## Case 2AC Deference

#### New Chevron regime now.

**Urick, 2013**

[Jonathan D., Virginia Law Review, “CHEVRON AND CONSTITUTIONAL DOUBT”, <http://www.virginialawreview.org/content/pdfs/99/2/375.pdf>, BJM]

When viewed in light of the previous era, the Supreme Court’s decision¶ in Chevron primarily represents the triumph of a relatively clear¶ rule over the vague standards of prior doctrine. The “Chevron revolution” is thus best understood as one mainly of form, rather than substance.¶ 43 Most importantly for this Note, this understanding allows¶ preexisting constitutional “buffer zones” established by the avoidance¶ canon to survive the revolution intact.¶ At the time Chevron was decided it was hardly regarded as revolutionary.¶ The text of the opinion certainly signals no great sea change.44¶ Writing for a unanimous court, Justice Stevens’s opinion does not seem¶ to have sparked much debate among the Justices.45 Stevens himself most¶ likely regarded Chevron as simply “a restatement of existing law rather¶ than a new approach.”46 Similarly, the Supreme Court as a whole did not¶ initially seem to view Chevron as much of a break from the past: “[I]n¶ the year following Chevron, the Court decided nineteen cases involving¶ [administrative] deference issues, but applied the Chevron framework¶ only once.”47 “In time, however, lower courts, [administrative] agencies,¶ and commentators all came to regard . . . Chevron as fundamentally different¶ from . . . the previous era.”48 Despite Justice Stevens’s probably¶ modest aim, Thomas Merrill insists that his “opinion contained several¶ features that can only be described as ‘revolutionary,’ even if no revolution¶ was intended at the time.”49¶ Certainly the most prominent contribution of Chevron is its now famous¶ two-step framework. In contrast to the seemingly ad hoc “formlessness¶ of the previous era,” Chevron offered a more predictable, rulelike¶ test that discarded the various factors formerly considered.50 Under¶ step one of Chevron, the reviewing court determines whether Congress¶ “has directly spoken to the precise question at issue.”51 If Congress’s in-¶ tent is clear, “that is the end of the matter.”52 However, in cases where¶ “the statute is silent or ambiguous with respect to the specific issue,”53¶ the reviewing court “shift[s] into . . . deference mode” under step two.54¶ At step two, the court must defer to the agency’s interpretation so long¶ as it is “a permissible construction of the statute,” meaning any “reasonable¶ interpretation.”55 This relatively straightforward approach eliminated¶ a “lingering ambiguity in the law” that was a consistent source of¶ confusion for both litigants and lower courts alike.56¶ Besides making deference “an all-or-nothing matter,” the Chevron¶ test “inverted the traditional default rule” away from independent judicial¶ judgment.57 Under the new Chevron regime, “independent judgment¶ . . . requires special justification, and deference is the default¶ rule.”58 Although a substantive shift, this presumption simply reflects an¶ equally arbitrary default rule for Congress to legislate against.59 As this¶ Note contends, established, rule-like limits on deference were not affected.¶ 60 Nevertheless, Chevron introduced democratic theory as a new rationale¶ for switching the historical presumption61: when the intent of¶ Congress is unclear administrative agencies “are the preferred gap filler[s].” Since judges “are not part of either political branch,” they “have¶ no constituency.”62 Agencies, on the other hand, while “not directly accountable¶ to the people,” are subject to the general oversight and supervision¶ of the President, who is democratically accountable.63¶ But how did the Supreme Court know that Congress actually wants¶ indeterminacies in statutes to be resolved by administrative agencies rather¶ than by Article III courts? The short answer is, It didn’t.64 The Court¶ in Chevron, however, answered this question by adopting perhaps its¶ “most controversial innovation.”65 According to Justice Stevens, Chevron’s¶ default rule rests on the presumption that administrative delegations¶ by Congress also include the interpretive authority to resolve ambiguities:¶ The power of an administrative agency to administer a congressionally¶ created . . . program necessarily requires the formulation of policy and¶ the making of rules to fill any gap left, implicitly or explicitly, by¶ Congress. If Congress has explicitly left a gap for the agency to fill,¶ there is an express delegation of authority to the agency to elucidate a¶ specific provision of the statute by regulation. . . . Sometimes the legislative¶ delegation to an agency on a particular question is implicit rather¶ than explicit.66¶ Some commentators accordingly rely on this rationale to conclude that¶ Chevron should displace restrictive interpretive principles such as the¶ avoidance canon.67 As described below, this conclusion gives undue¶ force to a legal fiction.

## 2AC T- Restrictions

#### 1. W/M – We limit the president’s authority to determine those responsible for 9/11 in the AUMF.

Bradley & Goldsmith 2005

[- Curtis & - Jack, Professors at University of Virginia and Harvard Law Schools Respectively, CONGRESSIONAL AUTHORIZATION AND THE

WAR ON TERRORISM, Harvard Law Review, Volume 118, May 2005]

The AUMF is arguably more restrictive in one respect, and argua-bly broader in another respect, than authorizations in declared wars. It is arguably more restrictive to the extent that it requires the Presi-dent to report to Congress on the status of hostilities. This difference from authorizations in declared wars, however, does not purport to af-fect the military authority that Congress has conferred on the Presi-dent. The AUMF is arguably broader than authorizations in declared wars in its description of the enemy against which force can be used. The AUMF authorizes the President to use force against those “na-tions, organizations, or persons he determines” have the requisite nexus with the September 11 attacks. This provision contrasts with authori-zations in declared wars in two related ways. First, it describes rather than names the enemies that are the objects of the use of force.144 Second, it expressly authorizes the President to determine which “nations, organizations, or persons” satisfy the statutory criteria for enemy status.145 One could argue that the effect of the “he determines” provision is to give the President broad, and possibly unreviewable, discretion to apply the nexus requirement to identify the covered enemy — at least to the extent that his determination does not implicate constitutional rights.146 Even if this argument is correct, this provision probably adds little to the President’s already-broad authority to de-termine the existence of facts related to the exercise of his authority under the AUMF.147

**Legal scholars agree it’s the most restrictive approach**

**Chesney, Goldsmith, Waxman, & Wittes, 2013**

[Robert, Professor in Law at The University of Texas School of Law, Jack, Henry L. Shattuck Professor of Law at Harvard University, Matthew, professor of law at Columbia Law School and an adjunct senior fellow at the Council on Foreign Relations, & Benjamin, Senior fellow in governance studies at the Brookings Institution and codirector of the Harvard Law School–Brookings Project on Law and Security, “A Statutory Framework¶ for¶ Next-Generation¶ Terrorist¶ Threats”, Hoover Institution, Taskforce on National Security & Law, Stanford University, <http://media.hoover.org/sites/default/files/documents/Statutory-Framework-for-Next-Generation-Terrorist-Threats.pdf>, BJM]

Congress could instead authorize the president to use force against specified¶ terrorist groups and/or in specified countries or geographic areas. This would¶ resemble the more traditional approach by which Congress authorizes force¶ against state adversaries or for particular operations within foreign countries.¶ Recent news reports have suggested that some in the administration and the¶ military are deliberating about whether to ask Congress for just such a statute to¶ address Islamist terrorist threats in some North African countries.8 This “retail”¶ approach—in contrast to the “wholesale” approach laid out in the previous¶ section—is the one that, among our three options, most restricts presidential¶ discretion.

#### C/I A statutory restriction is a limit or control enacted by legislation

**Black’s Law No Date** Law Dictionary, Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. <http://thelawdictionary.org/statutory-restriction/>

What is STATUTORY RESTRICTION?

