# Same 1AC as R6

# 2AC

## Case

### 2AC- Circumvention

#### He doesn’t have to circumvent- they say yes

#### Doesn’t assume congress steps up when presidents violate oversight- empirically proven

Ettinger, 3-28 – former Ambassador, lecturer, insider on US-Israel relations

[Yoram, "Congressional muscle and US foreign policy," Israel Hayom, 3-28-14, www.israelhayom.com/site/newsletter\_opinion.php?id=7879, accessed 3-28-14]

Contrary to conventional wisdom, the inherently pro-Israel **Congress possesses the muscle to check**, defy, oversee, overrule, direct, fund and withhold funds from **the administration**, including in the arenas of foreign policy and national security. Congress prefers to focus on district, state and national domestic priorities, which preoccupy the constituency and, therefore dominate the congressional re-election process. Congress tends to be deferential to the president on external issues, but reveals formidable muscle when presidents assume an overly imperial posture, outrageously usurping power, disregarding Congress, violating laws, pursuing strikingly failed policies, or dramatically departing from public consensus (as in Vietnam, Watergate and Irangate). The power of the U.S. legislature is unique among Western democracies. It reflects the intent of the founding fathers to secure civil liberties by highlighting the centrality of the constituent and precluding excessive executive power, by constraining unilateral presidential maneuverability. Hence, the fundamental tenets of limited government, the separation of shared, overlapped and conflicting power, an elaborate system of checks and balance (treaty ratification, confirmation of senior appointments, veto and veto override), the congressional power of the purse, oversight, declaration of war, establishment/abolishment of executive departments and agencies, impeachment, and more. The president proposes, but Congress disposes. The president is the commander-in-chief, but only as authorized and appropriated by Congress. Moreover, congressional independence is bolstered by prescribing House members and senators -- as well as governors -- a different constituency, term, timetable and agenda than those assigned to the president. Thus, the president, constrained by a two-term limit, rushes to accomplish his nationwide agenda within four to eight years. On the other hand, House members and senators benefit from two- and six-year unlimited terms, which enable them to adopt a long-term, gradual approach, advancing their district and state-wide agendas, which may not be consistent with the president's national agenda and timetable. For example, on Feb. 17, 2011, U.S. President Barack Obama reluctantly vetoed a U.N. Security Council condemnation of Israel's settlement policy, due to pressure exerted by Democrats and Republicans on Capitol Hill. The Senate defied both Clinton and Obama, refusing to ratify the 1999 Comprehensive Test Ban Treaty. Senate Majority Leader Harry Reid (D-Nev.) foiled Obama's attempts to close down the Guantanamo detention camp. In 2009, House and Senate bi-partisan leadership prevented the appointment of Chas Freeman to chair the National Intelligence Council, because of Freeman's close business and political ties with China and Saudi Arabia. Congress ended U.S. military involvement in Vietnam (the Eagleton, Cooper and Church amendments), Angola (the Clark Amendment) and Nicaragua (the Boland Amendment); overrode President Ronald Reagan's veto and brought down the white regime in South Africa; halted the supply of AWACs to Iran on the eve of the Khomeini revolution; overhauled the U.S. intelligence (Church/Pike Committees); and forced the USSR/Russia (Jackson-Vanik amendment in defiance of the president) to allow the emigration of one million Jews to Israel. In 1957, bi-partisan congressional leadership (especially Senators Lyndon Johnson and William Knowland) was about to force President Dwight D. Eisenhower to refrain from imposing sanctions on Israel unless it withdrew from the Sinai Peninsula. However, Prime Minister David Ben-Gurion pulled the rug from under the feet of Congress, by announcing full withdrawal. In 1990-1992, Senators Inouye, Ted Stevens (R-Alaska) and Bob Kasten (R-Wis.) initiated a series of amendments, expanding U.S.-Israel strategic cooperation, despite presidential opposition.

#### Obama *strictly adheres* to legal policy- status quo policy is firmly backed by legal grounding- their evidence doesn’t assume Congressional change

**Goldsmith ’12** [Jack Goldsmith is a Harvard Law professor and a member of the Hoover Task Force on National Security and Law. He served in the Bush administration as assistant attorney general in charge of the Office of Legal Counsel, “Fire When Ready,” 3-19-12, <http://www.foreignpolicy.com/articles/2012/03/19/fire_when_ready?page=full>, March 19, 2012]

When the Obama administration made the decision to kill Awlaki, it did not rely on the president's constitutional authority as commander in chief. Rather, it relied on authority that Congress gave it, and on guidance from the courts. In September 2001, Congress authorized the president "to use all necessary and appropriate force against those nations, organizations, or persons he determines" were responsible for 9/11. Whatever else the term "force" may mean, it clearly includes authorization from Congress to kill enemy soldiers who fall within the statute. Unlike some prior authorizations of force in American history, the 2001 authorization contains no geographical limitation. Moreover, the Supreme Court, in the detention context, has ruled that the "force" authorized by Congress in the 2001 law could be applied against a U.S. citizen. Lower courts have interpreted the same law to include within its scope co-belligerent enemy forces "associated" with al Qaeda who are "engaged in hostilities against the United States." International law is also relevant to targeting decisions. Targeted killings are lawful under the international laws of war only if they comply with basic requirements like distinguishing enemy soldiers from civilians and avoiding excessive collateral damage. And they are consistent with the U.N. Charter's ban on using force "against the territorial integrity or political independence of any state" only if the targeted nation consents or the United States properly acts in self-defense. There are reports that Yemen consented to the strike on Awlaki. But even if it did not, the strike would still have been consistent with the Charter to the extent that Yemen was "unwilling or unable" to suppress the threat he posed. This standard is not settled in international law, but it is sufficiently grounded in law and practice that no American president charged with keeping the country safe could refuse to exercise international self-defense rights when presented with a concrete security threat in this situation. The "unwilling or unable" standard was almost certainly the one the United States relied on in the Osama bin Laden raid inside Pakistan. These legal principles are backed by a system of internal and external checks and balances that, in this context, are without equal in American wartime history. Until a few decades ago, targeting decisions were not subject to meaningful legal scrutiny. Presidents or commanders typically ordered a strike based on effectiveness and, sometimes, moral or political considerations. President Harry Truman, for example, received a great deal of advice about whether and how to drop the atomic bomb on Hiroshima and Nagasaki, but it didn't come from lawyers advising him on the laws of war. Today, all major military targets are vetted by a bevy of executive branch lawyers who can and do rule out operations and targets on legal grounds, and by commanders who are more sensitive than ever to legal considerations and collateral damage. Decisions to kill high-level terrorists outside of Afghanistan (like Awlaki) are considered and approved by lawyers and policymakers at the highest levels of the government. The lawyers and policymakers are guided in part by Supreme Court and lower court decisions that, in the context of reviewing military detentions, have interpreted the meaning, scope, and limits of the congressional authorization to use force. The executive branch also has tools at its disposal -- an elaborate intelligence bureaucracy, precision weapons, and computer targeting algorithms -- to minimize collateral damage in war like never before (indeed, these tools sometimes force an operation or target to be avoided or aborted). We do not know the full details of targeting decisions, but we do know -- from administration speeches and press coverage of internal deliberations -- that Obama administration policymakers and lawyers seriously grapple with the legal limits of their authorities, construe them narrowly to meet the case at hand, and are constrained in who they target. Congress too is involved. The executive branch only targets enemy forces that fall within the parameters set by Congress in 2001. All major targeting operations conducted as "covert actions" must, under laws in place before 9/11, be conducted in conformity with presidential "findings" and reported to congressional intelligence committees. These committees lack a formal veto, but they have many ways to push back against covert actions they dislike. House Minority Leader Nancy Pelosi is said to have scaled back a covert operation in 2004 to influence the outcome of elections in Iraq by complaining to the White House, while the House Intelligence Committee reportedly persuaded the Obama administration not to arm the Libyan rebels in 2011. Operations by the U.S. military are also reported to and scrutinized by congressional armed services committees through less formal means. More broadly, Congress as a whole is well aware of the president's targeted killing program, and many congressional committees have held public hearings on targeted killing in the last few years. And yet, in contrast to its actions to tighten the president's traditional military authorities in other contexts (like interrogation, military detention, and military commissions), Congress has not tightened the president's power to target. Instead, Congress chose to reaffirm the 2001 authorization on which the president has rested his targeting practices in December 2011, and to bless the judicial construction of the statute that extended the president's authorities to co-belligerents like Awlaki, all without a word about limitations on targeted killing. Congress did this against the backdrop of many public reports that the 2001 statute was relied on to kill Awlaki. The targeted killing of Awlaki was also subject to a limited but important form of judicial scrutiny. In 2010, the ACLU and the Center for Constitutional Rights brought a novel lawsuit that sought to enjoin the president from killing Awlaki. Judge John Bates of the U.S. District Court for the District of Columbia dismissed the case, in part because of "the impropriety of judicial review." Bates explained that the Constitution places "responsibility for the military decisions at issue in this case 'in the hands of those who are best positioned and most politically accountable for making them'" -- Congress and the president. This ruling, based on extensive precedent, is almost certainly right. Commanders in chief have always had discretion over targeting decisions in wars authorized by Congress. No court has ever suggested that judicial approval for these decisions was appropriate or necessary. This is so even though the U.S. military killed U.S. citizens in the Civil War and most likely in World War II as well, when some fought in the Italian and German armies. The Supreme Court itself has ruled -- in the context of military commissions and military detention -- that U.S. citizenship does not by itself preclude the commander in chief from exercising traditional forms of military force. This is the background against which to assess Attorney General Holder's claim that the Constitution "guarantees due process, not judicial process." Holder was referring to the Fifth Amendment's prohibition on taking life without due process, a further legal limitation on the targeted killing of U.S. citizens. Critics belittled Holder for distinguishing due process from judicial process, but Holder is right. The Supreme Court has ruled in many contexts that due process does not always demand judicial scrutiny. It has also ruled that the type and extent of process due depends on the nature and circumstances of the deprivation, including a balance between the interests of the individual and the government. A U.S. citizen's interest is obviously at its height when he is targeted with lethal force. The government's interest is at its height when it seeks to incapacitate a threatening enemy in a congressionally sanctioned war. Holder only defended the wartime authority to kill a U.S. citizen who presents "an imminent threat of violent attack against the United States" and for whom "capture is not feasible," and only when operations are "conducted in a manner consistent with applicable law of war principles." In these circumstances, he claimed, high-level executive deliberation, guided by judicial precedent and subject to congressional oversight, is all the process that is due. Is Holder right? It is hard to say for sure because the due process clause has never before been thought relevant to wartime presidential targeting decisions. The system described above goes far beyond any process given to any target in any war in American history. Awlaki was not given a formal notice and opportunity to defend himself in court, but war does not permit such formal practices. One predicate for the killing was that Awlaki was in hiding -- beyond legal process or the reasonable possibility of capture -- and plotting and directing attacks on the United States. The U.S. government made clear that if Awlaki "were to surrender or otherwise present himself to the proper authorities in a peaceful and appropriate manner, legal principles with which the United States has traditionally and uniformly complied would prohibit using lethal force or other violence against him in such circumstances." And as Judge Bates noted, while Awlaki's placement on a targeting list was publicly disclosed in January 2010, Awlaki publicly disclaimed any intention of challenging his status or turning himself in. It is hard to see how the executive branch could have taken its constitutional responsibilities more seriously while honoring its obligation to keep the nation safe. In light of Judge Bates's ruling and the analysis on which it rests, and until Congress thinks the president's approach to targeting requires change, the current system -- executive deliberation guided by judicial precedent and subject to congressional oversight -- almost certainly satisfies any constitutional requirement. In any event, it belies the claim that the president is not subject to checks and balances. This conclusion will not assuage critics like Andrew Rosenthal who insist that "the president must receive judicial input before ordering the death of an American citizen." What Rosenthal and other krytocrats have not explained is how the Constitution permits, much less demands, such ex ante judicial input. These critics have not grappled with Judge Bates's analysis. Nor have they explained how a presidential request for judicial approval to target and kill a terrorist suspect is consistent with the constitutional limitation of judicial power to cases and controversies between parties in court. It is also unclear whether judges possess the competence to assess and quickly act upon military targets, or whether they would welcome the responsibility for targeting decisions. Perhaps Congress could devise a lawful and effective scheme of judicial or administrative review of the president's targeting decisions. But it has shown no inclination to do so, and it appears to support the current arrangement.

