansions, along with the concomitant regulatory burdens and expanded possibilities of litigation faced by the military, provide little if any marginal environmental benefit and impose unnecessarily burdensome congressionally-mandated training and readiness requirements. As a representative example of the deleterious impact on military readiness created by excessive complexity and unnecessarily expansive authority in regulatory regimes, consider the problems created by the CZMA. Where the act originally limited each state’s regulatory influence to “direct effects” of actions taken within the waters of the state’s coastal zone, a 1990 amendment expanded jurisdiction outside the state’s own “coastal zone” to include actions taken anywhere that may with reasonable foreseeability “[a]ffect” that state’s “coastal zone.” No apparent distinction is made between, for example, the long-range effects of an oil spill and the temporary disruption of whale movement for the purposes of whale watching. Furthermore, each state has dramatically varying approaches to its own coastal management (anywhere from near cursory approval of Navy training to months-long contentious disputes). This is to say nothing of the fact that what each state’s regulations even are is not always clear, as there is no common repository of all current state CZMA regulations. And lastly, it is not always clear to affected bodies such as the Navy when “coastal management plans” have been altered, as review procedures are separated into “significant” and “routine” without explanation, with only significant changes requiring a process resembling “notice and comment” for affected federal bodies. The end result of these unnecessary complications is that military legal personnel encounter an almost Kafkaesque body of regulations that vary according to time and place, sometimes without notice, and are frequently subject purely to interpretation by state officials, who do not necessarily stay in office long-term. It is worth remembering that Congress, in establishing the CZMA, repeatedly emphasized in both the legislative history and the act itself the importance of cooperative interaction between regulators (the states) and the regulated (private and public entities), and that it established the CZMA in 1972 in the face of severe degradation of America’s coastal ecosystems primarily as a result of private despoliation. All of these goals are noble and any suggestion that one must choose either the environment or national security poses a false choice; however, since its inception in 1972, the CZMA has grown more expansive and less clear. This problem is amplified by the fact that, where amendments have been introduced in response to specific, concrete issues, their impacts now go well beyond the issue that led to the amendment (e.g. offshore oil and gas development in California spurring the 1990 amendment to expand the “effects” test). The impediments to military readiness created by all of the above issues are only those emergent from the CZMA. The severity of the problem is only magnified by the regulatory issues (to say nothing of litigation) created through the MMPA, NEPA, et cetera. As the United States continues to face challenging national security threats, it is essential, both from the point of view of policy and of law, that the inefficiencies and ambiguities of regulation are corrected. Subjecting the military to a statutorily geographically-unbound regulatory regime, hemmed in only by a “reasonable foreseeability” test, or leaving entirely unclear what constitutes a “routine” change outside any notice requirement in a highly-decentralized system of 34 coastal management plans is to create a system where unclear legislation is allowed to have unforeseen and potentially grave consequences.

#### Military’s strategy relies upon using lands the plan takes away

**Elwood, Nature Serve, 2008**

(John, “One Way Street?”, <http://www.dodbiodiversity.org/ch4/index_2.html>, ldg)

Military demands for land and airspace have grown dramatically since World War II. A World War II infantry battalion operated in a 4,000-acre maneuver space. According to current Army publications, a maneuver space of 61,281 acres is now necessary to train a battalion task force. The required training space is expected to triple again as information dominance, a concept that recognizes the importance of communication, computers, intelligence, and surveillance, becomes increasingly important. Total space is not the entire issue; irregular shape and terrain can also be a factor. Fragmentation of habitat due to environmental restrictions further exacerbates the problem. Airspace training requirements have grown significantly, also. A World War I dogfight between opposing aircraft occurred within visual range. A World War II fighter required a five-nautical-mile maneuvering radius. Modern aerial fighters require about 80 nautical miles (Rubenson 1996). For the Navy, deeper draft vessels are having an increasing impact as dredging is required to maintain port facilities. Moreover, changes in naval strategy that require more ships to operate in coastal areas increase the Navy's need for training space closer to population centers (ibid.). No military installation, range, or training space is sized sufficiently to conduct unobstructed ground brigade or air wing training maneuvers to the full capabilities of U.S. weapon systems. The military's use of resources exceeded the boundaries of its installations sometime in the last half-century. Installations have become proficient in working around or avoiding these obstructions; alternatively, they have become accustomed to using a larger share of surrounding regional resources (air, land, water) than exist in their inventory. The military's "free" use of the air, space, and land resources is now challenged on many fronts. As much as communities value the positive effects of having a military installation in their community, they almost assuredly will become less tolerant over time of the intrusive effects of military training. The level of community tolerance varies from installation to installation, depending on the relationship that has been fostered by the commanders with community leaders and the general public. In addition, the economic impact that the installation has on the surrounding communities is an integral factor in the degree of tolerance and/or level of annoyance that is tolerated.

### Uniqueness – 2NC

#### Naval power is high but not guaranteed-question of capabilities not numbers

**Schofield, “Assessing Navy's Strength Requires More Than Math”, 2012**

(Matthew, “Assessing Navy's Strength Requires More Than Math”, 10-24, <http://www.military.com/daily-news/2012/10/24/tallying-navys-strength-requires-more-than-math.html>, ldg)

James R. Holmes, an associate professor of strategy at the U.S. Naval War College, though speaking on his own, notes: "We judge naval combat power on a relative scale. ... That's why 'the Navy is smaller than it has been since 1917' and 'the Navy is bigger than the next 13 navies combined' both contain a grain of truth but are basically factoids. Numbers count; the tonnage of ships counts; but these one-liners tell us little." The reality of the modern world is that the U.S. Navy is very unlikely to be engaged in a traditional high-seas battle. Instead, potential battles would be close to land, meaning that naval power (on both sides) would have to include air power, ground power and missile capacity. Iran cannot match American naval power, but it can pose a potential threat if near a coast it uses smaller boats to "swarm" more powerful but less numerous U.S. ships. "You also have to be careful about just counting hulls," Holmes notes. "A nuclear-powered aircraft carrier counts as one hull; so does a minesweeper." Michael O'Hanlon, an expert on security with Washington's Brookings Institution, said that while it is obvious there is no comparable naval threat, it's important to remember the world can change, quickly. Japan hid an attacking force behind a thunderstorm to launch its attack on Pearl Harbor. Today, the Navy would rely on satellite intelligence for early warning. "But one consideration is that a foe in the future might have the ability to put satellites out of commission," he said. "It's possible that this 20-year period will be viewed as a vacation from history."