**Limits or controls** that have been place on activities by its ruling legislation.

**This is distinct from prohibition**

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

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

## XO CP 2AC

**AUMF to expire – congress must act.**

Barnes, 12

[Beau D., Boston University - School of Law; Tufts University - The Fletcher School of Law and Diplomacy, “Reauthorizing the 'War on Terror': The Legal and Policy Implications of the AUMF's Coming Obsolescence”, 211 Military Law Review 57 (2012), <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150874>, BJM]

The AUMF’s inevitable expiration brought about by the¶ increasingly tenuous link between current U.S. military and covert¶ operations and those who perpetrated the September 11 attacks, leaves¶ few good options for the Obama Administration. Unless Congress soon¶ reauthorizes military force in the struggle against international terrorists,¶ the administration will face difficult policy decisions. Congress,¶ however, shows no signs of recognizing the AUMF’s limited lifespan or¶ a willingness to meaningfully re-write the statute. In light of this¶ reticence, one choice would be for the Obama Administration to¶ acknowledge the AUMF’s limited scope and, on that basis, forego¶ detention operations and targeted killings against non-Al Qaeda-related¶ terrorists. For both strategic and political reasons, this is extremely¶ unlikely, especially with a president in office who has already shown a¶ willingness to defy legal criticism and aggressively target terrorists¶ around the globe.120 Another option would be for the Executive Branch¶ to acknowledge the absence of legal authority, but continue targeted¶ killings nonetheless. For obvious reasons, this option is problematic and¶ unlikely to occur.¶ Therefore, the more likely result is that the Executive Branch,¶ grappling with the absence of explicit legal authority for a critical policy,¶ would need to make increasingly strained legal arguments to support its¶ actions.121 Thus, the Obama Administration will soon be forced to¶ rationalize ongoing operations under existing legal authorities, which, I¶ argue below, will have significant harmful consequences for the United¶ States. Indeed, the administration faces a Catch-22—its efforts to destroy¶ Al Qaeda as a functioning organization will lead directly to the vitiation¶ of the AUMF. The administration is “starting with a result and finding¶ the legal and policy justifications for it,” which often leads to poor policy¶ formulation.122 Potential legal rationales would perforce rest on¶ exceedingly strained legal arguments based on the AUMF itself, the¶ President’s Commander in Chief powers, or the international law of self-¶ defense.123 **Besides the inherent damage to U.S. credibility attendant to¶ unconvincing legal rationales, each alternative option would prove¶ legally fragile, destabilizing to the international political order, or both.**

#### Congress is key – only the perm solves

Silverstein 2011

[- Gordon, Fellow in the Program in Law and Public Affairs, Princeton University and Assistant Professor of Political Science at the University of California, Berkeley, is the author of Law’s Allure: How Law Shapes, Constrains, Saves and Kills Politics (Cambridge University Press 2009) and Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy (Oxford University Press, 1997), “U.S. War and Emergency Powers: The Virtues of Constitutional Ambiguity”]

Far from embedding a new normal, the Bush Administration’s lawfare strategy (Bruff 2009:285-294) was having the opposite effect (Goldsmith 2005, Cole 2008). John Yoo, a primary architect of the Bush legal and constitutional strategy, recognized as early as 2006 that far from being an ally in the realignment of constitutional power away from Congress and the courts and into the Executive branch, the Supreme Court would in fact be a major impediment. “What the Court is doing,” Yoo told the New York Times after the Court handed down the Hamdan decision in 2006, “is attempting to suppress creative thinking.” The Court, Yoo added, “has just declared that it is going to be very intrusive in the war on terror.” The Hamdan decision, Yoo said, could undercut the entire legal edifice that had been built by the Bush lawyers: “It could,” he insisted, “affect every aspect of the war on terror” (Liptak 2006). But, of course, Hamdan was a great defeat not for the administration’s policy preferences, but for the broader goal of the formal bifurcation of the constitution and eradication of any ambiguities that shared power imposed. Saikrishna Prakash (2006) illuminates this important distinction between the constitutionality of the policy itself (where the Bush lawyers typically prevailed) and the question of who decides upon that policy (where they failed). Consider torture. There were, Prakash notes, two very different constitutional debates to be had: Could the United States torture? And just who has the authority to torture; who has the authority to interpret and abrogate treaties; who can detain, and who can establish and administer military commissions? Similarly, Mark Tushnet notes that the military commission decision in Hamdan dealt “solely with the procedural law of emergency powers” (Tushnet 2007:1452) and offered no opinion on the substantive or normative issue of the place of military commissions in American law, leaving that to prevailing political preferences. The message in these cases was that the United States could engage in the practices in question (harsh interrogation; military commissions, truncated habeas proceedings), but that the Executive, alone, did not have the authority to make these choices. **To do these things would require explicit authorization from Congress**. To the degree the Court was eliminating ambiguity, it was doing so by issuing clear opinions favoring congressional and not Executive prerogatives which was arguably worse from the administration’s perspective than would have been the case had they never pressed for exclusive control. At least with ambiguity, the administration could act now, and seek post-hoc ratification (Gross 2008). By eradicating ambiguity and pressing the Court to go on record requiring an explicit congressional role, the Bush lawyers had succeeded in expanding Justice Jackson’s least permissive category (President versus Congress) and shrinking the “twilight zone” in the opposite direction – away from Executive power.

#### XOs are net worse for political capital and prez powers

Scheir 2011

Steven E., Professor of Political Science at Carleton College in Northfield, Minnesota The Contemporary Presidency: The Presidential Authority Problem and the Political Power Trap Presidential Studies Quarterly [Volume 41, Issue 4,](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/psq.2011.41.issue-4/issuetoc)pages 793–808, December 2011

So the “presidential authority problem” has several parts. Authority among elites faces limits due to the institutional thickening in national government. Authority among the public and in Congress suffers from the lessening of presidential political capital detailed in this article. Political authority, according to Skowronek, is designated in advance, works through institutions, and has enforceable mandates and perceptions ([Orren and Skowronek 2004](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b35" \o "Link to bibliographic citation), 125). The decline in presidential political capital means that nowadays such traits are hard for presidents to come by. Advance designations frequently vanish among American governing elites and the mass public. Institutions are less “workable” for presidents. Mandates and perceptions are now evanescent, much less enforceable. This leads to a “presidential power trap.” Maintaining authority is hard and frustrating work, and in seeking to maintain it, presidents encounter widespread constraints. Yet the modern presidency grants an incumbent many formal powers over executive branch administration, foreign, and national security policy. The power is there, if the authority is not. So why not use the power—via unilateral decisions, signing statements and executive orders—while you have it, if authority is so hard to garner? The risk is that by using such powers, a president effectively destroys his authority. Richard Nixon's presidency, with its constitutional violations, is the signal example of this, but one can find evidence of the authority problem and power trap among other recent presidencies. Carter took his authority for granted, ignoring the maintenance of its elite and mass aspects, and paid the price. Reagan gradually relied more on executive power as authority problems grew, leading to the Iran-Contra imbroglio. George H. W. Bush exerted war powers but never found a stable basis in political authority. Clinton usually suffered an authority shortage and found his use of powers under steady political attack. George W. Bush's use of war powers destroyed his authority during his second term. Presidential efforts to increase their powers have drawn scholarly attention. As William Howell noted regarding these efforts, “almost all the trend lines point upward” ([Howell 2005](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b22), 417). A recent manifestation of increasing power claims is the theory of the unitary executive introduced during the Reagan presidency and repeatedly asserted by George W. Bush. Exponents Steve Calabresi and John Yoo argue the Constitution “gives presidents the power to control their subordinates by vesting all of the executive power in one, and only one, person: the president of the United States” ([Calabresi and Yoo 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b9" \o "Link to bibliographic citation), 4). Thus Congress's power to interfere with executive branch decisions is quite limited, and the president has total control of all executive agencies within limits set by Congress. Several legal and presidential scholars have argued this theory gives too much rein to unilateral presidential action in a way that threatens the constitutional separation of powers and individual liberty (for example, [Fisher 2010](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b16), [Matheson 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b28), [Rudalevig 2006](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b41" \o "Link to bibliographic citation)). Accompanying the unitary executive theory in the second Bush administration was an aggressive use of signing statements, presidential memoranda, and executive orders. Ambitious claims of unilateral presidential power have ominous implications: “The assertion by the executive that it alone has the authority to interpret the law and that it will enforce the law at its own discretion threatens the constitutional balance set up by the Constitution” ([Pfiffner 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b38" \o "Link to bibliographic citation), 227). Barack Obama and the Power Trap It is in the context of such controversies that Obama serves as president and continues to use unilateral tools when they prove convenient. Though he has publicly disavowed the theory of the unitary executive, like his recent predecessors he has made unilateral policy via executive order, presidential memoranda, and signing statements ([Schier 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b45" \o "Link to bibliographic citation)). Upon taking office in 2009, Obama's executive orders reversed his predecessor's policies on U.S. government support for international family planning organizations, union organizing, and terrorist interrogation techniques. Another executive order secured passage of his landmark health care reform in early 2010. The order, banning the use of federal funds for abortion, secured the vital support of a group of antiabortion House Democrats. Obama employed presidential memoranda to order his energy secretary to formulate higher fuel efficiency standards for automobiles and energy efficiency standards for appliances ([Schier 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b45" \o "Link to bibliographic citation)). In 2009, two of Obama's signing statements drew strong protests from Congress. In the statements, the president indicated he would not enforce certain provisions of the law with which he disagreed ([Weisman 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b53), [Associated Press 2009](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b5)). This stance echoed the approach of his predecessor, George W. Bush ([Schier 2008](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full" \l "b44" \o "Link to bibliographic citation)). The ensuing uproar caused the administration to declare it would no longer issue such policy declarations in signing statements