### Pak

#### Pak police good but US assistance key

Abbas ’12 (Hassan Abbas, Hassan Abbas is a Senior Advisor at Asia Society and a Professor at National Defense University, “Move over military: Police and counterterrorism in Pakistan”, <http://southasia.foreignpolicy.com/posts/2012/07/24/move_over_military_police_and_counterterrorism_in_pakistan>, July 24, 2012)

It is generally believed in the West that military action can resolve the terrorism problem in the Pakistan-Afghanistan border region as well as help efforts to thwart violent radicalism throughout the region. This idea, while sounding sensible when peering at Pakistan from the outside, misses an important reality on the ground: according to a new report released today by the Asia Society, it is the domestic police force that can best root out terror networks, find and disable their financial support, and even manage de-radicalization programs in association with local communities.¶ When faced with a serious internal security crisis, it is crucial that a state pursue reform that entails capacity building not just in the military and civilian government, but within the law enforcement sector. Pakistan is a case in point. The state is facing a variety of internal security challenges that are severely limiting its citizens' potential as well as creating tension between neighbors and potential allies abroad. Without police and law enforcement reform, stability is likely to continue eluding Pakistan.¶ Meaningful reform is not going to be an easy endeavor. A high number of terrorist attacks and increasingly troubling crime patterns tell the story of a state under siege. An increase in targeted killings of political and religious leaders, attacks on armed forces and police, kidnapping for ransom by the Taliban, and ‘mob justice' incidents show just how daunting the challenges for the police have become. Pakistan's efforts to combat crime and to counter terrorist activities are being outpaced by the innovation and agility of criminal networks and protean terrorist organizations. Radicalized elements within the political and religious spheres further complicate security challenges.¶ One might assume that, as a result, the government of Pakistan has prioritized reform of the police and other law enforcement agencies, allocating budgets accordingly. This simply is not the case. A lack of resources, poor training facilities, insufficient and outmoded equipment, entrenched corruption, and political interference mar law enforcement institutions throughout the country. Still, the police force is one of the country's few institutions in which internal reform is actually underway. This struggle merits attention and needs support.¶ Interestingly, the international support provided to Pakistan for antiterrorism operations in the last decade was largely geared towards the defense sector, and very little of that ever reached police. This created a situation in which military control trumped local knowledge and know-how. . A balanced approach is needed to help Pakistan tackle both internal and external challenges more effectively.¶ Few know that Pakistan is among the top five police-contributing countries to the United Nations over the last decade, and the professional performance of Pakistani officers in UN peacekeeping operations is rated highly. However, Pakistan has no mechanism in place to utilize the services of these officers in such a way that police institutions in-country might benefit from this experience. Many Pakistani police officers were successful in getting Fulbright scholarships and Hubert Humphrey fellowships in the United States in recent years as well. Thus, there is a lot of untapped potential in the country that can help transform the law enforcement institutions.¶ This week, Asia Society is releasing a report by an independent commission on police reforms in Pakistan that includes contributions from many seasoned and reputed Pakistani police officers, as well as a few American scholars and experts. The report recommends a host of reform measures, with a few key points being:¶ 1. In the face of increased terrorist attacks specifically targeting Pakistan's police, the force has rendered many sacrifices. Two of Pakistan's best police officers - Safwat Ghayur and Malik Saad - died at the hands of suicide bombers. Stories like these demand proper media attention to help drive reform.¶ 2. Focused and targeted international help can play a significant role in enhancing the capacity of Pakistan's law enforcement structure to fight crime as well as terrorism. Technical assistance, training, and modern equipment top this list. Creation of regional mechanisms for sharing of information about organized crime and terrorist networks can enhance Pakistan's standing in the international arena in turn increasing the prospects of such support.

### AT: Drone Proliferation Inevitable

#### Even if prolif is inevitable, the plan sends a signal of norms of restraint that solve war

Roberts ’13 (Kirstin Roberts, News Editor for National Journal and was news editor and deputy bureau chief for Reuters’ Washington bureau, “When the Whole World Has Drones”, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>, March 23, 2013)

A slim aircraft glided through Israeli airspace, maintaining low altitude and taking a winding path to avoid detection. It flew over sensitive military installations and was beginning its approach to the Dimona nuclear reactor when it was blown from the sky by the Israel Defense Forces. The plane was pilotless, directed by agents elsewhere, and had been attempting to relay images back home. Whether they were successfully transmitted, Israelis won’t say, perhaps because they don’t know. But here’s what’s certain: It wasn’t American. It wasn’t Russian or Chinese. It was an Iranian drone, assembled in Lebanon and flown by Hezbollah. The proliferation of drone technology has moved well beyond the control of the United States government and its closest allies. The aircraft are too easy to obtain, with barriers to entry on the production side crumbling too quickly to place limits on the spread of a technology that promises to transform warfare on a global scale. Already, more than 75 countries have remote piloted aircraft. More than 50 nations are building a total of nearly a thousand types. At its last display at a trade show in Beijing, China showed off 25 different unmanned aerial vehicles. Not toys or models, but real flying machines. It’s a classic and common phase in the life cycle of a military innovation: An advanced country and its weapons developers create a tool, and then others learn how to make their own. But what makes this case rare, and dangerous, is the powerful combination of efficiency and lethality spreading in an environment lacking internationally accepted guidelines on legitimate use. This technology is snowballing through a global arena where the main precedent for its application is the one set by the United States; it’s a precedent Washington does not want anyone following. America, the world’s leading democracy and a country built on a legal and moral framework unlike any other, has adopted a war-making process that too often bypasses its traditional, regimented, and rigorously overseen military in favor of a secret program never publicly discussed, based on legal advice never properly vetted. The Obama administration has used its executive power to refuse or outright ignore requests by congressional overseers, and it has resisted monitoring by federal courts. To implement this covert program, the administration has adopted a tool that lowers the threshold for lethal force by reducing the cost and risk of combat. This still-expanding counterterrorism use of drones to kill people, including its own citizens, outside of traditionally defined battlefields and established protocols for warfare, has given friends and foes a green light to employ these aircraft in extraterritorial operations that could not only affect relations between the nation-states involved but also destabilize entire regions and potentially upset geopolitical order. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things.”—Dennis Blair, former director of national intelligence Hyperbole? Consider this: Iran, with the approval of Damascus, carries out a lethal strike on anti-Syrian forces inside Syria; Russia picks off militants tampering with oil and gas lines in Ukraine or Georgia; Turkey arms a U.S.-provided Predator to kill Kurdish militants in northern Iraq who it believes are planning attacks along the border. Label the targets as terrorists, and in each case, Tehran, Moscow, and Ankara may point toward Washington and say, we learned it by watching you. In Pakistan, Yemen, and Afghanistan. This is the unintended consequence of American drone warfare. For all of the attention paid to the drone program in recent weeks—about Americans on the target list (there are none at this writing) and the executive branch’s legal authority to kill by drone outside war zones (thin, by officials’ own private admission)—what goes undiscussed is Washington’s deliberate failure to establish clear and demonstrable rules for itself that would at minimum create a globally relevant standard for delineating between legitimate and rogue uses of one of the most awesome military robotics capabilities of this generation. THE WRONG QUESTION The United States is the indisputable leader in drone technology and long-range strike. Remote-piloted aircraft have given Washington an extraordinary ability to wage war with far greater precision, improved effect, and fewer unintended casualties than conventional warfare. The drones allow U.S. forces to establish ever greater control over combat areas, and the Pentagon sees the technology as an efficient and judicious force of the future. And it should, given the billions of dollars that have gone into establishing and maintaining such a capability. That level of superiority leads some national security officials to downplay concerns about other nations’ unmanned systems and to too narrowly define potential threats to the homeland. As proof, they argue that American dominance in drone warfare is due only in part to the aircraft itself, which offers the ability to travel great distances and loiter for long periods, not to mention carry and launch Hellfire missiles. The drone itself, they argue, is just a tool and, yes, one that is being copied aggressively by allies and adversaries alike. The real edge, they say, is in the unparalleled intelligence-collection and data-analysis underpinning the aircraft’s mission. “There is what I think is just an unconstrained focus on a tool as opposed to the subject of the issue, the tool of remotely piloted aircraft that in fact provide for greater degrees of surety before you employ force than anything else we use,” said retired Lt. Gen. David Deptula, the Air Force’s first deputy chief of staff for intelligence, surveillance, and reconnaissance. “I think people don’t realize that for the medium altitude aircraft—the MQ-1 [Predator] and MQ-9 [Reaper] that are generally written about in the press—there are over 200 people involved in just one orbit of those aircraft.… The majority of those people are analysts who are interpreting the information that’s coming off the sensors on the aircraft.” The analysts are part of the global architecture that makes precision strikes, and targeted killing, possible. At the front end, obviously, intelligence—military, CIA, and local—inform target decisions. But in as near-real time as technologically possible, intel analysts in Nevada, Texas, Virginia, and other locations watch the data flood in from the aircraft and make calls on what’s happening on target. They monitor the footage, listen to audio, and analyze signals, giving decision-makers time to adjust an operation if the risks (often counted in potential civilian deaths) outweigh the reward (judged by the value of the threat eliminated). “Is that a shovel or a rifle? Is that a Taliban member or is this a farmer? The way that warfare has advanced is that we are much more exquisite in our ability to discern,” Maj. Gen. Robert Otto, commander of the Air Force Intelligence, Surveillance, and Reconnaissance Agency, told National Journal at Nellis Air Force Base in Nevada. “We’re not overhead for 15 minutes with a fighter that’s about to run out of gas, and we have to make a decision. We can orbit long enough to be pretty sure about our target.” Other countries, groups, and even individuals can and do fly drones. But no state or group has nearly the sophisticated network of intelligence and data analysis that gives the United States its strategic advantage. Although it would be foolish to dismiss the notion that potential U.S. adversaries aspire to attain that type of war-from-afar, pinpoint-strike capability, they have neither the income nor the perceived need to do so. That’s true, at least today. It’s also irrelevant. Others who employ drones are likely to carry a different agenda, one more concerned with employing a relatively inexpensive and ruthlessly efficient tool to dispatch an enemy close at hand. “It would be very difficult for them to create the global-strike architecture we have, to have a control cell in Nevada flying a plane over Afghanistan. The reality is that most nations don’t want or need that,” said Peter Singer, director of the Brookings Institution’s Center for 21st Century Security and Intelligence and one of the foremost experts in advanced military technology. “Turkey’s not looking to conduct strikes into the Philippines.... But Turkey is looking to be able to carry out long-duration surveillance and potentially strike inside and right on its border.” And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.” BEHIND CLOSED DOORS The argument against public debate is easy enough to understand: Operational secrecy is necessary, and total opacity is easier. “I don’t think there is enough transparency and justification so that we remove not the secrecy, but the mystery of these things,” said Dennis Blair, Obama’s former director of national intelligence. “The reason it’s not been undertaken by the administration is that they just make a cold-blooded calculation that it’s better to hunker down and take the criticism than it is to get into the public debate, which is going to be a hard one to win.” “Consistently, nations have gone down the pathway of first only surveillance and then arming.”—Peter Singer, Brookings Institution But by keeping legal and policy positions secret, only partially sharing information even with congressional oversight committees, and declining to open a public discussion about drone use, the president and his team are asking the world to just trust that America is getting this right. While some will, many people, especially outside the United States, will see that approach as hypocritical, coming from a government that calls for transparency and the rule of law elsewhere. “I know these people, and I know how much they really, really attend to the most important details of the job,” said Barry Pavel, a former defense and security official in the Bush and Obama administrations who is director of the Brent Scowcroft Center on International Security at the Atlantic Council. “If I didn’t have that personal knowledge and because there isn’t that much really in the press, then I would be giving you a different rendering, and much more uncertain rendering.” That’s only part of the problem with the White House’s trust-us approach. The other resides in the vast distance between the criteria and authorization the administration says it uses in the combat drone program and the reality on the ground. For example, according to administration officials, before a person is added to the targeted strike list, specific criteria should be met. The target should be a 1) senior, 2) operational 3) leader of al-Qaida or an affiliated group who presents 4) an imminent threat of violent attack 5) against the United States. But that’s not who is being targeted. Setting aside the administration’s redefining of “imminence” beyond all recognition, the majority of the 3,500-plus people killed by U.S. drones worldwide were not leaders of al-Qaida or the Taliban; they were low- or mid-level foot soldiers. Most were not plotting attacks against the United States. In Yemen and North Africa, the Obama administration is deploying weaponized drones to take out targets who are more of a threat to local governments than to Washington, according to defense and regional security experts who closely track unrest in those areas. In some cases, Washington appears to be in the business of using its drone capabilities mostly to assist other countries, not to deter strikes against the United States (another precedent that might be eagerly seized upon in the future). U.S. defense and intelligence officials reject any suggestion that the targets are not legitimate. One thing they do not contest, however, is that the administration’s reliance on the post-9/11 Authorization for Use of Military Force as legal cover for a drone-strike program that has extended well beyond al-Qaida in Afghanistan or Pakistan is dodgy. The threat that the United States is trying to deal with today has an ever more tenuous connection to Sept. 11. (None of the intelligence officials reached for this article would speak on the record.) But instead of asking Congress to consider extending its authorization, as some officials have mulled, the administration’s legal counsel has chosen instead to rely on Nixon administration adviser John Stevenson’s 1970 justification of the bombing of Cambodia during the Vietnam War, an action new Secretary of State John Kerry criticized during his confirmation hearing this year. Human-rights groups might be loudest in their criticism of both the program and the opaque policy surrounding it, but even the few lawmakers who have access to the intelligence the administration shares have a hard time coping with the dearth of information. “We can’t always assume we’re going to have responsible people with whom we agree and trust in these positions,” said Sen. Angus King, I-Maine, who sits on the Senate Intelligence Committee. “The essence of the Constitution is, it shouldn’t matter who is in charge; they’re still constrained by principles and rules of the Constitution and of the Bill of Rights.” PEER PRESSURE Obama promised in his 2013 State of the Union to increase the drone program’s transparency. “In the months ahead, I will continue to engage Congress to ensure not only that our targeting, detention, and prosecution of terrorists remains consistent with our laws and system of checks and balances, but that our efforts are even more transparent to the American people and to the world,” the president said on Feb. 12. Since then, the administration, under pressure from allies on Senate Intelligence, agreed to release all of the legal memos the Justice Department drafted in support of targeted killing. But, beyond that, it’s not certain Obama will do anything more to shine light on this program. Except in situations where leaks help it tell a politically expedient story of its skill at killing bad guys, the administration has done little to make a case to the public and the world at large for its use of armed drones. Already, what’s become apparent is that the White House is not interested in changing much about the way it communicates strike policy. (It took Sen. Rand Paul’s 13-hour filibuster of CIA Director John Brennan’s nomination to force the administration to concede that it doesn’t have the right to use drones to kill noncombatant Americans on U.S. soil.) And government officials, as well as their surrogates on security issues, are actively trying to squash expectations that the administration would agree to bring the judicial branch into the oversight mix. Indeed, judicial review of any piece of the program is largely off the table now, according to intelligence officials and committee members. Under discussion within the administration and on Capitol Hill is a potential program takeover by the Pentagon, removing the CIA from its post-9/11 role of executing military-like strikes. Ostensibly, that shift could help lift the secret-by-association-with-CIA attribute of the program that some officials say has kept them from more freely talking about the legitimate military use of drones for counterterrorism operations. But such a fix would provide no guarantee of greater transparency for the public, or even Congress. And if the administration is not willing to share with lawmakers who are security-cleared to know, it certainly is not prepared to engage in a sensitive discussion, even among allies, that might begin to set the rules on use for a technology that could upend stability in already fragile and strategically significant places around the globe. Time is running out to do so. “They’re not drawing names out of a hat here.”—Mike Rogers, chairman, House Intelligence Committee “The history of technology development like this is, you never maintain your lead very long. Somebody always gets it,” said David Berteau, director of the International Security Program at the Center for Strategic and International Studies. “They’re going to become cheaper. They’re going to become easier. They’re going to become interoperable,” he said. “The destabilizing effects are very, very serious.” Berteau is not alone. Zenko, of the Council on Foreign Relations, has urged officials to quickly establish norms. Singer, at Brookings, argues that the window of opportunity for the United States to create stability-supporting precedent is quickly closing. The problem is, the administration is not thinking far enough down the line, according to a Senate Intelligence aide. Administration officials “are thinking about the next four years, and we’re thinking about the next 40 years. And those two different angles on this question are why you see them in conflict right now.” That’s in part a symptom of the “technological optimism” that often plagues the U.S. security community when it establishes a lead over its competitors, noted Georgetown University’s Kai-Henrik Barth. After the 1945 bombing of Hiroshima and Nagasaki, the United States was sure it would be decades before the Soviets developed a nuclear-weapon capability. It took four years. With drones, the question is how long before the dozens of states with the aircraft can arm and then operate a weaponized version. “Pretty much every nation has gone down the pathway of, ‘This is science fiction; we don’t want this stuff,’ to, ‘OK, we want them, but we’ll just use them for surveillance,’ to, ‘Hmm, they’re really useful when you see the bad guy and can do something about it, so we’ll arm them,’ ” Singer said. He listed the countries that have gone that route: the United States, Britain, Italy, Germany, China. “Consistently, nations have gone down the pathway of first only surveillance and then arming.” The opportunity to write rules that might at least guide, if not restrain, the world’s view of acceptable drone use remains, not least because this is in essence a conventional arms-control issue. The international Missile Technology Control Regime attempts to restrict exports of unmanned vehicles capable of carrying weapons of mass destruction, but it is voluntary and nonbinding, and it’s under attack by the drone industry as a drag on business. Further, the technology itself, especially when coupled with data and real-time analytics, offers the luxury of time and distance that could allow officials to raise the evidentiary bar for strikes—to be closer to certain that their target is the right one. But even without raising standards, tightening up drone-specific restrictions in the standing control regime, or creating a new control agreement (which is never easy to pull off absent a bad-state actor threatening attack), just the process of lining up U.S. policy with U.S. practice would go a long way toward establishing the kind of precedent on use of this technology that America—in five, 10, or 15 years—might find helpful in arguing against another’s actions. A not-insignificant faction of U.S. defense and intelligence experts, Dennis Blair among them, thinks norms play little to no role in global security. And they have evidence in support. The missile-technology regime, for example, might be credited with slowing some program development, but it certainly has not stopped non-signatories—North Korea and Iran—from buying, building, and selling missile systems. But norms established by technology-leading countries, even when not written into legal agreements among nations, have shown success in containing the use and spread of some weapons, including land mines, blinding lasers, and nuclear bombs. Arguably more significant than spotty legal regimes, however, is the behavior of the United States. “History shows that how states adopt and use new military capabilities is often influenced by how other states have—or have not—used them in the past,” Zenko argued. Despite the legal and policy complexity of this issue, it is something the American people have, if slowly, come to care about. Given the attention that Rand Paul’s filibuster garnered, it is not inconceivable that public pressure on drone operations could force the kind of unforeseen change to U.S. policy that it did most recently on “enhanced interrogation” of terrorists. The case against open, transparent rule-making is that it might only hamstring American options while doing little good elsewhere—as if other countries aren’t closely watching this debate and taking notes for their own future policymaking. But the White House’s refusal to answer questions about its drone use with anything but “no comment” ensures that the rest of the world is free to fill in the blanks where and when it chooses. And the United States will have already surrendered the moment in which it could have provided not just a technical operations manual for other nations but a legal and moral one as well.

## Offcase

### 2AC- Restrict = Prohibit

#### We Meet

Chesney ’11 (Bobby Chesney is the Charles I. Francis Professor in Law at the University of Texas School of Law, as well as a non-resident Senior Fellow of the Brookings Institution, “Offensive Cyberspace Operations, the NDAA, and the Title 10-Title 50 Debate”, <http://www.lawfareblog.com/2011/12/cyberoperations/>, December 14, 2011)

B. Requirement of Presidential Authorization

Substantive conditions aren’t the only way to limit how an authority can be used. Procedural constraints, such as requiring the affirmative approval of senior officials, can contribute to this end as well. We see this in the context of “covert action” under Title 50, for example, in the requirement of a presidential finding approving such actions.

#### C/I --- Restriction is limitation, NOT prohibition

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

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

### Judicial

#### Doesn’t solve

#### Doesn’t solve *binding*- that’s 1AC Webb

#### means it doesn’t solve international precedent

Webb ’13 (Jim Webb is a former U.S. senator from Virginia and served as Secretary of the Navy in the Reagan administration, <http://www.jameswebb.com/articles/natlinterest-congabdication.html>, March/April Edition 2013)

Unless Americans accept that we have by fiat devolved into a political system where the president has become a de facto prime minister, it is difficult to understand why Congress has remained so complacent when the executive branch has negotiated and signed agreements affecting long-term security and economic issues. Congress did not participate in the development of an agreement which, if not a security treaty, still could bind certain fiscal and security policies of our country through many ways, including pure financial inertia. Nor, again, did congressional leaders from either house or either political party even ask for a debate, much less a vote, as to whether it should be approved. As with the SFA in Iraq, the Afghan parliament did in fact vote on this agreement, even as our Congress was not formally consulted. THE FAILURE of Congress to meet its historical obligations while the president unilaterally engaged in combat operations in Libya promises even deeper consequences for future crises. In many international situations the future promises a different kind of warfare, made possible (and politically more complex) by the use of special-operations forces, CIA operatives, drones and precision munitions, thus removing the average American from the consequences and even the direct knowledge of military actions that a president might undertake at his or her sole discretion. But to what extent should this "cleaner" way of war also remove Congress as an arbiter of when and where our nation should become involved in overseas hostilities? The inherent right of self-defense allows the president, as commander in chief, to order strikes anywhere in the world against legitimate terrorist targets if the country in which they operate either cannot or will not take appropriate action itself. But this is a different concept than unilaterally commencing hostilities in situations that do not directly threaten our country. When we examine the conditions under which the president ordered our military into action in Libya, we are faced with the prospect of a very troubling, if not downright odd, historical precedent that has the potential to haunt us for decades. The issue in play in Libya was not simply whether the president should ask Congress for a declaration of war. Nor was it wholly about whether Obama violated the edicts of the War Powers Act, which in this writer's view he clearly did. The issue that remains to be resolved is whether a president can unilaterally begin, and continue, a military campaign for reasons that he alone defines as meeting the demanding standards of a vital national interest worthy of risking American lives and expending billions of dollars of taxpayer money. And what was the standard in this case? The initial justification was that a dictator might retaliate against people who rebelled against him. No thinking person would make light of the potential tragedy involved in such a possibility in Libya (or, at present, in Syria). But it should be pointed out that there are a lot of dictators in the world and very few democracies in that particular region. This gives the Obama standard a pretty broad base if he or any future president should decide to use it again. And then, predictably, once military operations began, the operative phrase became "human suffering" and the stated goal became regime change, with combat dragging on for months. In a world filled with cruelty, the question is not only how but whether a president should be allowed to pick and choose when and where to use military force on the basis of such a vague standard. Given our system of government, the fundamental question is: Who should decide? And even if a president should decide unilaterally on the basis of an overwhelming, vital national interest that requires immediate action, how long should that decision be honored, and to what lengths should our military go, before the matter comes under the proper scrutiny-and boundaries-of Congress? As a measure for evaluating future crises, it is useful to review the bidding that led to our actions in Libya. What did it look like when President Obama ordered our military into action in that country, and what has happened since? Was our country under attack, or under the threat of imminent attack? No. Was a clearly vital national interest at stake? No. Were we invoking the inherent right of self-defense as outlined in the UN Charter? No. Were we called upon by treaty commitments to come to the aid of an ally? No. Were we responding in kind to an attack on our forces elsewhere, as we did in the 1986 raids in Libya after American soldiers had been killed in a Berlin disco? No. Were we rescuing Americans in distress, as we did in Grenada in 1983? No. The president followed no clear historical standard when he unilaterally decided to use force in Libya. Once this action continued beyond his original definition of "days, not weeks," into months and months, he did not seek the approval of Congress to continue military activities. And, while administration members may have discussed this matter with some members of Congress, the administration never formally conferred with the legislative branch as a coequal partner in our constitutional system. Obviously, these points are not raised out of any lasting love for the late Libyan leader Muammar el-Qaddafi. But this is not about Qaddafi; it is about the manner in which our nation decides to use lethal military force abroad. This is a region rife with tribalism, fierce loyalties and brutal retaliation. Libya represented the extreme (at least so far) of executive action in the absence of the approval of Congress. We took military action against a regime that we continued to recognize diplomatically, on behalf of disparate groups of opposing forces whose only real point of agreement was that they wished to rid Libya of Qaddafi. This was not even a civil war. As then secretary of defense Robert Gates put it to this writer during a Senate Armed Services Committee hearing, it is not a civil war when there is no cohesive opposition facing a regime. The too frequently ignored end result of this process was not only the rampant lawlessness that possibly contributed to the assassination of our ambassador and three other U.S. officials, but also the region-wide dispersion of thousands of weapons from Qaddafi's armories. The inaction (some of it deliberate) of key congressional leaders during this period has ensured that the president's actions now constitute a troubling precedent. Under the objectively undefinable rubric of "humanitarian intervention," President Obama has arguably established the authority of the president to intervene militarily virtually anywhere without the consent or the approval of Congress, at his own discretion and for as long as he wishes. It is not hyperbole to say that the president himself can now bomb a country with which we maintain diplomatic relations, in support of loosely aligned opposition groups that do not represent any coalition that we actually recognize as an alternative. We know he can do it because he already has done it. Few leaders in the legislative branch even asked for a formal debate over this exercise of unilateral presidential power, and in the Senate any legislation pertaining to the issue was prevented from reaching the floor. One can only wonder at what point these leaders or their successors might believe it is their constitutional duty to counter unchecked executive power exercised on behalf of overseas military action. AT BOTTOM, what we have witnessed in these instances, as with many others, is a breakdown of our constitutional process. Opinions will surely vary as to the merits of the actual solution that was reached in each case, but this sort of disagreement, which in and of itself forms the basis of our form of government, is the precise reason why each one of these cases, and others, should have been properly debated and voted on by Congress. In none of these situations was the consideration of time or emergency so great as to have precluded congressional deliberation. In each, we can be certain that Congress was deliberately ignored or successfully circumvented, while being viewed by some members of the executive branch as more of a nuisance than an equal constitutional partner. And there is no doubt that some key congressional leaders were reluctant, at best, to assert the authority that forms the basis of our governmental structure. When it comes to the long-term commitments that our country makes in the international arena, ours can be a complicated and sometimes frustrating process. But our Founding Fathers deliberately placed checks and counterchecks into our constitutional system for exactly that purpose. The congressional "nuisance factor" is supposed to act as a valuable tool to ensure that our leaders-and especially our commander in chief-do not succumb to the emotions of the moment or the persuasions of a very few. One hopes Congress-both Republicans and Democrats-can regain the wisdom to reassert the authority that was so wisely given to it so many years ago. And as for the presidency, a final thought is worth pondering. From a political standpoint, it is far smarter to seek congressional approval on controversial matters of foreign policy, as was done in the October 2002 authorization to invade Iraq, than to attempt to circumvent the legislative branch. At home, Congress and the presidency will then share accountability. Abroad, the international community will know that America is united and not acting merely at the discretion of one individual.