but would instead quietly disregard enforcement of laws it found unconstitutional ([Savage 2010](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b42)). In May 2011, Obama ignored requirements of the War Powers Resolution regarding his military incursion into Libya. The use of force occurred without prior consultation of Congress as required by the resolution. The administration also ignored the resolution's provision that Congress approve the use of the military within 60 days of their initial engagement in conflict until after the deadline had passed ([Ackerman and Hathaway 2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b3)). Obama initially enjoyed strong public approval but his job approval gradually sank, in part because of continuing slow economic growth and high unemployment. His impressive successes with Congress in 2009 and 2010 also accompanied a shift in the public mood against him, evident in the rise of the Tea Party movement and the large GOP gains in the 2010 elections. During 2009, [James Stimson (2011](http://onlinelibrary.wiley.com.ezproxy.baylor.edu/doi/10.1111/j.1741-5705.2011.03918.x/full#b51)) calculated the public mood shifted −.88 against Obama's policies. In comparison, the public's notable move against Obama's policy position was greater than that registered during the JFK, LBJ, and the first Bush presidencies. It also exceeded mood shifts during Clinton's second term and during either of the second Bush's two terms. By mid-2011 Obama's job approval had slipped well below its initial levels, and Congress was proving increasingly intransigent. In the face of declining public support and rising congressional opposition, Obama, like his predecessors when faced with similar circumstances, continued to resort to the energetic use of executive power. Declining political capital, rising authority problems, and accompanying assertions of executive power—we have seen this movie before. Obama thus faces an authority problem and a power trap. Only by solving the former is he likely to avoid the latter. Presidents in recent years have been unable to prevent their authority—evident in their political capital—from eroding. When it did, their power assertions often got them into further political trouble. None of his post-1965 predecessors solved the political authority problem. It is the central political challenge confronted by modern presidents, and now by Obama.

**It’s a rubber stamp---external oversight key**

Ilya **Somin 11**, Professor of Law at George Mason University School of Law, June 21 2011, “Obama, the OLC, and the Libya Intervention,” <http://www.volokh.com/2011/06/21/obama-the-olc-and-the-libya-intervention/>

But I am more skeptical than Balkin that illegal presidential action can be constrained through better consultation with legal experts within the executive branch. The fact is that the president **can almost always find** respectable lawyers within his administration who will tell him that **any policy he** really **wants** to undertake is constitutional. Despite the opposition of the OLC, Obama got the view he wanted from the White House Counsel and from State Department Legal Adviser Harold Koh. Bush, of course, got it from within the OLC itself, in the form of John Yoo’s “torture memo.” This isn’t just because administration **lawyers want to tell their political masters what they want to hear**. It also arises from the understandable fact that administrations tend to appoint people who **share the president’s** ideological **agenda and approach** to constitutional interpretation. By all accounts, John Yoo was and is a true believer in nearly unlimited wartime executive power. He wasn’t simply trying to please Bush or Dick Cheney.¶ Better and more thorough consultation with executive branch lawyers can prevent the president from undertaking actions that virtually all legal experts believe to be unconstitutional. But on the many disputed questions where there is no such consensus, the president will usually be able find administration lawyers who will tell him what he wants to hear. To his credit, Ackerman is aware of this possibility, and recommends a creative institutional fix in his recent book: a new quasi-independent tribunal for assessing constitutional issues within the executive branch. I am somewhat skeptical that his approach will work, and it may well require a constitutional amendment to enact. I may elaborate these points in a future post, if time permits.¶ Regardless, for the foreseeable future, the main constraints on unconstitutional presidential activity **must come from** **outside executive branch** – that is, from Congress, the courts, and public opinion. These constraints are highly imperfect. But they do impose **genuine costs** on presidents who cross the line. Ackerman cites the Watergate scandal, Iran-Contra and the “torture memo” as examples of the sorts of abuses of executive power that need to be restricted. True enough. But it’s worth remembering that Nixon was forced to resign over Watergate, Reagan paid a high political price for Iran-Contra, and the torture memo was a public relations disaster for Bush, whose administration eventually ended up withdrawing it (thanks in large part to the efforts of Jack Goldsmith). On the other side of the ledger, Bill Clinton paid little price for waging an illegal war in Kosovo, though he avoided it in part by keeping that conflict short and limited. It remains to be seen whether President Obama will suffer any political damage over Libya.

#### OLC can’t solve and links to politics

Eric Posner 11, the Kirkland & Ellis Professor, University of Chicago Law School. “DEFERENCE TO THE EXECUTIVE IN THE UNITED STATES AFTER 9/11 CONGRESS, THE COURTS AND THE OFFICE OF LEGAL COUNSEL” available at <http://www.law.uchicago.edu/academics/publiclaw/index.html>.