#### Congress hand on the trigger key

Woods ’12 (Chris Woods, won the Martha Gellhorn Prize for Journalism in 2013, Journalist for The Bureau Investigates and Salon, “Pakistani objection to US drones puts ‘nations at war’, says Democrat”, <http://www.thebureauinvestigates.com/2012/06/29/pakistani-objection-to-us-drones-puts-nations-at-war-says-leading-democrat/>, June 29, 2012)

President Obama’s continued bombing of Pakistan, despite Islamabad’s repeated calls for the CIA to halt its attacks, means the two nations may technically be at war, says a US Congressman. Dennis Kucinich, who has represented Ohio since 1996, described the US covert drone programme as ‘vigilantism conducted by robots’. In an interview with the Bureau, Democrat Kucinich voices withering criticism of US clandestine operations in Pakistan, Yemen and Somalia, saying that America has found itself ‘running a killing bureaucracy’. Kucinich told the Bureau that he believed the US may in effect be at war with Pakistan, given that its ‘ally’ has demanded that drone strikes on its territory stop. In recent months Pakistan has loudly protested each drone strike, calling them a ‘total contravention of international law’ which are a ‘violation of its territorial integrity and sovereignty.’ Kucinich believes that Islamabad’s recent opposition to the strikes marks a new and worrying chapter in US-Pakistani relations. ‘If a nation, which at one time asked for our help, resents our help, then any action that takes place effectively loses the protection of the request for cooperation. And then it becomes a clearly outlined act of aggression. And so, if it is as Pakistan says it is, and if in fact Pakistan has made this request and asked us to stop and we continue this bombing, then we are at war with Pakistan,’ Kucinich told the Bureau. Pakistan has always denied claims that secret agreements with the US allow Washington to conduct attacks on its soil. ‘Assassination programmes’ The 66-year old Ohio Congressman, who steps down this November, is a long-time critic of US militarism. He condemned the covert use of drones, describing them as incendiaries ‘that spreads war more broadly and incite more people to join the cause of those who protest the US policies and who seeks to commit violence.’ He added: ‘When you have assassination programmes that lack any attempt to establish legal justification, then you have journeyed into moral depravity. International law means nothing, laws of war mean nothing.’ ‘You are looking here at an executive power that is unleashed,’ continued Kucinich. He believes the White House has bypassed America’s ‘highly structured’ system of justice to the point where it is not dispensing justice at all. ‘If you have only an executioner that is not justice, that is something else,’ he said. ‘Because the emphasis is on killing, this is murder.’ When you have assassination programmes that lack any attempt to establish legal justification, then you have journeyed into moral depravity.’ US Congressman Dennis Kucinich Lamenting the lack of transparency and oversight of the drone programme, the Congressman fears the US is stuck in an endless cycle of violence. Kucinich sees the criteria of what constitutes a legitimate drone target ‘just gets looser and looser,’ referring to the fact that the CIA considers all adult males in a strike zone as militants. ‘The power to declare global war’ The US Constitution gives Congress the power to choose what country to declare war on, asserts Kucinich. But since the September 11 attacks ‘declarations of war have basically vanished, replaced by an administration’s assertion of the power to declare a global war.’ ‘Under the Obama administration it is the derogation to the executive of the power to strike at any nation at any time for any reason,’ he continues. In response he is planning to bring a resolution before Congress that will return martial powers to the legislature. ‘What I am trying to bring about in the Congress is to force accountability and transparency.’ In Kucinich’s view the US is also at war in Yemen, where US drones, combat aircraft and warships are currently fighting – all ‘covertly’. ‘We do not need to go through an Orwellian exercise of semantics or the twisting of meaning here,’ said Kucinich. ‘We understand that we are at war in Yemen.’ He hopes to force the Obama administration to formally seek a declaration of war from Congress. Earlier this week, former US President and fellow Democrat Jimmy Carter also made an outspoken attack on Obama’s counter-terrorism policy. In a New York Times article, Carter said of the covert drone strikes ‘We don’t know how many hundreds of innocent civilians have been killed in these attacks, each one approved by the highest authorities in Washington. This would have been unthinkable in previous times.’ Saying that the United States had lost the right to speak with moral authority on foreign affairs, Carter urged Washington ‘to reverse course and regain moral leadership according to international human rights norms that we had officially adopted as our own and cherished throughout the years.’

#### the CP drains the solicitor general’s capital and spills over – best studies prove and LT politics

Wohlfarth, ‘9

Patrick C. Wohlfarth University of North Carolina at Chapel Hill, The Journal of Politics, Vol. 71, No. 1, January 2009, Patrick C. Wohlfarth is Assistant Professor in the Department of Government and Politics at the University of Maryland, College Park. Research Fellow, Center for American Politics and Citizenship, Ph.D. in Political Science in 2010 from the University of North Carolina at Chapel Hill, Post-Doctoral Fellow in the Department of Political Science and Center for Empirical Research in the Law at Washington University in St. Louis. Dr. Wohlfarth’s research interests include American politics and quantitative methodology, focusing on judicial politics, interinstitutional politics, and time series analysis. His current research projects examine judicial influence on the executive branch, the impact of public opinion on the U.S. Supreme Court, executive branch litigation on the U.S. Supreme Court, and bureaucratic politics. Patrick’s published research has appeared in the American Journal of Political Science and The Journal of Politics.)

The solicitor general (S.G.), as the executive branch’s chief lawyer on the U.S. Supreme Court, represents perhaps the most important inﬂuence on the Court’s decisions beyond the justices themselves. While ofﬁcially a presidential appointee and member of the Justice Department, scholars widely regard the S.G. as the independent bridge connecting the executive branch to the Court. As a result, Court observers view the S.G. as an informational tool the justices utilize throughout the decision-making process. Perry (1991) claims that the solicitor general, on many cases at the agenda setting stage, functions as a ‘‘surrogate of the Court’’ in signaling the merit for granting certiorari. This unique status affords the S.G. unmatched success when seeking the Court’s support for legal positions (Caldeira and Wright 1988; Caplan 1987; McGuire 1998; O’Connor 1983; Salokar 1992; Scigliano 1971; Segal 1988). In fact, the S.G.’s success on the merits as a litigant and amicus curiae, and the deference commonly received from the Court, is so well established that scholars often refer to the solicitor general as the ‘‘Tenth Justice’’ (Caplan 1987). 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 success of the United States as a litigant beginning with Reagan’s solicitors general.

#### That’s key to solve warming and pollution – CSPAR rulings are key

By Emily Atkin 12-9 “4 Reasons The Supreme Court Might Want To Uphold The EPA’s Cross-State Air Pollution Rule” December 9, 2013 at 5:00 pm <http://thinkprogress.org/climate/2013/12/09/3039061/4-reasons-supreme-court-cross-state-air-pollution-rule/>

Those states that create large amounts of pollution are called “upwind” states, and they are responsible for higher ozone levels, increased healthcare costs, and decreased air quality in their neighboring “downwind” states.¶ The issue of how to regulate it has long perplexed the EPA and the courts. Cross-state transport rules implemented in 1977 and tightened in 1990 were never able to effectively combat the complex problem. For example, it’s not just upwind states that bring pollution to downwind states. Some upwind states receive emissions from other upwind states which contribute to their own pollution problems. The EPA has thus deemed the cross-state pollution problem as a “dense, spaghetti-like matrix” of overlapping soot.¶ But in 2011, the EPA finalized its Cross-State Air Pollution Rule (CSAPR), which promised to “slash hundreds of thousands of tons of smokestack emissions that travel long distances through the air leading to soot and smog, threatening the health of hundreds of millions of Americans living downwind.” CSAPR, according to the EPA, would achieve up to $280 billion in annual health benefits by preventing up to 34,000 premature deaths, 15,000 nonfatal heart attacks, 19,000 cases of acute bronchitis, 400,000 cases of aggravated asthma, and 1.8 million sick days a year beginning in 2014.¶ In response, a coalition of fossil fuel companies, unions and those upwind states sued the EPA seeking to invalidate the rule, and they won. In August 2012, the conservative D.C. Circuit Court of Appeals ruled that the EPA exceeded its authority by making upwind states reduce more pollution than what federal air quality standards prescribe. In other words, they said the EPA’s rule makes upwind states cut too much pollution.¶ The case has now made its way to the U.S. Supreme Court, which will hear an extended 90-minute session of oral arguments on Tuesday. Here are 4 reasons why the Supreme Court very well might reverse the D.C. Circuit’s ruling — and why it matters.¶ Air Pollution Worsens Economic Inequality¶ In some downwind states like Delaware, Connecticut, and Maryland, more than 80 percent of the air pollution can come from outside the state, according to Howard Fox of Earthjustice, who is representing the American Lung Association in the case.¶ “There’s economic inequality of having a downwind business spend money to control their pollution when upwind businesses are able to pollute and not spend as much,” Fox told ThinkProgress. “That creates a competitive disadvantage.”¶ Delaware governor Jack Markell told Reuters that removing pollution in his state would cost between $10,000 and $40,000, but that it would only cost $200 to $500 per tonne in upwind states, “where even some basic control technologies have not been installed.”¶ Human Health Suffers As Air Pollution Kills Thousands¶ In a brief filed with the Supreme Court, a consortium of energy industry players including Entergy Corp. Luminant Energy, and United Mine Workers of America said the EPA’s cross-state pollution rules were a prime example of “overcontrol.” But briefs filed by both The American Thoracic Society (ATS) and the EPA disagreed, citing some jarring statistics about the real health effects of air pollution.¶ “When air pollution levels are high, deaths can occur immediately, or within months, by inducing heart attacks or strokes,” the ATS brief said. The EPA cited that one out of 20, or 5 percent, of deaths in the country can be attributed to lasting effects of air pollution. Children, senior citizens, pregnant women, and people with asthma, cardiovascular issues, and diabetes are the most at-risk, the brief said.¶ Even under current pollution rules, the ATS said, the country will see an estimated 2,550 to 6,560 more premature deaths due to air pollution than would occur under the new cross-state rules.¶ Pollution From Coal Plants Causes Climate Change¶ Though it does not seem to be a crucial part of the EPA’s case, reductions in emissions from coal and other fossil fuel plants will be crucial in the fight against climate change in the United States.¶ According the Union of Concerned Scientists, coal plants are the nation’s top source of carbon dioxide emissions, which are the primary cause of global warming. Utility coal plants in the United States emitted a total of 1.7 billion tons of CO2 in 2011, even with clean coal technologies.¶ The UCS also cites burning coal as a leading cause of smog, acid rain, and toxic air pollution.¶ This Is Why The U.S. Constitution Exists¶ “Inter-state air pollution is right at the core of why the federal government created the constitution in the first place,” Tom Donnelly, counsel at the progressive think tank Constitutional Accountability Center (CAC), told ThinkProgress. CAC also filed a brief with the Supreme Court in this case, which outlines the Constitution’s support for the EPA’s authority.¶ “The text, history and structure of the Constitution all strongly support Congress’s power to enact laws that address genuinely national problems like instate air pollution,” the brief said, citing Resolution VI, which declares that Congress has authority “to legislate in all cases for the general interests of the union, and also in those to which the states are separately incompetent.” That resolution was translated into Article I, which affords the federal government the ability to provide national solutions to national problems.¶ “When Congress and the Executive Branch are acting to address such a problem [as pollution], their efforts are entitled to great deference from the judiciary,” Donnelly said. “This case has everything to do with making sure that the federal government has the flexibility it needs to address genuinely national problems.”

### Congress Addon- Groupthink

Checks on the executive key to solve groupthink

Chehab, 12 [Ahmad, Georgetown University Law Center, Retrieving the Role of Accountability in the Targeted Killings Context: A Proposal for Judicial Review]

The practical, pragmatic justification for the COAACC derives largely from considering social psychological findings regarding the skewed potential associated with limiting unchecked decision-making in a group of individuals. As an initial point, psychologists have long pointed out how individuals frequently fall prey to cognitive illusions that produce systematic errors in judgment.137 People simply do not make decisions by choosing the optimal outcome from available alternatives, but instead employ shortcuts (i.e., heuristics) for convenience.138 Cognitive biases like groupthink can hamper effective policy deliberations and formulations.139 Groupthink largely arises when a group of decision-makers seek conformity and agreement, thereby avoiding alternative points of view that are critical of the consensus position.140 This theory suggests that some groups—particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfidence, and a shared world view or value system—suffer from a deterioration in their capacity to engage in critical analysis.141 Many factors can affect such judgment, including a lack of crucial information, insufficient timing for decision-making, poor judgment, pure luck, and/or unexpected actions by adversaries.142 Moreover, decision-makers inevitably tend to become influenced by irrelevant information,143 seek out data and assessments that confirm their beliefs and personal hypotheses notwithstanding contradictory evidence,144 and “[i]rrationally avoid choices that represent extremes when a decision involves a trade-off between two incommensurable values.”145 Self-serving biases can also hamper judgment given as it has been shown to induce well-intentioned people to rationalize virtually any behavior, judgment or action after the fact.146 The confirmation and overconfidence bias, both conceptually related to groupthink, also result in large part from neglecting to consider contradictory evidence coupled with an irrational persistence in pursuing ideological positions divorced from concern of alternative viewpoints.147 Professor Cass Sunstein has described situations in which groupthink produced poor results precisely because consensus resulted from the failure to consider alternative sources of information.148 The failures of past presidents to consider alternative sources of information, critically question risk assessments, ensure neutral-free ideological sentiment among those deliberating,149 and/or generally ensure properly deliberated national security policy has produced prominent and devastating blunders,150 including the Iraq War of 2003,151 the Bay of Pigs debacle in the 1960’s,152 and the controversial decision to wage war against Vietnam.153 Professor Sunstein also has described the related phenomenon of “group polarization,” which includes the tendency to push group members toward a “more extreme position.”154 Given that both groupthink and group polarization can lead to erroneous and ideologically tainted policy positions, the notion of giving the President unchecked authority in determining who is eligible for assassination can only serve to increase the likelihood for committing significant errors.155 The reality is that psychological mistakes, organizational ineptitude, lack of structural coherence and other associated deficiencies are inevitable features in Executive Branch decision-making. D. THE NEED FOR ACCOUNTABILITY CHECKS To check the vices of groupthink and shortcomings of human judgment, the psychology literature emphasizes a focus on accountability mechanisms in which a better reasoned decision-making process can flourish.156 By serving as a constraint on behavior, “accountability functions as a critical norm-enforcement mechanism—the social psychological link between individual decision makers on the one hand and social systems on the other.”157 Such institutional review can channel recognition for the need by government decision-makers to be more self-critical in policy targeted killing designations, more willing to consider alternative points of view, and more willing to anticipate possible objections.158 Findings have also shown that ex ante awareness can lead to more reasoned judgment while also preventing tendentious and ideological inclinations (and political motivations incentivized and exploited by popular hysteria and fear).159 Requiring accounting in a formalized way prior to engaging in a targeted killing—by providing, for example, in camera review, limited declassification of information, explaining threat assessments outside the immediate circle of policy advisors, and securing meaningful judicial review via a COAACC-like tribunal—can promote a more reliable and informed deliberation in the executive branch. With process-based judicial review, the COAACC could effectively reorient the decision to target individuals abroad by examining key procedural aspects—particularly assessing the reliability of the “terrorist” designation—and can further incentivize national security policy-makers to engage in more carefully reasoned choices and evaluate available alternatives than when subject to little to no review.

#### Key to solve war

Jervis, 4(Robert, political science and international politics professor at Columbia University and a consultant to the CIA, The Record, 7/14, lexis)

But was that indeed what happened? "Groupthink" - identified in the early 1970s by the late Yale psychologist Irving Janis - refers to a process by which conformity grows out of deliberations in small groups. It can indeed be quite powerful. The way Janis explained it, groupthink operates when individuals work closely together over a sustained period. It isn't merely that members of the group come to think alike but that they come to overvalue the harmonious functioning of the group. In their eagerness to reach consensus, they become inhibited from questioning established assumptions or from raising questions that might disturb their colleagues and friends. A vicious circle begins as the group feels good about itself because it has discovered the truth, and this truth is accepted by each person because it is believed by the others. In this way, a group of intelligent individuals can confidently arrive at conclusions that are wildly removed from reality. Most social scientists agree that groupthink has contributed to many disastrous decisions in business, families, and foreign policy. President Kennedy and his top advisers, for instance, fell into a groupthink trap, believing that the landings of the Cuban exiles at the Bay of Pigs in April 1961 might overthrow Fidel Castro. Intense face-to-face meetings among the president's top foreign policy planners formed strong bonds that no one wanted to loosen. In hindsight, their plans were so badly flawed that it is hard to understand how such world-wise leaders could have endorsed them. But apparently each individual grew confident because the others were - each was reassured because the group was functioning so well and without discord; no one felt the need, or had the nerve, to insist they consider the possibility that the group was on the totally wrong track. Richard Nixon's Watergate cover-up was in part maintained by the same dynamic. To many outsiders even at the time, it was obvious that the only way for Nixon to survive was to air the full truth early on. But the Nixon White House was a small group, closed-mouthed and predisposed to keeping everything secret.

### NATO

#### Drone debates collapse NATO

Tom **Parker 12**, Former Policy Dir. for Terrorism, Counterterrorism and H. Rts. at Amnesty International, U.S. Tactics Threaten NATO, September 17, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

A growing chasm in operational practice is opening up between the **U**nited **S**tates and its allies in NATO. This rift is **putting the Atlantic alliance at risk**. Yet no one in Washington seems to be paying attention. The escalating use of **u**nmanned **a**erial **v**ehicle**s** to **strike terrorist suspects** in an increasing number of operational environments from the Arabian Peninsula to Southeast Asia, coupled with the continued use of military commissions and indefinite detention, is driving a wedge between the **U**nited **S**tates and its allies. Attitudes across the Atlantic are hardening fast. This isn’t knee-jerk, man-on-the-street anti-Americanism. European governments that have tried to turn a blind eye to U.S. counterterrorism practices over the past decade are now **forced to pay attention by their own courts**, which will **restrict coop**

**eration in the future**.As recently as last month, the German federal prosecutor’s office opened a probe into the October 2010 killing of a German national identified only as “Buenyamin E.” in a U.S. drone strike in Pakistan. There are at least four other similar cases involving German nationals and several reported strikes involving legal residents of the United Kingdom. In March, Polish prosecutors charged the former head of Polish intelligence, Zbigniew Siemiatkowski, with “unlawfully depriving prisoners of the their liberty” because of the alleged role he played in helping to establish a CIA secret prison in northeastern Poland in 2002–2003. Last December, British Special Forces ran afoul of the UK courts for informally transferring two Al Qaeda suspects detained in Iraq, Yunus Rahmatullah and Amanatullah Ali, to U.S. forces. The British government has been instructed to recover the men from U.S. custody or face legal sanctions that could result in two senior ministers being sent to prison. Perhaps the most dramatic example illustrating the gap that has opened up between the United States and its European allies concerns the 2009 in absentia conviction of twenty-three U.S. agents in an Italian court for the role they played in the extraordinary rendition of radical Imam Hassan Mustafa Osama Nasr from Milan to Cairo. Britain, Poland, Italy and Germany are among America’s closest military partners. Troops from all four countries are currently serving alongside U.S. forces in Afghanistan, but they are now operating within a **very different set of constraints than their U.S. counterparts**. The **E**uropean **C**ourt of **H**uman **R**ights established its jurisdiction over stabilization operations in Iraq, and by implication its writ extends to Afghanistan as well. The British government has lost a series of cases before the court relating to its operations in southern Iraq. This means that concepts such as the right to life, protection from arbitrary punishment, remedy and due process apply in areas under the effective control of European forces. Furthermore, the possibility that **intel**ligence provided by any of America’s European allies could be used to target a terrorism suspect in Somalia or the Philippines for a lethal drone strike now **raises serious criminal liability issues** for the Europeans. The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued anywhere on the globe where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic **intel**ligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an **obstacle to intelligence sharing**. European attitudes are not going to change—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of counterterrorism powers as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place **more** and more **constraints on working with U.S. forces**. NATO cannot conduct military operations under two competing legal regimes for long. Something has to give—and **it may just be the Atlantic alliance**.

#### NATO prevents global nuclear war

Zbigniew Brzezinski 9, former U.S. National Security Adviser, Sept/Oct 2009, “An Agenda for NATO,” Foreign Affairs, 88.5, EBSCO

NATO's potential is not primarily military. Although NATO is a collective-security alliance, its actual military power comes predominantly from the United States, and that reality is not likely to change anytime soon. NATO's real power derives from the fact that it combines the United States' military capabilities and economic power with Europe's collective political and economic weight (and occasionally some limited European military forces). Together, that combination makes NATO globally significant. It must therefore remain sensitive to the importance of safeguarding the geopolitical bond between the United States and Europe as it addresses new tasks. The basic challenge that NATO now confronts is that there are historically unprecedented risks to global security. Today's world is threatened neither by the militant fanaticism of a territorially rapacious nationalist state nor by the coercive aspiration of a globally pretentious ideology embraced by an expansive imperial power. The paradox of our time is that the world, increasingly connected and economically interdependent for the first time in its entire history, is experiencing intensifying popular unrest made all the more menacing by the growing accessibility of weapons of mass destruction –

- not just to states but also, potentially, to extremist religious and political movements. Yet there is no effective global security mechanism for coping with the growing threat of violent political chaos stemming from humanity's recent political awakening. The three great political contests of the twentieth century (the two world wars and the Cold War) accelerated the political awakening of mankind, which was initially unleashed in Europe by the French Revolution. Within a century of that revolution, spontaneous populist political activism had spread from Europe to East Asia. On their return home after World Wars I and II, the South Asians and the North Africans who had been conscripted by the British and French imperial armies propagated a new awareness of anticolonial nationalist and religious political identity among hitherto passive and pliant populations. The spread of literacy during the twentieth century and the wide-ranging impact of radio, television, and the Internet accelerated and intensified this mass global political awakening. In its early stages, such new political awareness tends to be expressed as a fanatical embrace of the most extreme ethnic or fundamentalist religious passions, with beliefs and resentments universalized in Manichaean categories. Unfortunately, in significant parts of the developing world, bitter memories of European colonialism and of more recent U.S. intrusion have given such newly aroused passions a distinctively anti-Western cast. Today, the most acute example of this phenomenon is found in an area that stretches from Egypt to India. This area, inhabited by more than 500 million politically and religiously aroused peoples, is where NATO is becoming more deeply embroiled. Additionally complicating is the fact that the dramatic rise of China and India and the quick recovery of Japan within the last 50 years have signaled that the global center of political and economic gravity is shifting away from the North Atlantic toward Asia and the Pacific. And of the currently leading global powers -- the United States, the EU, China, Japan, Russia, and India -- at least two, or perhaps even three, are revisionist in their orientation. Whether they are "rising peacefully" (a self-confident China), truculently (an imperially nostalgic Russia) or boastfully (an assertive India, despite its internal multiethnic and religious vulnerabilities), they all desire a change in the global pecking order. The future conduct of and relationship among these three still relatively cautious revisionist powers will further intensify the strategic uncertainty. Visible on the horizon but not as powerful are the emerging regional rebels, with some of them defiantly reaching for nuclear weapons. North Korea has openly flouted the international community by producing (apparently successfully) its own nuclear weapons -- and also by profiting from their dissemination. At some point, its unpredictability could precipitate the first use of nuclear weapons in anger since 1945. Iran, in contrast, has proclaimed that its nuclear program is entirely for peaceful purposes but so far has been unwilling to consider consensual arrangements with the international community that would provide credible assurances regarding these intentions. In nuclear-armed Pakistan, an extremist anti-Western religious movement is threatening the country's political stability. These changes together reflect the waning of the post-World War II global hierarchy and the simultaneous dispersal of global power. Unfortunately, U.S. leadership in recent years unintentionally, but most unwisely, contributed to the currently threatening state of affairs. The combination of Washington's arrogant unilateralism in Iraq and its demagogic Islamophobic sloganeering weakened the unity of NATO and focused aroused Muslim resentments on the United States and the West more generally.

### **Appropriations**

#### Funding cuts are restrictions placed upon the President’s authority over indefinite detention

Hanes 11 (2011¶ Brigham Young University Law Review¶ 2011 B.Y.U.L. Rev. 2283¶ LENGTH: 16243 words COMMENT: Challenging the Executive: The Constitutionality of Congressional Regulation of the President's Wartime Detention Policies NAME: William M. Hains\* BIO: \* William M. Hains received his Juris Doctor from the J. Reuben Clark Law School, Brigham Young University, in April 2011. He currently serves as a law clerk for the Honorable J. Frederic Voros Jr. on the Utah Court of Appeals. He would like to thank Professor Howard Nielson and Carla Crandall for their suggestions on an earlier draft of this paper and the BYU Law Review staff for their editorial assistance. He would also like to thank Chrisy for her support and patience. The views expressed in this Comment are his own.)

While the Constitution does not explicitly grant the power of the purse to Congress, a number of provisions read together make it clear that "the Legislature ... commands the purse ... ." [n137](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n137) The most prominent textual support is phrased as a restriction supposedly directed at the executive branch rather than an explicit grant of power to Congress: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law ... ." [n138](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n138) Congress not only has authority to collect funds for the Treasury but is also authorized "to pay the Debts and provide for the common Defence and general Welfare ... ." [n139](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n139) Congress has power "To raise and support Armies" [n140](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n140) and "provide and maintain a Navy." [n141](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n141) Furthermore, the Necessary and Proper Clause [n142](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n142) shores up the other clauses to create a solid constitutional foundation for congressional control over spending. [n143](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n143)¶ Congress has successfully invoked its spending power to end or restrict military engagements in Southeast Asia, Angola, Nicaragua, and Somalia. [n144](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n144) Some of these restrictions left the President with considerable discretion, [n145](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n145) while others were more absolute. [n146](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n146) The [\*2310] power to end war could be seen as a necessary and proper incident of the power of Congress to declare war, [n147](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n147) yet these funding restrictions have typically been justified solely on grounds of congressional power over spending

. [n148](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n148) Indeed, the connection of several of the funding clauses to war powers suggests that the power of the purse was intended as a particularly potent check on the President's war-making powers. For example, the restriction on Congress's appropriations power requiring that funds for the army must be renewed every two years [n149](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n149) was seen historically as a requirement that Congress not abrogate its oversight role, lest a standing army be maintained and used without the consent of the people. [n150](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true" \l "n150) Thus, Congress appears to have power to regulate the conduct of war at least to some degree through its appropriations power.¶ 4.