These two events neatly encapsulate the dilemma for OLC, and indeed all the president’s legal advisers. If OLC tries to block the president from acting in the way he sees fit, it takes the risk that he will disregard its advice and marginalize the institution. If OLC gives the president the advice that he wants to hear, it takes the risk that it will mislead him and fail to prepare him for adverse reactions from the courts, Congress, and the public. Can OLC constrain the executive? That is the position taken by many scholars, most notably Jack Goldsmith. 18 The underlying idea here is that even if Congress and the courts cannot constrain the executive, perhaps offices within the executive can. The opposite view, advanced by Bruce Ackerman, is that OLC is a rubber stamp. 19 I advocate a third view: OLC does not constrain the executive but enables him to accomplish goals that he would not otherwise be able to accomplish. It is more accurate to say that OLC enables than constrains. B. OLC as a Constraint on the Executive A number of scholars have argued that OLC can serve as an important constraint on executive power. I will argue that OLC cannot act as a constraint on executive power. Indeed, its only function is the opposite—as an “enabler” (as I will put it) or extender of executive power. A president must choose a course of action. He goes to OLC for advice. Ideally, OLC will provide him good advice as to the legality of the course of action. It will not provide him political advice and other relevant types of advice. The president wants to maximize his political advantage, 21 and so he will follow OLC’s advice only if the legal costs that OLC identifies are greater than the political benefits. On this theory, OLC will properly always give the president neutral advice, and the president will gratefully accept it although not necessarily follow it. If the story ended here, then it would be hard to see what the controversy over OLC could be about. As an adviser, it possesses no ability to constrain the executive. It merely provides doctrinal analysis, in this way, if it does its job properly, merely supplying predictions as to how other legal actors will react to the president’s proposed action. The executive can choose to ignore OLC’s advice, and so OLC cannot serve as a “constraint” on executive power in any meaningful sense. Instead, it merely conveys to the president information about the constraints on executive power that are imposed from outside the executive branch. However, there is an important twist that complicates the analysis. The president may choose to publicize OLC’s opinions. Naturally, the president will be tempted to publicize only favorable opinions. When Congress 22 claims that a policy is illegal, the president can respond that his lawyers advised him that the policy is legal. This response at least partially deflects blame from the president. There are two reasons for this. First, the Senate consented to the appointment of these lawyers; thus, if the lawyers gave bad advice, the Senate is partly to blame, and so the blame must be shared. Second, OLC lawyers likely care about their future prospects in the legal profession, which will turn in part on their ability to avoid scandals and to render plausible legal advice; they may also seek to maintain the office’s reputation. When OLC’s opinions are not merely private advice, but are used to justify actions, then OLC takes on a quasi-judicial function. Presidents are not obliged to publicize OLC’s opinions, but clearly they see an advantage to doing so, and they have in this way given OLC quasi-judicial status. But if the president publicizes OLC opinions, he takes a risk. The risk is that OLC will publicly advise him that an action is illegal. If OLC approval helps deflect blame from the president, then OLC disapproval will tend to concentrate blame on the president who ignores its advice. Congress and the public will note that after all the president is ignoring the advice of lawyers that he appointed and thus presumably he trusts, and this can only make the president look bad. To avoid such blame, the president may refrain from engaging in a politically advantageous action. In this way, OLC may be able to prevent the president from taking an action that he would otherwise prefer. At a minimum, OLC raises the political cost of the action. I have simplified greatly, but I believe that this basic logic has led some scholars to believe that OLC serves as a constraint on the president. But this is a mistake. OLC strengthens the president’s hand in some cases and weakens them in others; but overall it extends his power—it serves as enabler, not constraint. To see why, consider an example in which a president must choose an action that lies on a continuum. One might consider electronic surveillance. At one extreme, the president can engage in actions that are clearly lawful—for example, spying on criminal suspects after obtaining warrants from judges. At the other extreme, the president can engage in actions that are clearly unlawful—for example, spying on political opponents. OLC opinions will not affect Congress’s or the public’s reaction to either the obviously lawful or the obviously unlawful actions. But then there are middle cases. Consider a policy L, which is just barely legal, and a policy I, which is just barely illegal. The president would like to pursue policy L but fears that Congress and others will mistakenly believe that L is illegal. As a result, political opposition to L will be greater than it would be otherwise. In such a case, a favorable advisory opinion from a neutral legal body that has credibility with Congress will help the president. OLC’s approval of L would cause political opposition (to the extent that it is based on the mistaken belief that L is unlawful) to melt away. Thus, OLC enables the president to engage in policy L, when without OLC’s participation that might be impossible. True, OLC will not enable the president to engage in I, assuming OLC is neutral. And, indeed, OLC’s negative reaction to I may stiffen Congress’ resistance. However, the president will use OLC only because he believes that OLC will strengthen his hand on net. It might be useful to make this point using a little jargon. In order for OLC to serve its ex ante function of enabling the president to avoid confrontations with Congress in difficult cases, it must be able to say “no” to him ex post for barely illegal actions as well as “yes” to him for barely legal actions. It is wrong to consider an ex post no as a form of constraint because, ex ante, it enables the president to act in half of the difficult cases. OLC does not impose any independent constraint on the president, that is, any constraint that is separate from the constraint imposed by Congress. An analogy to contract law might be useful. People enter contracts because they enable them to do things ex ante by imposing constraints on them ex post. For example, a debtor can borrow money from a creditor only because a court will force the debtor to repay the money ex post. It would be strange to say that contract law imposes “constraints” on people because of ex post enforcement. In fact, contract law enables people to do things that they could not otherwise do—it extends their power. If it did not,people would not enter contracts. A question naturally arises about OLC’s incentives. I have assumed that OLC provides neutral advice—in the sense of trying to make accurate predictions as to how other agents like Congress and the courts would reaction to proposed actions. It is possible that OLC could be biased—either in favor of the president or against him. However, if OLC were biased against the president, he would stop asking it for advice (or would ask for its advice in private and then ignore it). This danger surely accounts for the fact that OLC jurisprudence is pro-executive. 23 But it would be just as dangerous for OLC to be excessively biased in favor of the president. If it were, it would mislead the president and lose its credibility with Congress, with the result that it could not help the president engage in L policies. So OLC must be neither excessively pro-president nor anti-president. If it can avoid these extremes, it will be an “enabler”; if it cannot, it will be ignored. In no circumstance could it be a “constraint.” If the OLC cannot constrain the president on net, why have people claimed that OLC can constrain the president? What is the source of this mistake? One possibility, which I have already noted, is that commentators might look only at one side of the problem. Scholars note that OLC may “prevent” the president from engaging in barely illegal actions without also acknowledging that it can do so only if at the same time it enables the president to engage in barely legal actions. This is simply a failure to look at the full picture. For example, in The Terror Presidency, Goldsmith argues that President Bush abandoned a scheme of warrantless wiretapping without authorization from the FISA court because OLC declared the scheme illegal, and top Justice Department officials threatened to resign unless Bush heeded OLC’s advice. 25 This seems like a clear example of constraint. But it is important to look at the whole picture. If OLC had approved the scheme, and subsequently executive branch agents in the NSA had been prosecuted and punished by the courts, then OLC’s credibility as a supplier of legal advice would have been destroyed. For the president, this would have been a bad outcome. As I have argued, a credible OLC helps the president accomplish his agenda in “barely legal” cases. Without taking into account those cases where OLC advice helps the president’s agenda ex post as well as the cases where OLC advice hurts the president’s agenda ex post, one cannot make an overall judgment about OLC’s ex ante effect on executive power. Another possible source of error is that scholars imagine that “neutral” advice will almost always prevent the president from engaging in preferred actions, while rarely enabling the president to engage in preferred actions. The implicit picture here is that a president will normally want to break the law, that under the proper interpretation of the Constitution and relevant standards the president can accomplish very little. So if OLC is infact neutral and the president does obey its advice, then it must constrain the president. But this theory cannot be right, either. If OLC constantly told the president that he cannot do what he wants to do, when infact Congress and other agents would not object to the preferred actions, then the president would stop asking OLC for advice. As noted above, for OLC to maintain its relevance, it cannot offer an abstract interpretation of the Constitution that is divorced from political realities; it has to be able to make realistic predictions as to how other legal agents will react to the president’s actions. This has led OLC to develop a pro-executive jurisprudence in line with the long-term evolution of executive power. If OLC tried to impose constraints other than those imposed by Congress and other institutions with political power, then the president would ignore it.

#### The SG’s seen as politicized---links to politics and can’t solve cred

Patrick Wohlfarth 9, UNC at Chapel Hill, The Tenth Justice? Consequences of Politicization in the Solicitor General’s Office, [www.gvpt.umd.edu/wohlfarth/Wohlfarth%202009%20JOP.pdf](http://www.gvpt.umd.edu/wohlfarth/Wohlfarth%202009%20JOP.pdf)

Judicial scholars offer several explanations for the Court’s disproportionate attention to the ofﬁce’s arguments and commonly view the S.G. as a representative of both executive and judicial interests. Historically, solicitors general have acknowledged and respected the ofﬁce’s reputation for legal integrity and relative independence from partisan inclinations. Yet by many accounts, recent solicitors general have increasingly politicized the ofﬁce by frequently behaving as a direct advocate of the executive’s often narrow legal philosophy (Caplan 1987; Ubertaccio 2005). Solicitors general commonly enter the ofﬁce with a reservoir of decision-making capital. The ofﬁce’s esteemed reputation affords the S.G. a degree of freedom to act as the president’s political advocate. The heightened sense of political behavior within the contemporary ofﬁce suggests that solicitors general are indeed willing to utilize this discretion and expend such resources. However, the S.G. who exhausts that capital and excessively politicizes the ofﬁce might jeopardize both the president’s immediate ability to advance the administration’s policy agenda through the Court as well as the longterm integrity of the S.G.’s ofﬁce as an institution.¶ The recent controversy surrounding the ﬁring of several U.S. attorneys and Attorney General Alberto Gonzales’ eventual resignation further illustrates the consequences that may arise when perceptions of excessive political bias pervade the Justice Department. The S.G., even more so than the attorney general, stands at the intersection of law and politics. This unique position carries an expectation that its ofﬁce holders will maintain an independent balance. Existing empirical accounts of the S.G.’s behavior have not fully explored the degree to which the Court’s perceptions of political bias may jeopardize the ofﬁce’s reputation as an unbiased informational cue. In this article, I examine the extent to which the S.G.’s politicization adversely affects the ofﬁce’s credibility. If the Court perceives that solicitors general repeatedly abuse their discretion by acting as the president’s political advocate, then it should not trust the information provided and, thus, discount the ofﬁce’s arguments. I employ an individual-level analysis of all solicitor general amici between 1961 and 2003. The results reveal that increased politicization diminishes the likelihood that the Court will support the S.G.’s positions on the merits. In addition, I demonstrate that politicization’s negative impact yields a spillover effect by endangering the

## Pres Powers DA 2AC

#### Deference kills pres-powers in the long term.

**Margulies 2009**

[Peter, Professor of Law, Roger Williams University, THE WAGES OF PLAYING FOR TIME:¶ AVOIDANCE DOCTRINES AND INTERPRETIVE¶ METHOD IN NATIONAL SECURITY AND FOREIGN RELATIONS CASES]

The response to advocates of presidential power accepts their general thesis on the advantages of presidential action, but queries whether deference best preserves the president’s discretion over the long term. Although some advocates for deference acknowledge that the executive can act in haste, they view judicial intervention as a cure worse than the disease.341 Moreover, the most sophisticated presidential power advocates, who argue that emergency powers usually have no long-term impact on rights,342 discount the tendency of moral hazard to produce volatility in the form of a backlash against executive excesses. The presidential power advocates argue descriptively for a cycling thesis in which courts and public opinion curb emergency powers once the occasion for the emergency fades, thereby leading to new threats that eventually produce renewed deference.343 However, the presidential power advocates fail to consider whether moral hazard encourages a greater than optimal level of executive overreaching, thereby leading to cycling of greater than optimal amplitude. If the executive felt somewhat greater constraints from courts ab initio, overreaching might decrease along with unnecessary volatility. The result might be a higher overall level of both liberty and security.

## Debt Ceiling 2AC

Won’t pass because of election fears and Obama’s approach prolongs Republican backlash- star this card

Kaplan 10-3-13 [Rebecca, serves as City Councilmember At-Large for Oakland, California, CBS News, “Why is it so difficult to end the government shutdown?” <http://www.cbsnews.com/8301-250_162-57605784/why-is-it-so-difficult-to-end-the-government-shutdown/>]

As the government shutdown enters its third day, Democrats and Republicans seem no closer to bridging their differences than they were when the shutdown began early Tuesday morning. It's difficult to say when the standoff will end. The two shutdowns that occurred in 1995 and 1996 lasted a total of 27 days. And back then, the conditions for getting to a deal were much better.¶ Republicans won the House and Senate in the 1994 midterm elections - the first time the party had a House majority in 40 years. That set up a showdown between House Speaker Newt Gingrich, who had run on a conservative platform, and then-President Bill Clinton. That dispute came in 1995, when Gingrich wanted to balance the budget in a short time frame and Clinton wanted money spent on Democratic priorities. After two separate shutdowns and several weeks, the pressure was too high on Republicans and they cut a deal with Clinton: he would get his priorities, but would have to balance the budget for 10 years.¶ "They were kind of testing each other," said former Rep. Tom Davis, R-Va., who was a freshman in Congress at the time. Afterward, Davis noted, Clinton and Gingrich would go on to work together on a host of issues including welfare reform. The economy boomed, helping to mitigate budget issues.¶ Republicans who were lawmakers or aides in Congress in 1995 cite a variety of reasons that the shutdown ended. For Davis, it was the mounting public pressure on Republicans and their rapidly dropping poll numbers that helped spur a compromise. "There was a revolt, and they simply couldn't hold their members after a while," he said of the Republican leadership. It didn't help that Republicans were afraid of losing the first majority they'd had in decades. Davis recalls going to former Rep. Dick Armey, then the Republican Majority leader from Texas, and saying, "We're getting our butts kicked."¶ But Bob Walker, then a Republican congressman from Pennsylvania, had a different take from the conventional narrative that Republicans had caved. "We stayed focused in 1995 on the fact that what the end result for us was to get a pathway to a balanced budget, and so in the end when we got an agreement to just begin the process of moving toward a balanced budget," he said. "We declared victory on that and we were prepared to then get the government back into action."¶ This time, it's not so easy for Republicans to achieve even a piece of their chief goal - to dismantle the Affordable Care Act. The law is President Obama's signature policy achievement, and its constitutional authority was affirmed by the Supreme Court. Democrats in the Senate and Mr. Obama himself have proven with the shutdown fight that they are determined to keep the law intact.¶ "We didn't get an immediate balanced budget obviously but what we got was a seven-year plan toward a balanced budget that then ended up being accomplished in there years," Walker said of the House Republicans in 1995. But nowadays, he said, "I'm not certain I see where the bottom lines are."¶ As shutdown continues, Obama says Wall Street "should be concerned"¶ Government shutdown: Is Congress acting selfishly?¶ Yet another explanation of why the 1995-1996 shutdown ended had to do with presidential politics. Former Senate Majority Leader Bob Dole, R-Kansas, was eyeing a presidential bid against Clinton in 1996.¶ "He just got sick of it. I think he started seeing that this was directly impacting his ability to run for president," said John Feehery, a political strategist who was the communications director for then-House Majority Whip Tom DeLay during the shutdown. Dole was key to engineering an end to the shutdown, a fact that was apparent to everyone - even Democrats.¶ "It was a huge factor," said American University professor Patrick Griffin, who served as Clinton's assistant for legislative affairs from 1994 to 1996. "We could always sense that there was no love lost between him and [Gingrich] - on the [Contract with America], on the shutdown. It was just not Dole's style...he was wasting time, he was not being able to get his campaign."¶ If anything, presidential politics will lengthen the shutdown. Mr. Obama has no re-election campaign to worry about - like Clinton did at the time - and Republican presidential campaigns cannot be won without pleasing an active base that hates the healthcare law. It would be difficult for any Republican to help broker a compromise that preserved most of Obamacare and then woo Republican primary voters.¶ Not that many Republicans feel as if they can work with Mr. Obama. "Many people in Congress ...believe that the president treats them with contempt and so the atmosphere for negotiating is not very good. That's a big difference," said Walker.¶ House Speaker John Boehner, R-Ohio, and Mr. Obama have tried and failed to negotiate big deals several times. Since the government shut down on Tuesday, they've barely talked aside from a meeting the president held with top congressional leaders Wednesday afternoon. And a recent Politico story that detailed how Boehner and Senate Majority Leader Harry Reid, R-Nev., worked together to preserve congressional subsidies for healthcare coverage will likely have poisoned the well between the leaders of the two chambers.¶ That wasn't the case with Gingrich and Clinton, despite their differences. "Both President Clinton and Speaker Gingrich had a pretty civil and reasonably good personal relationship," said Mack McLarty, Clinton's first chief of staff as president. Both hailed from the south, and had "very inquisitive minds" about the world around them.¶ Perhaps the biggest roadblock to a deal, however, is the increasingly partisan nature of Congress caused by congressional redistricting that puts many members into seats where fewer and fewer constituents are from the opposite party. In 1995, more than 34 percent of Republican representatives in the House were elected in districts that had voted for Clinton as president. Now, only seven percent of House members come from districts that voted for Mr. Obama.¶ There's a larger proportion of hardline conservatives in the House in 2013, and they have so far been more successful at driving the agenda than their more moderate counterparts. "The-rank-and-file members are sick and tired of the rebels running the thing but there's too many of them who vote with the rebels to protect their flank," Feehery said, referring to Republicans who are worried about receiving a primary challenge from the right.¶ With so many factors working against a deal, it's hard to see a way out of the crisis. The only thing that's guaranteed to inject some urgency into the debate is the looming deadline to raise the debt ceiling on Oct. 17. While a government shutdown can have minimal effects on the financial markets, the possibility of the U.S. defaulting is much more likely to cause financial panic that could push lawmakers into a deal.¶ Plus, if the spending and debt ceiling deals morph into one, there may be more issues on the table to discuss such as the sequester and the whole federal budget. That, Walker said, will give Republicans more areas where they can look for victory.

All their link args are non-unique

NPR 9/21, “Have Obama's Troubles Weakened Him For Fall's Fiscal Fights?” http://www.ideastream.org/news/npr/224494760

President Obama has had a tough year. He failed to pass gun legislation. Plans for an immigration overhaul have stalled in the House. He barely escaped what would have been a humiliating rejection by Congress on his plan to strike Syria.¶ Just this week, his own Democrats forced Larry Summers, the president's first choice to head the Federal Reserve, to withdraw.¶ Former Clinton White House aide Bill Galston says all these issues have weakened the unity of the president's coalition.¶ "It's not a breach, but there has been some real tension there," he says, "and that's something that neither the president nor congressional Democrats can afford as the budget battle intensifies."¶ Obama is now facing showdowns with the Republicans over a potential government shutdown and a default

on the nation's debt. On Friday, the House voted to fund government operations through mid-December, while also defunding the president's signature health care law — a position that's bound to fail in the Senate.¶ As these fiscal battles proceed, Republicans have been emboldened by the president's recent troubles, says former GOP leadership aide Ron Bonjean.