### Firebreak

#### Independently, US targeted killing is driving a global shift in strategic doctrine toward preventive self-defense---causes nuclear war

Kerstin Fisk 13, visiting assistant professor in the Department of Political Science at Loyola Marymount University, PhD in Political Science from Claremont Graduate University, and Jennifer M. Ramos, Assistant Professor of Political Science at Loyola Marymount University, PhD in Political Science from UC Davis, April 15 2013, “Actions Speak Louder Than Words: Preventive Self-Defense as a Cascading Norm,” International Studies Perspectives, http://onlinelibrary.wiley.com.turing.library.northwestern.edu/doi/10.1111/insp.12013/full

How and to what extent is the preventive use of force becoming the future of foreign policy for states around the world? We explore the spread of preventive logic to increasing numbers of states and examine the degree to which an international norm toward preventive self-defense is cascading in the international system. Through content and comparative case study analysis, we investigate leaders’ rhetoric and security policies concerning what we theorize is the key indicator of a country's emulation of the United States: assertion of the right to the unilateral, preventive use of force outside of its borders. Our evidence indicates that there has been a shift away from the established international norm—which considers the use of preventive force illegal and illegitimate—toward growing acceptance of unilateral preventive strategies, a shift largely propelled by the precedents set by the United States in the war in Iraq and its use of unmanned aerial vehicles (UAVs or drones) in the global war on terror. Our findings also reveal that some states are applying the strategy of preventive self-defense beyond the use of UAVs for targeted killings to the extreme contingency plan for nuclear war. We conclude by discussing possibilities for further research and considering the implications of this phenomenon.

#### The impact is an endless, global series of preventive wars---those go nuclear

Ariel Colonomos 13, Director of Research at the French National Centre for Scientific Research, Ph.D. in political science from the Institut d'Etudes Politiques de Paris, “The Gamble of War: Is it Possible to Justify Preventive War?” p 72-75, google books

John Yoo holds that the American interventions in Afghanistan or Iraq fulfilled the criteria of necessity and proportionality. To support this argument (which was contested on the invasion of Iraq), he contends that technological change has a direct impact on the calculation of proportionality and the definition of what constitutes an emergency. The proliferation of WMDs, the networking potential of the United States’ enemies, involving also transnational movements, required the adoption of an anticipatory mode of use of force. This is a disturbing line of reasoning. On the one hand—and this is the case with many of the propositions advanced by these intellectuals—it sweeps away the contemporary model of international law, which is based on a cautious (though, it should also be said, ambiguous and hence fragile) interpretation of self-defense. On the other hand, the transition from the empirical to the normative is very abrupt here, with the argument that law depends on the “reality” specific to a particular moment of history. Insofar as WMDs are actually within the reach of a large number of the United States’ enemies today (the USSR and China are no longer the only threats), the world would, in this view, be constantly on tenterhooks at the possibility of a series of preventive wars. These would be triggered by provocations or hasty, contradictory declarations on the part of movements whose strategy is, at times, to draw Westerners—and particularly the American global policeman—into endless wars. This greatly increases instability. During the Cold War, the triggering of a nuclear clash depended on interactions between a limited number of states. Today, nuclear weapons—previously regarded by some as a factor of stability, particularly because of the supposed rationality of those who possessed them—have become grounds for war. More generally there is the whole question of WMDs. The players involved are more numerous, and there is great distrust, both on account of the lack of rationality attributed by the United States to its new enemies and of their greater number and dispersal.

## Patent

### 2AC

#### Patent reform will get delayed

Brown et al 3-28-14 [Brendan Sasso, Laura Ryan, and Dustin Volz – Writers for the National Journal, “Patent Action Delayed and the FCC’s Tech is Outdated” <http://www.nationaljournal.com/tech-edge/patent-action-delayed-and-the-fcc-s-tech-is-outdated-20140328>]

SENATE JUDICIARY DELAYS PATENT MARKUP: The committee Thursday delayed the long-awaited markup of Chairman Patrick Leahy's patent reform legislation until at least April 3, an expected move announced amid chatter that members are earnestly working to forge a grand compromise on how to best slay patent trolls. Leahy promised he is "working closely with other members of this committee to craft a manager's amendment that will bring in additional provisions" and said a compromise could be brokered "in the next few days."¶ Still, onlookers have heard this tune before, and many are again growing worried that April could slip by without anything passed out of committee. And while Leahy gave lip service to Sen. Hatch's bill on fee shifting and a bill from Sen. Cornyn aimed at shell companies, notably absent was any such endorsement of Sen. Schumer's crusade to expand review methods to guard against low-quality patents. Schumer, for his part, said he would continue fighting for the controversial measure.

#### No litigation explosion AND reform fails- not enough data and bill fails

-addresses the wrong issue

- there’s not enough data to get the solution right

Merritt, 3-12 – EE Times news correspondent, Silicon Valley bureau chief; citing Daniel F. Spulber, research director of Northwestern University's Searle Center on Law

[Rick, "Patent Data Missing in Troll Debate," EE Times, 3-12-14, http://www.eetimes.com/document.asp?doc\_id=1321364&\_mc=MP\_IW\_EDT\_STUB, accessed 3-13-14]

Patent Data Missing In Troll Debate

Congress and the Supreme Court are poised to take action on patent suits, but data to inform ongoing debates is missing, experts say. This is the first of a series of ongoing stories exploring the current debate about the US patent system. While the US Congress debates legislation aimed at addressing a troubling increase in patent infringement suits from so-called trolls, experts are debating whether the rise even exists or should trouble anyone. A handful of studies and papers say patent cases are not rising significantly. The non-practicing entities (NPEs) that assert patents but do not make products are not playing a destructive role, they argue. However, some experts say more data still needs to be collected. "Right now it's like the fear of the unknown -- we actually don't know that much about patents despite a large amount of study," says Daniel F. Spulber, research director of Northwestern University's Searle Center on Law, which received a $2 million grant from Qualcomm that's funding a five-year research project. The program is focusing on so-called "standards-essential" patents from the top three of an estimated 700 standards organizations that release thousands of technical standards a year. "What I hope to do is create as comprehensive a database as is feasible. Then empirically analyze the standards and organizations and make that data available for free to academic researchers," says Spulber. "We've barely begun to scratch the surface of what we need to know, so policy makers should probably not rush to judgment." However, he does have his own opinions. "I do not believe there is a problem with patent suits and NPEs in particular -- **there's no evidence, and** even **people** who [say there is] **are relying on horror stories and anecdotes**." A **rise of patent** infringement **suits** from NPEs **is not** **the big problem**, according to an August 2013 report from the US Government Accounting Office. The real issue is a rise in cases about software patents and a lack of clarity about what software patents mean and who owns them, it said, concluding: Our analysis indicates that regardless of the type of litigant, lawsuits involving software-related patents accounted for about 89 percent of the increase in defendants between 2007 and 2011, and most of the suits brought by [NPEs] involved software-related patents. This suggests that the focus on the identity of the litigant -- rather than the type of patent -- may be misplaced. The report noted the patent office started working with the software industry in November 2011 to clarify the language used in software patents. It also called for linking data on patent suits to data on examinations of related patents at the patent office. Software patents (purple) have grown much faster than overall patents (light blue) in the 1991-2011 period, the GAO report said.

### AT: Losers Lose

#### Loser’s lose is wrong- dems and GOP feed a false narrative- there’s an epistemology disad to their arguments

Beutler, 13 -- Salon staff writer

[Brian, “GOP’s massive new lie: The truth about Obama’s second term,” Salon, 9/9/13, [www.salon.com/2013/09/09/syria\_wont\_derail\_obamas\_second\_term\_house\_republicans\_will/](http://www.salon.com/2013/09/09/syria_wont_derail_obamas_second_term_house_republicans_will/), accessed 3-29-14]

**It's factually** and morally **wrong to say his agenda is doomed if war vote loses**. Here's why they're doing it When President Obama decided to seek authorization to bomb Syria, he didn’t just throw the fate of his plans into the hands of 535 unpredictable members of Congress. He also made himself vulnerable to **overblown suggestions** that his entire second term is on the line. Political reporters have a weakness for narratives, and the narrative of a weakened president is irresistible. Moreover, members of Congress will feed that narrative. Even Democrats. If you’re Nancy Pelosi or Harry Reid, a great way to pad your vote count is to plead to your caucus that if the resolution fails, Obama will become a lame duck a year earlier than he ought to. This pitch is both morally and factually incorrect. Let’s assume that absent a divisive, losing debate over striking Syria, Obama would have real potential to accomplish meaningful things before the end of his presidency. An immigration bill, say. It would be perverse for members to accede to acts of war they’d otherwise oppose to salvage an unrelated issue like immigration reform. The moral argument here is the same one that made the “death panel” charge so offensive — making the country’s health systems affordable is a praiseworthy goal, but that doesn’t make killing old people OK. But the good news for Democratic whips on Capitol Hill is that they don’t need to engage in this kind of manipulation. If the Syria vote goes down, the gloom and doom tales of Obama’s losing gamble will be false. To the extent that Congress has the will to do anything other than vote on an authorization to strike Syria, the outcome of that vote is disconnected from those other issues. If House Republican leaders believe they and their party have an interest in passing immigration reform or any other issue, they’ll do it no matter how the Syria vote comes down. The same moral argument works in reverse. If Republicans think an immigration bill should become law, it’s wrong of them to block it because of hard feelings, just as it’s wrong for John Boehner to kill legislation he supports in the abstract for member management purposes, or the self-interest of his own speakership. Whether the vote to bomb Syria passes or fails, I expect some Republicans will cite it as a key reason when other unrelated issues fizzle. But **they’ll be lying**. The fight over Syria — like the fights over funding the government and increasing the debt limit — will provide useful cover to Republicans who have already resolved themselves against supporting immigration reform, or a farm bill, or a budget deal, or anything else.

### 2AC- Weak Now

#### Backlash now against Obama’s anti-terror policies

The Washington Post 3/27/14 (Jennifer Rubin, "Bipartisan Second-Thoughts on National Security")

There are signs of a bipartisan pushback against the passive foreign policy and hostility to anti-terror methods we’ve seen over the last few years. Across the board, polls show voters’ disapproval significantly outpaces approval when it comes to President Obama’s handling of foreign policy. As my colleague [Robert Kagan puts it](http://foreignpolicyi.us1.list-manage.com/track/click?u=67276f8f876a3a2654f37fc99&id=9bb28bdf1a&e=3764eb5916), “A majority of Americans may not want to intervene in Syria, do anything serious about Iran or care what happens in Afghanistan, Iraq, Egypt or Ukraine. They may prefer a minimalist foreign policy in which the United States no longer plays a leading role in the world and leaves others to deal with their own miserable problems. They may want a more narrowly self-interested American policy. In short, they may want what Obama so far has been giving them. But they’re not proud of it, and they’re not grateful to him for giving them what they want.”

### 2AC – IMF Thumper

#### IMF reform thumps losers lose

Wiesman, 3-25 – NY Times congressional reporter

[Jonathan, "Senate Democrats Drop I.M.F. Reforms From Ukraine Aid," NY Times, 3-25-14, www.nytimes.com/2014/03/26/world/europe/senate-democrats-drop-imf-reforms-from-ukraine-aid-package.html, accessed 3-26-14]

Democrats, bowing to united House Republican opposition, dropped reforms of International Monetary Fund governance from a Ukraine aid package on Tuesday, handing President Obama an embarrassing defeat as he huddled in Europe with allies who have already ratified the changes. The monetary fund language would have enlarged the Ukraine loan package while finally ratifying changes dating to 2010 that only the United States has opposed. Mr. Obama himself negotiated those changes, and European allies conferring with l1im on Ukraine have been pressing for American action. But the need for speed on loans and direct assistance to Ukraine overcame the White House's willingness for a tight. Senator Harry Reid of Nevada, the majority leader, said he was talcing his lead from Secretary of State J olm Kerry, who had signaled that the administration would push for the monetary fimd language separately. Mr. Reid said the package should pass the Senate by Thursday. "Obviously, politics don't stop at the water's edge on this issue," said Senator Robert Menendez, Democrat of New Jersey and chairman of the Foreign Relations Committee, denouncing the Republican stance. The governance changes would raise the borrowing limit of countries like Ukraine at the multilateral lending institution, while giving more authority to emerging economic heavyweights like China, Brazil - and Russia. The Obama administration painted them as vital to a Ukraine aid package, but Republicans were never convinced. Some conservatives oppose the changes as a lessening of American authority at the fund, although Washington would retain veto power. But Republican leaders saw them more as a bargaining chip and were pressing to swap the changes for an agreement from the administration to delay final Internal Revenue Service regulations on political groups that conceal the name of their donors by incorporating as tax-exempt "social welfare" organizations. The White House position was undercut this week by two New York Democrats, Representatives Eliot L. Engel, the ranking member of the House Foreign Affairs Committee, and Nita M. Lowey, the ranking member of the House Appropriations Committee, both of whom said the Senate should drop the matter and pass the other parts of the package. "I would hope that we would find a common ground, pass it, so that we can help our friends," Speaker John A. Boehner said of the Ukraine aid and Russia sanctions measure. The Senate legislation would guarantee $1 billion in loans to the fledgling government in Kiev and offer an additional $100 million in direct aid. It would codify sanctions against Ukrainians and Russians already affected by sanctions ordered by Mr. Obama, but at the same time, it would expand the list of targets who would be denied United States Visas and subject to civil or criminal penalties. Similar legislation is expected to pass the House this week "I feel strongly about I.M.F. reform, and we need to get that done," Mr. Reid said. "But this bill is important." The decision was another setback for Mr. Obama; the administration also tried and failed in December to attach the monetary fimd language to a trillion-dollar spending measure. "It's simply irresponsible that the Republican leadership insisted on holding I.M.F. reforms hostage in an effort to protect their special- interest campaign contributors' ability to pour money into the system unchecked," said Dan Pfeiffer, Mr. Obama's chief communications strategist. "Supporting these reforms would have meant Ukraine could access additional assistance, and it's unfortunate that Republicans stood in the way." But Republicans are eager to exploit Democratic divisions. "I can only quote Nita Lowey, the ranking Democrat on the House Appropriations Committee, and also the ranking member of the Foreign Affairs Committee, who said it was more important to do this quickly than to deal with the I.M.F., which is a much more controversial issue," said Senator Mitch McConnell of Kentucky, the Republican leader. "I agree with these two important House Democrats.