Fiat means the plan passes instantaneously and doesn’t cost capital

Shutdown crushes Obama’s agenda

O’Brien 10/1 (Michael O'Brien 10/1, "Winners and losers of the government shutdown", 2013, nbcpolitics.nbcnews.com/\_news/2013/10/01/20763839-winners-and-losers-of-the-government-shutdown?lite)

Obama¶ The fiscal fight is a double-edged sword for Obama.¶ Yes, the president won a short-term victory that revitalizes his pull within the Beltway after beating back Republicans and shifting blame primarily to them for a shutdown. But Obama is no less a symbol of Washington dysfunction than Ted Cruz or John Boehner.¶ It might be simplistic, but any president shares in some of the broader opinion toward D.C. just by the very nature of the job. Put another way: as president, Obama is the most visible political leader in the U.S., if not the world. If Americans are dissatisfied with Washington, Obama will have to shoulder some of that burden.¶ Obama's 2011 battles with Republicans over the debt ceiling saw his approval ratings sink to one of the lowest points of his presidency. There are signs this fight might be taking a similar toll: a CNN/ORC poll released Monday found that 53 percent of Americans disapprove of the way the president is handling his job, versus 44 percent who approve.¶ Moreover, after the time and political capital expended on this nasty political fight — and with midterm elections on the docket for 2014 — Obama's top second-term priorities, like comprehensive immigration reform, are on life support.

Political capital isn’t key and Obama isn’t spending it

Allen, 9/27/13- politics reporter for Politico (Jonathan, “President Obama’s distance diplomacy” <http://www.politico.com/story/2013/09/government-shutdown-barack-obama-house-gop-97483.html?hp=t3_3>)

The White House’s distance diplomacy with Republicans is an approach that tacitly acknowledges three inescapable realities: There’s no one to negotiate with on the GOP side; Obama’s direct involvement in a pact would poison it for many rank and file Republicans; and Democrats don’t trust him not to cut a lousy deal. Indeed, Democrats are urging Obama to stay at arm’s length from Congress so there’s no confusion over his message that he won’t negotiate on an increase in the debt limit, which the nation is expected to breach as early as Oct. 17 without legislative action. “I believe the president has made it very clear, as we have tried to make it clear: There are no negotiations. We’re through,” Senate Majority Leader Harry Reid (D-Nev.) told POLITICO. In past installments of the fiscal-failure soap opera, overheated rhetoric about government shutdowns and a default on the national debt has been matched by sober and direct deal-making behind the scenes — usually in the form of a virtual handshake between Vice President Joe Biden and Senate Minority Leader Mitch McConnell. In the winter 2010 debate over tax cuts, Biden and McConnell agreed to extend all of the Bush-era tax cuts for two years, infuriating the left. In 2011, Boehner and Obama secretly discussed for weeks a possible grand-bargain deal — but when the details were leaked, Democrats were furious and the negotiations fell apart. And in 2012, Biden and McConnell averted the so-called fiscal cliff — but that greatly upset Reid, who believed the White House gave away too much to Republicans whose backs were against the wall. Indeed, many Democrats had buyer’s remorse on aspects of those agreements, particularly a budget sequestration plan that has squeezed domestic and military spending, and the locking in of much of the Bush tax rates. When Chief of Staff Denis McDonough and other senior White House aides quietly discussed budget issues with a group of Senate Republicans earlier this year, top Democrats believed it made little sense to continue negotiations that appeared to be going nowhere and didn’t seem likely to help their party. So they’ve asked Obama himself to steer clear of this round of the debt fight and try to force Republicans to come to him. The Senate, on a party line 54-44 vote on Friday, sent a bill that would keep the government operating but dropped a House provision defunding Obamacare. Now the House is expected to load up the measure with more provisions that aren’t acceptable to Democrats — though it has been hard for House GOP leaders to herd their troops on a budget bill and a separate plan to raise the debt ceiling. “You first need the Republicans to have a position to negotiate – they don’t yet,” Sen. Chuck Schumer (D-N.Y.), who often advises the White House on strategy, said Friday when asked about Obama’s posture. “Until the House Republican Caucus figures out what it wants to do, nobody can deal with them.” Other than a terse phone call to Speaker John Boehner last Friday to reiterate that he won’t negotiate on the debt limit, Obama hasn’t talked to House Republicans — the key constituency in the fight. The White House has let Reid take the lead in the latest fights, even scrapping a potential meeting at the White House with Obama and the three other congressional leaders to allow the process to play out on Capitol Hill. With Republicans fighting with each other over Obamacare, Democrats believe it makes far more sense to keep the focus on the GOP intraparty warfare, rather than risk putting Obama middle of a politically sensitive negotiation. Republicans sourly note that Obama has been quicker to talk with Russian President Vladimir Putin — and now Iranian President Hassan Rouhani — than with House Speaker John Boehner. “Grandstanding from the president, who refuses to even be a part of the process, won’t bring Congress any closer to a resolution,” said Brendan Buck, a spokesman for House Speaker John Boehner. When McDonough went to the Hill this week for closed-door talks, it was to reassure fellow Democrats that the president wouldn’t fold early, as he’s been accused of doing in past budget battles. Obama isn’t expected to meet with congressional leaders until after the Tuesday deadline to stop a government shutdown. Asked if he believed that Obama would eventually have to engage directly in the fiscal fights, Reid said: “Not on the debt ceiling and not on the CR. Maybe on something else – but not these two. We have to fund the government and pay our bills.” Whether Obama can sustain his no-negotiatio

n position on the debt ceiling remains to be seen. Senate Republicans — even those who have balked at calls to use the threat of a government shutdown to defund Obamacare — say the president won’t get a clean debt ceiling increase. “It’s what’s wrong with the government right now,” said Sen. Roy Blunt (R-Mo.), who voted to break a GOP-led filibuster blocking the continuing resolution. “I suppose the Congress might say we don’t want a negotiation on the debt ceiling either.” If Obama can’t get 60 votes in the Senate for a clean debt ceiling increase, he will very likely to have to engage in direct talks with Republicans, even Democrats privately concede. But for now, Democratic leaders say the president is doing what he has to: Making speeches to attack Republicans, and letting his allies on the Hill deal with the nitty-gritty of legislating and horse-trading. Republican Rep. Mike Rogers (R-Mich.), who has worked with the White House on national security issues, says the president’s always had a “laissez-faire” approach to Congress.

Obama’s PC is low and decreasing

Steinhauser, 9/26/13 **–** CNN Political Editor (Paul, “Obama's support slips; controversies, sluggish economy cited” <http://www.cnn.com/2013/09/26/politics/cnn-poll-of-polls-obama/?hpt=po_c2>)

As he battles with congressional Republicans over the budget and the debt ceiling, and as a key component of his health care law kicks in, new polling suggests that President Barack Obama's standing among Americans continues to deteriorate. The president's approval rating stands at 45%, according to a CNN average of four national polls conducted over the past week and a half. And a CNN Poll of Polls compiled and released Thursday also indicates that Obama's disapproval rating at 49%. In the afterglow of his re-election and second inauguration, the percentage of those approving of Obama's job performance hovered in the low 50s as the year began, according to CNN Poll of Poll averages. But his numbers slipped to the upper 40s by spring and now have edged down to the mid 40s. At the same time, his disapproval numbers have edged up from the low 40s to right around the 50% mark. Anxiety and skepticism over the Affordable Care Act, better known as Obamacare, continuing concerns over the sluggish economy, and a drop in the president's approval on foreign policy -- once his ace in the hole -- all appear to be contributing to the slide of Obama's general approval rating. "Not a precipitous drop, but more like a continued erosion in the president's numbers," says CNN Chief Political Correspondent Candy Crowley. "The Boston Marathon bombings, Edward Snowden's 'big brother' revelations, the 'non-coup' in Egypt, the 'now we bomb, now we don't' policy in Syria, an economic recovery that remains disappointing, the uncertainty of how/what will change under the new health care system, shall I go on?" "It all adds up to an awful lot of uncertainty and unfairly or not, uncertainty tends to breed lower poll numbers for the guy in charge," added Crowley, anchor of CNN's "State of the Union." Besides being the main indicator of a president's standing with the public, a presidential approval rating is a good gauge of his clout in dealing with Congress. The drop in his numbers comes as the president pushes back against attempts by congressional Republicans to use deadlines to keep the federal government funded and to extend the nation's debt ceiling to try and defund the health care law. A slew of national polls conducted this month indicate that a majority doesn't support shutting down the government in order to defund Obamacare. But if the fight shifts to the debt ceiling, public opinion appears to turn against the president, who reiterated on Thursday that he will not negotiate with the GOP in Congress over extending the debt ceiling.