### 2AC- Econ Thumper

#### Collapse inevitable- fiscal/regulatory policies, export market crashes, market speculation

Epoch Times 3/11 (Interview conducted by Valentin Schmid, Epoch Times. Peter Schiff is the CEO of investment firm Euro Pacific Capital. He correctly predicted the subprime crash and the ensuing financial crisis of 2008. Peter Schiff: US Economy ‘Screwed Up,’ Stock Market a ‘Bubble’ (+Video) http://www.theepochtimes.com/n3/553225-peter-schiff-us-economy-screwed-up-stock-market-a-bubble-video/)

Epoch Times: Mr. Schiff, what’s your view on the U.S. economy at this moment? Peter Schiff: I think it’s a disaster. Very few people perceive just how big a disaster it is. Most people think the U.S. economy is recovering, maybe a bit more sluggish than they would like. People talk about a jobless recovery. But the reality is it’s not a recovery at all. We are not recovering from anything. The country is getting sicker. The U.S. economy is really all screwed up. It’s the result of mainly monetary policy, but fiscal and regulatory policies are part of the problem. I think the major part of the problem is the central bank. The central bank is basically trying to accommodate bad fiscal policy, bad regulatory policy. They are trying to provide a stimulus to the economy to negate the sedative that is being applied by the government. But it’s actually making the problem worse. Epoch Times: So what’s the problem? Mr. Schiff: One of the problems we have in America is that interest rates are too low. We don’t save enough, we spend too much, we borrow too much, we don’t produce enough. So we have these huge external imbalances where we borrow from the rest of the world. We have to import goods, because we don’t invest in productivity. We are not producing the goods. But all this is done to try to maintain the illusion of health, so Americans can keep on spending. So politicians can actually pretend the economy is getting better. But all we are doing is actually covering up the symptoms. Beneath the surface, the economy is actually deteriorating. Eventually it’s going to collapse.

Epoch Times: Why? Mr. Schiff: There is a limit to how much artificial stimulus we can have. There is a limit to how much money the world is willing to lend. Because once they are coming to terms with the fact that we are never going to pay the money back, they are not going to want to send us their savings and send us their production if we can’t pay for it. But we got this phony bubble economy that gets bigger and bigger. People focus on the stock market. They say, “Well the stock market is going up that must mean the economy is getting better.” No it doesn’t. There is just a lot of cash, a lot of inflation created by the central banks. So they are able to inflate a bubble in stocks or in real estate, but they are not able to generate legitimate economic growth. Epoch Times: So that’s why people feel different about the recovery? Mr. Schiff: It doesn’t feel like an economic recovery to the average American, because it’s not. We are not getting the type of prosperity that would come from real economic growth; we are just getting a bubble. And when people are speculating in the stock market, it doesn’t create real wealth. On paper for some. But we are not building factories, we are not producing more consumer goods, we are not creating good jobs, we are just inflating a bubble. And we are delaying the day of reckoning, which is relatively close at this point. Epoch Times: What does the day of reckoning look like? Mr. Schiff: Right now we are consuming what other people produce. So somebody has to do the production. The question is: Why is the world so willing to let America enjoy the fruits of their labor? When are the people producing those goods going to want to consume the goods themselves? Now right now, they are content to accept our IOUs [debt], because they figure “well we are going to spend them in the future.” They think they are building their future; they are saving dollars that they can spend in the future. Of course they don’t realize that the dollar is not going to have much value in the future, so there will be almost nothing to buy. But I also think that most of these developing economies are under the false impression that their economic growth, the success of it, lies in their ability to export—it doesn’t. The key is production. And people forget that nations don’t export just to export. They don’t export to create jobs. You export to pay for your imports. And if you are not importing anything, then there is no reason to export. Because what people want are consumer goods. So you either produce them yourself or you trade for them. But to send your consumer goods out and have nothing in return, except Treasury bonds, our trading partners aren’t benefiting. We are benefiting because we get to consume things; we did not produce anything to pay for it. Epoch Times: That can’t go on forever right? Mr. Schiff: When the world figures out that we conned them and they are holding a bunch of worthless IOUs, they are going to stop exporting. It doesn’t mean that they are going to stop producing goods. It just means that their own citizens will consume them. Which will be better for them, but that’s when the party ends in the U.S. Because without the world to supply us with the goods that we don’t produce, there is almost nothing to buy. If there is almost nothing to buy, it doesn’t matter how much money consumers will spend. There is nothing there, it’s just inflation. All our policies are about putting money in the pockets of consumers. But money doesn’t do you any good if there is almost nothing to buy. And where is this stuff coming from? It’s coming from the productive efforts of people outside of America.

### Popularity

#### Loss on war powers bolsters Obama’s popularity- proves he is principled with no costs

Thompson, 13 -- Forbes contributor

[Loren, "The Syria Vote: Why Obama Wins If He Loses," Forbes, 9-9-13, www.forbes.com/sites/lorenthompson/2013/09/09/the-syria-vote-why-obama-wins-if-he-loses/, accessed 2-8-13]

The Syria Vote: Why Obama Wins If He Loses

Sometime this week, Congress will begin voting on a resolution that would support President Obama’s proposal to launch limited strikes against the military forces of Syrian dictator Bashar al-Assad as retribution for their use of chemical weapons. Although Washington is divided on the advisability of carrying out the strikes, there is virtual unanimity among observers that if the president does not prevail on Capitol Hill it will be a major blow to his power and influence — both at home and abroad. The pundits are wrong. If Obama carries the day in both chambers, he will lose over the long run because of the likely political fallout from any new military action in the Middle East. On the other hand, if he loses the vote he will win over the long run by escaping the distractions and drawbacks of an action that he himself is reluctant to take. Since he is in fact highly likely to lose the congressional vote and almost certain not to act unilaterally once he does, let’s look at all the benefits that will accrue to him when legislators reject his risky plan. 1. Undesirable consequences of military action will be avoided. These consequences could include retaliation by Syria or its Iranian ally forcing the U.S. to broaden its military involvement; a tipping of the military balance in the civil war to favor jihadists; Russian intervention on the side of Assad’s government; destabilization of the Syrian state; or a pressing need to inject U.S. ground forces in order to secure chemical weapons. If Congress rebuffs the proposal for punitive strikes, most of these things are less likely to happen. 2. Obama upholds his principles without having to pay the cost. The White House is waging the biggest lobbying campaign of Obama’s second term in an effort to convince Congress it should back limited military action in Syria. The main reason it is doing so is the president’s deeply held belief that the international norm against use of “weapons of mass destruction” (nerve gas in this case) must be upheld. Although the lobbying campaign probably will fail, **everyone will recognize** **Obama** stuck with his principles even when it waspoliticallyunpopular **— a circumstance which** arguably bolsters hiscredibility **rather than diminishes it**. 3. If things go wrong in Syria, it won’t be Obama’s fault. Some Middle East analysts are saying that Assad was emboldened to use chemical weapons because of U.S. reluctance to get involved in what is now a long-running civil war. It’s true that Obama has tried to avoid new entanglements in the Middle East throughout his presidency and has not moved decisively to arm moderate rebels fighting government forces. However, by rejecting the president’s belated bid to punish Assad’s brutality, Congress will absolve the administration of responsibility for any adverse developments that follow. 4. The president avoids blame for subverting global institutions. By proposing to act unilaterally — or at least, with active support from few other nations besides France — the White House has left itself open to charges that it doesn’t really support the rule of law in international relations. If it did, it would be working with the United Nations and other collective-security organizations to punish Assad’s government. But if America fails to act militarily, then it can’t be accused of creating a precedent for ignoring global institutions and world opinion. 5. Negative fallout for the economy will be minimized. Last week’s jobs report was just the latest indication that the current economic recovery is one of the weakest on record. One thing the nation’s sputtering economy doesn’t need right now is a spike in oil prices resulting from renewed U.S. military action in the Middle East — perhaps followed by far worse market reactions when Syria and its friends decide how they want to respond to the U.S. strikes (think cyber). By avoiding overt intervention in Syria’s civil war, the U.S. will reduce the likelihood of overseas developments derailing the gradual return of prosperity. 6. Congress confirms the shift to an Asia-Pacific strategy. Although the White House has always said that the Asia-Pacific strategy it unveiled in early 2012 did not mean America was abandoning the Middle East, everyone knew it meant less U.S. presence there. The proposed strikes in Syria are out of step with the trend in U.S. foreign policy, which recognizes the rising importance of East Asia and the declining importance of the Middle East (especially given the U.S. renaissance in fossil-fuel production). By voting down military intervention in Syria, Congress will in effect be reinforcing a strategic shift that the president himself initiated. 7. Obama gets to focus on his domestic agenda. Barack Obama was elected president to extricate America from unpopular wars in Southwest Asia and fix a broken economy. The main thrust of his presidency has always been domestic policy, and his agenda is better served by avoiding the distractions of overseas military involvement. With analysts already forecasting that wrangling over Syria will undercut the prospects for immigration reform this year, **it would actually be helpful to the president’s priorities if Congress** decisively **rejected military action**. Anyone who remembers the challenges Jimmy Carter, Ronald Reagan and both Bushes faced in the Middle East understands how involvement there can wreck domestic agendas.

#### Alt causes overwhelm or hegemony is resilient

Copley ’12 (Gregory R., editor of Defense & Foreign Affairs’ Strategic Policy, Strategic Policy in an Age of Global Realignment, lexis, June 2012)

3. Strategic Recovery by the US. The US will not, in 2012 or 2013, show signs of any recovery of its global strategic credibility or real strength. Its manufacturing and science and technology sectors will continue to suffer from low (even declining) productivity and difficulty in capital formation (for political reasons, primarily). A significant US recovery is not feasible in the timeframe given the present political and economic policies and impasse evident. US allies will increasingly look to their own needs while attempting to sustain their alliance relationship with the US to the extent feasible. Those outside the US alliance network, or peripheral to it, will increasingly disregard US political/diplomatic pressures, and will seek to accommodate the PRC or regional actors. The continued economic malaise of the US during 2012, even if disguised by modest nominal GDP growth, will make economic (and therefore strategic) recovery more difficult and ensure that it will take longer. In any event, the fact that the US national debt exceeds the GDP hollows the dollar and thus makes meaningful recovery impossible in the short-term. The attractiveness of a low dollar value in comparison to other currencies in making US manufacturing investment more feasible than in recent years is offset by declining US workforce productivity and political constraints which penalize investment in manufacturing, or even in achieving appealing conditions for capital formation. Banks are as afraid of such investment as are manufacturing investors themselves.

#### Sequestration thumper

Lightfoot ’13 (Jeff Lightfoot, deputy director of the Brent Scowcroft Center on International Security at the Atlantic Council, “Sequestration’s Credibility Costs,”<http://nationalinterest.org/commentary/sequestrations-credibility-costs-8172>, March 1, 2013)

The debate over sequestration is focused nearly entirely on the impact of spending reductions on the U.S. economy. Far less attention is given to how the automatic spending cuts would undermine the credibility of American power abroad. As sequestration comes into force, the White House and Congress signal a dangerous lack of resolve to both allies and adversaries. In doing so, they run the risk that a nervous Israel and an adventurous Iran could plunge the Mideast into a war the United States can ill afford

## Midterms

### 2AC – UQ

#### GOP will take the Senate- strong candidates, funding gaps

Martin, 3-15 -- NYT national political correspondent

["Obama Factor Adds to Fears of Democrats," New York Times, 3-15-2014, www.nytimes.com/2014/03/16/us/politics/obama-factor-adds-to-fears-of-democrats.html, accessed 3-28-14]