Obama executive order solves

Weisenyhal 9/30 (Joe Weisenthal 9/30, Executive Editor for Business Insider, “It Increasingly Looks Like Obama Will Have To Raise The Debt Ceiling All By Himself,” <http://www.businessinsider.com/it-increasingly-looks-like-obama-will-have-to-raise-the-debt-ceiling-all-by-himself-2013-9>)

With no movement on either side and the debt ceiling fast approaching, there's increasing talk that the solution will be for Obama to issue an executive order and require the Treasury to continue paying U.S. debt holders even if the debt ceiling isn't raised.¶ Here's Greg Valliere at Potomac Research:¶ HOW DOES THIS END? What worries many clients we talk with is the absence of a clear end-game. We think three key elements will have to be part of the final outcome: First, a nasty signal from the stock market. Second, a daring move from Barack Obama to raise the debt ceiling by executive order if default appears to be imminent. Third, a capitulation by Boehner, ending the shut-down and debt crisis in an arrangement between a third of the House GOP and virtually all of the Democrats. ¶ Valliere isn't the only one seeing this outcome.¶ Here's David Kotok at Cumberland Advisors:¶ We expect this craziness to last into October and run up against the debt limit fight. In the final gasping throes of squabbling, we expect President Obama to use the President Clinton designed executive order strategy so that the US doesn’t default. There will then ensue a protracted court fight leading to a Supreme Court decision. The impasse may go that far. This is our American way. “Man Plans and God Laughs” says the Yiddish Proverb.¶ Indeed, back in 2011, Bill Clinton said he'd raise the debt ceiling by invoking the 14th Amendment rather than negotiate with the House GOP.¶ This time around, again, Clinton is advising Obama to call the GOP's bluff.

No Default – internal checks & balanced budget

Dorfman, 10/3 [Jeffrey, Forbes, “Don't Believe The Debt Ceiling Hype: The Federal Government Can Survive Without An Increase”, <http://www.forbes.com/sites/jeffreydorfman/2013/10/03/dont-believe-the-debt-ceiling-hype-the-federal-government-can-survive-without-an-increase/>, BJM]

That’s right. As much as the politicians and news media have tried to convince you that the world will end without a debt ceiling increase, it is simply not true. The federal debt ceiling sets a legal limit for how much money the federal government can borrow. In other words, it places an upper limit on the national debt. It is like the credit limit on the government’s gold card. Reaching the debt ceiling does not mean that the government will default on the outstanding government debt. In fact, the U.S. Constitution forbids defaulting on the debt (14th Amendment, Section 4), so the government is not allowed to default even if it wanted to. In reality, if the debt ceiling is not raised in the next two weeks, the government will actually have to prioritize its expenses and keep its monthly, weekly, and daily spending under the revenue the government collects. In simple terms, the government would have to spend an amount less than or equal to what it earns. Just like ordinary Americans have to do in their everyday lives.

Fights now and McCain supports the plan.

Shapiro May 29th 2013

[-Ari, Why Obama Wants To Change The Key Law In The Terrorism Figh [www.npr.org/blogs/itsallpolitics/2013/05/29/187059276/why-obama-wants-to-change-the-key-law-in-the-terrorism-fight](http://www.npr.org/blogs/itsallpolitics/2013/05/29/187059276/why-obama-wants-to-change-the-key-law-in-the-terrorism-fight)]

The AUMF is one of the most unusual laws Congress has passed this century. It's less than a page long. The vote was nearly unanimous. And it went from concept to law in exactly one week. It authorizes the president to go after the groups that planned, authorized, committed or aided the Sept. 11 attacks, or any groups and countries that harbored them. In broad terms, it justified invading Afghanistan. But two presidents have applied it around the world. "It was vast in the powers that it gave," says Karen Greenberg, who runs the Center on National Security at Fordham Law School. "And it was somewhat vast in its definition of the enemy. However, in many ways, that definition has expanded in the interim years." Presidents Bush and Obama have used AUMF authority to kill terrorists in Somalia, Yemen and other places far from the Afghan battlefield. But last week at the National Defense University, Obama said the law needs to change. He explained that after 12 years, the Afghan war is ending, and al-Qaida's core is a shell of its former self. "Unless we discipline our thinking, our definitions, our actions, we may be drawn into more wars we don't need to fight," the president said, "or continue to grant presidents unbound powers more suited for traditional armed conflicts between nation-states." Obama promised to work with Congress to refine, and ultimately repeal, the AUMF's mandate. "And I will not sign laws designed to expand this mandate further," he said. According to a senior White House official, that threat was a specific reaction to lawmakers who have talked about expanding the law. Until now, presidents have interpreted a very vague law to give them very broad powers. Sen. John McCain, R-Ariz., has expressed interest in making the law less vague, and making those broad powers explicit. "Wouldn't it be helpful to the Department of Defense and the American people if we updated the AUMF to make it more explicitly consistent with the realities today, which are dramatically different [than] they were on that fateful day in New York?" he said at a Senate Armed Services Committee hearing earlier this month. But the White House is moving in the opposite direction. As a senior White House official put it: "The AUMF should apply to al-Qaida. As we defeat al-Qaida, we should ultimately repeal the law." As other terrorist groups become threats, the White House believes a president should ask Congress for permission to target those groups on a case-by-case basis. James Jeffrey, who was deputy national security adviser to Bush, worries about rolling back the law. "This law has served us well for over a decade," he says. "Much hangs from it, including the detention capability and the ability to use the U.S. military against clear and present dangers to the United States." That detention piece of the puzzle is key: The Guantanamo prison operates under the AUMF, so repealing this law is also part of the White House's effort to close the prison. Many in Congress want to keep the prison open. That's one reason this issue will not be easily resolved, says Thomas Kean, who co-chaired the 9/11 Commission. "I think it'll be a long debate, and it should be," Kean says. "[These are] very, very contentious issues, but the one thing you have to have, I think, in the United States, particularly for something lasting as long as this, is a framework of laws. We're a nation of laws. You can't just do ad hoc as we have in the past." It's pretty unusual for a president to ask Congress to take away some of his power. But Kate Martin of the Center for National Security Studies says if you look at it a different way, this situation doesn't seem so strange. "It's not unusual for presidents to end wars, right?" she says. "And if what we were talking about was ending military operations, that would not look like a president giving up power. It would look like a president ending wars."

McCain key to success in talks

Curry, 10/3 [Tom, NBC Politics, “McCain in the middle: Can Senate's GOP elders solve shutdown mess?”, <http://nbcpolitics.nbcnews.com/_news/2013/10/02/20790845-mccain-in-the-middle-can-senates-gop-elders-solve-shutdown-mess?lite>, BJM]

Arizona Sen. John McCain and other like-minded Republican senators could end up reprising roles as key deal-makers as the party seeks a final negotiated solution to the government shutdown. No clear path to ending the impasse over spending has emerged, but in one possible deal scenario -- a comprehensive agreement that also solves the problem of raising the debt limit -- McCain will likely play an essential role, just as he has been in past bipartisan agreements like the immigration bill that passed the Senate last June. With a core group of House Republicans sticking together in their chamber, and Senate GOP leader Mitch McConnell taking a low public profile in the fight, that leaves McCain and similar-thinking GOP senators to look for a deal. It’s no secret and no surprise that the Republican Party’s 2008 presidential standard-bearer has been critical of the strategy of conservatives such as Sen. Ted Cruz, R-Texas, and Sen. Mike Lee, R-Utah, of trying to use the spending bill and perhaps the debt limit as vehicles to force President Barack Obama to agree to defund or delay his signature achievement, the Affordable Care Act. McCain has argued over and over again that this is one battle that the Republicans simply cannot win. And most Republican senators seem to agree with him, but there is little evidence that their GOP counterparts in the House can be convinced, at least not yet. The lines have been drawn between Senate Republicans like McCain and House Tea Party members who are joined by a handful of sympathetic GOP senators like Cruz, who staged a 21-plus hour protest speech on the Senate floor against Obamacare last week. The impact of the first government shutdown in 17 years was felt across America as offices were shuttered and workers were sent home after lawmakers failed to come to a deal. Launch slideshow McCain, in turn, took to the floor to chastise Cruz for comparing those who opposed Obamacare delays to Nazi appeasers in the run up to World War II. "I resoundingly reject that allegation. That allegation, in my view, does a great disservice," McCain said on the Senate floor. "I do not agree with that comparison; I think it's wrong." The decisive vote that allowed Senate Majority Leader Harry Reid to move ahead and pass his short-term spending bill last Friday was the vote on cloture, or ending debate. On that vote, 25 of the Senate’s 46 Republicans voted to end debate and thus opened the door that allowed the Senate to pass the spending bill. Among the 25 GOP senators voting to end debate were Minority Leader McConnell of Kentucky and every member of the Senate GOP leadership team. But over the past several days, McConnell has largely not been in the vanguard of the fight over defunding Obamacare and blocking a spending bill. He is faced with the pressure of a conservative primary challenger, Matt Bevin, the tenor of whose campaign is suggested by the tagline of one recent campaign e-mail: “Follower McConnell's Liberalism Catches Up to Him.” (McConnell’s lifetime voting rating from the American Conservative Union: 90 out of a perfect 100.) As McConnell receded from leading the public fight, Republicans like McCain have picked up the slack. “We have to understand that the only way we are going to repeal Obamacare is when we have 67 Republican votes in the United States Senate because that's what's required to override a presidential veto,” McCain told Bloomberg News on Monday. McCain noted that he’d campaigned against Obamacare during the 2012 campaign and that he’d fought to defeat it on the Senate floor in 2009. But he added, “In democracies, unfortunately sometimes the majority rules. That's why we (Republicans) are at a disadvantage in this fight that we're having.” He added that “by threatening to shut down the government we are kind of circumventing the results of elections” – an argument that Obama and administration spokesmen have also made. Sen. John McCain, R-Ariz., expresses concern over a comparison made by Sen. Ted Cruz, R-Texas, on Tuesday between fighting Obamacare and standing up to Nazi Germany. The conservatives’ effort to defund or delay Obamacare risks alienating voters as the GOP heads into the 2014 mid-term elections, McCain has implied. “We're doing things that frankly are not rational in the view of our constituents,” he said Monday. Rather than simply being against Obamacare, he said, “We can present a positive agenda for the American people and win the elections in 2014. And I think if we do it right, we've got a great shot of getting a majority in the Senate.” But at least in the past two days, House Republicans have been following a playbook suggested by McCain: target the “most unpopular provisions such as the tax on medical devices and let's rifle shot amendments so that we force people to vote on those.”

## Debt Ceiling 1AR

**Economic decline wouldn’t cause conflict or damage hegemony**

**Deudney 99** [Daniel, Asst Prof of Poli Sci at Johns Hopkins, Contested Grounds: Security and Conflict in the New Environmental Politics]

Alterations in the relative power of states are unlikely to lead to war as readily as the lessons of history suggest because economic power and military power are not as tightly coupled as in the past. The relative economic power position of major states such as Germany and Japan has changed greatly since the end of World War II. But these changes, while requiring many complex adjustments in interstate relations, have not been accompanied by war or the threat of war. In the contemporary world, whole industries rise, fall, and relocate, often causing quite substantial fluctuations in the economic well-being of regions and peoples, without producing wars. There is no reason to believe that changes in relative wealth and power positions caused by the uneven impact of environmental degradation would be different in their effects.

No debt ceiling econ impact

Tom Raum 11, AP, “Record $14 trillion-plus debt weighs on Congress”, Jan 15, <http://www.mercurynews.com/news/ci_17108333?source=rss&nclick_check=1>

Democrats have use doomsday rhetoric about a looming government shutdown and comparing the U.S. plight to financial crises in Greece and Portugal. It's all a bit of a stretch. "We can't do as the Gingrich crowd did a few years ago, close the government," said Senate Majority Leader Harry Reid (D-Nev.), referring to government shutdowns in 1995 when Georgia Republican Newt Gingrich was House speaker. But those shutdowns had nothing to do with the debt limit. They were caused by failure of Congress to appropriate funds to keep federal agencies running. And there are many temporary ways around the debt limit. Hitting it does not automatically mean a default on existing debt. It only stops the government from new borrowing, forcing it to rely on other ways to finance its activities. In a 1995 debt-limit crisis, Treasury Secretary Robert Rubin borrowed $60 billion from federal pension funds to keep the government going. It wasn't popular, but it helped get the job done. A decade earlier, James Baker, President Ronald Reagan's treasury secretary, delayed payments to the Civil Service and Social Security trust funds and used other bookkeeping tricks to keep money in the federal till. Baker and Rubin "found money in pockets no one knew existed before," said former congressional budget analyst Stanley Collender. Collender, author of "Guide to the Federal Budget," cites a slew of other things the government can do to delay a crisis. They include leasing out government-owned properties, "the federal equivalent of renting out a room in your home," or slowing down payments to government contractors. Now partner-director of Qorvis Communications, a Washington consulting firm, Collender said such stopgap measures buy the White House time to resist GOP pressure for concessions. "My guess is they can go months after the debt ceiling is not raised and still be able to come up with the cash they need. But at some point, it will catch up," and raising the debt limit will become an imperative, he suggested.

No default

Daniel J. Mitchell 9-18, senior fellow at CATO, The Economic Costs of Debt-Ceiling Brinkmanship, <http://www.cato.org/publications/testimony/economic-costs-debt-ceiling-brinkmanship>

Let’s now deal directly with the debt ceiling. My fourth point is that an increase in the debt ceiling is not needed to avert a default. Simply stated, the federal government is collecting far more in revenue than what’s needed to pay interest on that debt.

To put some numbers on the table, interest payments are about $230 billion per year while federal tax revenues are approaching $3 trillion per year. There’s no need to fret about a default.

But don’t believe me. Let’s look at the views of some folks that disagree with me on many fiscal issues, but nonetheless are not prone to false demagoguery.

Donald Marron, head of the Urban-Brookings Tax Policy Center and former Director of the Congressional Budget Office, explained what actually would happen in an article for CNN Money.

If we hit the debt limit… that does not mean that we will default on the public debt. …[The Treasury Secretary] would undoubtedly keep making payments on the public debt, rolling over the outstanding principal and paying interest. Interest payments are relatively small, averaging about $20 billion per month.

And here is the analysis of Stan Collender, one of Washington’s best-known commentators on budget issues.

There is so much misinformation and grossly misleading talk about what will happen if the federal debt ceiling isn’t increased…it’s worth taking a few steps back from the edge. …if a standoff on raising the debt ceiling lasts for a significant amount of time… a default wouldn’t be automatic because payments to existing bondholders could be made the priority while payments to others could be delayed for months.

Or what about the Economist magazine, which made this sage observation.

Even with no increase in the ceiling, the Treasury can easily service its existing debt; it is free to roll over maturing issues, and tax revenue covers monthly interest payments by a large multiple.

Let me add one caveat to all this analysis. I suppose it’s possible that a default might occur, but only if the Secretary of the Treasury deliberately chose not to pay interest in the debt. But that won’t happen. Not only because the Obama Administration wouldn’t want to needlessly roil financial markets, but also since research by Administration lawyers in the 1960s concluded that the Secretary of the Treasury might be personally liable in the event of a default. Mr. Lew has more than one reason to make sure the government pays interest on the debt.