WASHINGTON - Democrats are becoming increasingly alarmed about their midterm election fortunes amid President Obama's sinking approval ratings, a loss in a special House election in Florida last week, and millions of dollars spent by Republican- aligned groups attacking the new health law. The combination has led to uncharacteristic criticism of Mr. Obama and bitter complaints that his vaunted political organization has done little to help the party's vulnerable congressional candidates. The latest in a cascade of bad news came Friday when Scott Brown, a former senator from Massachusetts, announced an exploratory committee to challenge the incumbent Democrat in New Hampshire, Senator Jeanne Shaheen, and when the Republican-aligned "super PAC" American Crossroads said it would spend $600,000 to help his effort. Earlier, another top-tier Republican recruit, Representative Cory Gardner, decided to challenge Senator Mark Udall of Colorado; the two races create **unanticipated opportunities** improving Republicans' chances to take control of the Senate. No prominent Democrats predict their party will win back the House. Interviews with more than two dozen Democratic members of Congress, state party officials and strategists revealed a new urgency about the need to address the party's prospects. One Democratic lawmaker, who asked not to be identified, said Mr. Obama was becoming "poisonous" to the party's candidates. At the same time, Democrats are pressing senior aides to Mr. Obama for help from the political network. "I'm a prolific fund-raiser, but I can't compete with somebody who has got 50- some-odd billion dollars," said Representative Joe Garcia of Florida, a vulnerable first-term member who has already faced more than $500,000 in negative TV ads from third-party conservative groups. "One hopes the cavalry is coming. One hopes the cavalry is coming." The gap is yawning. Outside Republican groups have spent about $40 million in this election cycle, compared with just $17 million by Democrats. When two senior White House officials - Jennifer Palmieri, the communications director, and Phil Scl1iliro, the health care adviser - went to the Capitol late last month to address Senate Democrats about the Affordable Care Act, they were met with angry questions about why Mr. 0bama's well-flmded advocacy group, Organizing for Action, was not airing commercials offering them cover on the health law. Among those raising concerns was Senator Michael Bennet of Colorado, chairman of the Democratic Senatorial Campaign Committee, who also has a low-key style and warm relationship with Mr. Obama. "They did not want to hear about health care enrollment," one source familiar with the meeting said, describing "a high level of anxiety." After the loss in Florida's 13th Congressional District, which Mr. Obama ca1'ried in 2012, Representative Steve Israel of New York, the chairman of the House Democratic campaign arm, asked the White House political director, David Simas, for additional help dining a Wednesday meeting at the Democratic Congressional Campaign Committee. Responding to these concerns, several Democrats said Friday that Organizing for Action would cut back its fimd-raising activities so the group would not be in competition with the candidates for donors. Katie Hogan, a spokeswoman for it, said, "We understand and expect that some of our more than 420,000 contributors will shift their focus to their local campaigns dining the midterm season." Democrats also said that the Wl1ite House would make Mr. Obama available for additional fimd-raisers and that the president was starting to meet with small groups of the party's largest contributors that could benefit the party's own super PACS. "Everyone is trying to send the signal: Don't get ahead of yourself - 2016 is critical, but 2014 comes first," said David Plouffe, the president's former campaign manager. Mr. Obama's approval rating of 41 percent in a Wall Street J o1n'nal/N BC Poll last week matched that of a New York Times/ CBS News survey in February and represents one of the clearest reasons for Democratic malaise. Since the post-World War II era, that measurement has been one of the most accurate predictors of midterm results, and any number below 50 means trouble for the party that holds the White House. "The state of Democrats is very much tied to the state of the president, and in that regard, these are far from the best of times," said Geoff Garin, a Democratic pollster. In addition to problems with the health law, the White House is losing the support of Democrats on key appointments such as Mr. 0bama's nominee to head the Justice Department's Civil Rights Division and his choice to be surgeon general. Also last week, Senator Dianne Feinstein, Democrat of California, broke with the administration with a scalding criticism of the Central Intelligence Agency. Historical trends overall also argue against the president's party in a sixth year. In 1958, Republicans lost 48 seats in the House and 13 in the Senate; in 2006, Republicans lost 30 seats in the House and six in the Senate. In the past 50 years, only Bill Clinton in 1998, when his approval ratings were much higher than Mr. Obama's today, did not drag down his party in a second midterm; Democrats picked up five House seats. Republicans also seem to be benefiting from the argument - reinforced by advertising and by their media surrogates - that Mr. Obama has presided over an activist government that has overreached and proved incompetent. Most Democrats up for re-election are trying to put some distance between themselves and the president, choosing surrogates such as Mr. Clinton to campaign for them, particularly in the South and parts of the West. Asked whether Mr. Obama is a liability, Representative Ami Bera, Democrat of California, demurred. "We haven't really focused much on the president," he said. "We're focused on Sacramento County and the folks that are there." Other Democrats are openly critical of the health care law in their advertisements. In one ad promoting Representative Ann Kirkpatrick, Democrat of Arizona, the narrator says she "blew the whistle on the disastrous health care website, calling it "˜stimning ineptitude,' and worked to tix it." Democrats also face a contradiction: As woeful as they are about their prospects in 2014, they are buoyant about their chances for winning the Wl1ite House in 2016. Polls show that Hillary Rodham Clinton has clear leads over possible Republican challengers. Even though special elections are rarely reliable predictors for future elections, Alex Sink's loss to David Jolly in Florida's 13th District last week added to the Democrats' negative storyline. Frightening Democrats fmther, none of the Republican third-party money in the race came from the Koch brothers, the wealthy industrialists whose political groups have fimded the bulk of the TV ads hammering Democrats this election cycle. "Florida 13 doesn't keep me up at mght, but the aggregate Republican super PAC money makes me toss and turn," Mr. Israel said. This unease is also prompting Democrats to speak more candidly about what many see as the root cause for their political difficulties: the bungled unveiling of the health law, in particular the insurance website, and the White House's failure to market the initiative effectively. "The rollout left a bad taste in people's mouth from Day 1, and it's hard to create a new flavor now," said Representative Steve Cohen, Democrat of Tennessee. To stem losses, the Democratic National Committee is focusing on teclmology and data to give their candidates, as well as the state parties, the latest tools they will need to turn out the vote more effectively and efficiently. And Senate Democrats will t1y to make races about local issues rather than a referendum on Mr. Obama. Mr. 0bama's aides say he is not idly watching congressional Democrats drown in a Republican wave. By the end of June, the president will have attended 14 events for Democratic groups. But on Capitol Hill, Democrats are furious that the same major contributors who enabled Mr. Obama and allied outside groups to raise over $1 billion for his re-election in 2012 are not rallying to ensure the president does not face a Congress controlled entirely by Republicans for his final two years. Democrats say that the party needs more donors with the means of the California billionaire Thomas F. Steyer, who is helping candidates who support addressing climate change, to protect candidates who backed the health law. "I'm not in the super PAC business, but we need somebody like a Steyer to get in the fight on the Affordable Care Act," said Representative J olm Yarmuth of Kentucky. Democrats, he said, are "getting beat to death."

### 2AC – Link Turn

#### GOP would push the plan and get the blame

Howell, 7 -- University of Chicago Public Policy professors

[William, and Jon Pevehouse, "When Congress Stops Wars: Partisan Politics and Presidential Power," Foreign Affairs, 86.5, Sept-Oct 2007, themonkeycage.org/wp-content/uploads/2013/09/Howell-Pevehouse-2007-1.pdf?343c0a, accessed 2-6-14]

The **partisan composition of Congress has historically been the** decisive factor **in determining whether lawmakers will oppose** or acquiesce in **presidential calls** for war. From Harry Truman to Bill Clinton, nearly every U.S. president has learned that members of Congress, and members of the opposition party in particular, are fully capable of interjecting their opinions about proposed and ongoing military ventures. When the opposition party holds a large number of seats or controls one or both chambers of Congress, members routinely challenge the president and step up oversight of foreign conflicts; when the legislative branch is dominated by the president's party, it generally goes along with the White House. Partisan unity, not institutional laziness, explains why the Bush administration's Iraq policy received such a favorable hearing in Congress from 2000 to 2006.

#### Plan boosts Obama and dooms GOP- casts them as soft on terror

Werner, 7 -- University of Wisconsin-Madison political science professor

[Timothy, Ph.D. in Political Science from University of Wisconsin–Madison and Peter Holm, UWM political science, "Political Capital and Presidential War Powers: Sources of Congressional Assertiveness on the Use of Force," March 2007, users.polisci.wisc.edu/Holm/uof-march2007-draft.pdf, accessed 2-5-14]

At the same time, the pressures on members to support the president in his foreign policy actions, especially when it involves the use of force, are strong. Challenging the president in foreign policy is always a risky endeavor in which Congress typically suffers from acute informational asymmetry and members do not want to be caught on the wrong end of a successful n\ilitary endeavor (Schlesinger 1989; Blech- man 1990). The temptation to remain on the sidelines is high; as Rep. Ron Paul [R-TX) put it, "Congress would rather give up its most important authorized power to the President and the UN than risk losing an election if the war goes badly" (Rudalevige 2005, 276). Further, most members are loathe to undercut the president and cripple the country's image of resolve abroad when he escalates a crisis situation. As Senator Arthur Vandenberg [R-Ml) noted after the famous Truman Doctrine speech requesting an aid commitment to Greece and Turkey in 1947, refusing the president would mean "there would never be another opportunity for us pacifically to impress the next aggressor with any degree of success (Johnson 2006, 20). U.S. involvement in an international crisis is also likely to bring with it some public rally to the president's side [Mueller 1973; Brody and Shapiro 1989; Parker 1995; Baum 2002). For individual members, the potential consequences of being cast as "soft" [whether on communism, terrorism, or defense issues in general) are extremely high, as incumbents like Emest Gruening [D-AK), Wayne Morse [D-OR), lohn Brademas (D-IN), and Max Cleland (D-GA) discovered in their **unsuccessful re-election** campaign**s** (Iohnson 2006). And once the president deploys troops, Congress’s only real recourse for re- moving them is to cut off funding but the taboo against withdrawing support from troops in the field remains intense.

#### Their link is irrelevant- not a referendum on Obama- empirical ev, distancing

Cillizza, 2-2 -- Washington Post

[Chris, Washington Post, 2-2-14, www.washingtonpost.com/politics/2014-senate-races-may-be-referendum-on-obama-if-so-democrats-should-worry/2014/02/02/f566ddac-8c1b-11e3-95dd-36ff657a4dae\_story.html, accessed 2-10-14]

In Arkansas and Alaska, the Democratic incumbents are running and distancing themselves from the president as fast as they can. “Overall, I’m disappointed with the president’s State of the Union address because he was heavy on rhetoric but light on specifics about how we can move our country forward,” Sen. Mark Pryor (Ark.) said after Obama’s speech last week. Sen. Mark Begich (Alaska) offered skepticism about the president’s executive-order emphasis, disagreed with him on energy policy and said that if Obama wants to come to the Last Frontier, “I’m not really interested in campaigning” with him. Democrats are putting considerable stock in the ability of people like Pryor and Begich — both of whom followed their fathers into elected office — to run on their own independent brands rather than be dragged down by the national one. They rightly point to North Dakota’s 2012 Senate race as a blueprint. In that campaign, former state attorney general Heidi Heitkamp, a known candidate with a well-regarded name, won despite the state’s clear Republican lean.

### 1NC/ 2AC- Warming No Impact

#### Not rapid

McGrath ’13 (Matt McGrath, Environment correspondent, BBC News, “Climate slowdown means extreme rates of warming 'not as likely'”, http://www.bbc.co.uk/news/science-environment-22567023, May 19, 2013)

Scientists say the recent downturn in the rate of global warming will lead to lower temperature rises in the short-term. Since 1998, there has been an unexplained "standstill" in the heating of the Earth's atmosphere. Writing in Nature Geoscience, the researchers say this will reduce predicted warming in the coming decades. But long-term, the expected temperature rises will not alter significantly. “Start Quote The most extreme projections are looking less likely than before” Dr Alexander Otto University of Oxford The slowdown in the expected rate of global warming has been studied for several years now. Earlier this year, the UK Met Office lowered their five-year temperature forecast. But this new paper gives the clearest picture yet of how any slowdown is likely to affect temperatures in both the short-term and long-term. An international team of researchers looked at how the last decade would impact long-term, equilibrium climate sensitivity and the shorter term climate response. Transient nature Climate sensitivity looks to see what would happen if we doubled concentrations of CO2 in the atmosphere and let the Earth's oceans and ice sheets respond to it over several thousand years. Transient climate response is much shorter term calculation again based on a doubling of CO2. The Intergovernmental Panel on Climate Change reported in 2007 that the short-term temperature rise would most likely be 1-3C (1.8-5.4F). But in this new analysis, by only including the temperatures from the last decade, the projected range would be 0.9-2.0C. Ice The report suggests that warming in the near term will be less than forecast "The hottest of the models in the medium-term, they are actually looking less likely or inconsistent with the data from the last decade alone," said Dr Alexander Otto from the University of Oxford. "The most extreme projections are looking less likely than before."

#### We adapt

Mendelsohn ‘9 – Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: <http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf>

These statements arelargely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences**.** The science and economicsof climate change is quite clear that emissions over the next few decades will lead to onlymild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these **“**potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

### 1NC/ 2AC- Warming Inevitable

#### United States not key to solve warming and inevitable

Grose ‘13 (Thomas K., National Geographic News Writer, “As U.S. Cleans Its Energy Mix, It Ships Coal Problems Abroad”, March 15, 2013)

Ready for some good news about the environment? Emissions of carbon dioxide in the United States are declining. But don't celebrate just yet. A major side effect of that cleaner air in the U.S. has been the further darkening of skies over Europe and Asia. The United States essentially is exporting a share of its greenhouse gas emissions in the form of coal, data show. If the trend continues, the dramatic changes in energy use in the United States—in particular, the switch from coal to newly abundant natural gas for generating electricity—will have only a modest impact on global warming, observers warn. The Earth's atmosphere will continue to absorb heat-trapping CO2, with a similar contribution from U.S. coal. It will simply be burned overseas instead of at home. "Switching from coal to gas only saves carbon if the coal stays in the ground," said John Broderick, lead author of a study on the issue by the Tyndall Center for Climate Change Research at England's Manchester University. The U.S. Energy Information Administration (EIA) released data this week showing that United States coal exports hit a record 126 million short tons in 2012, a 17 percent increase over the previous year. Overseas shipments surpassed the previous high mark set in 1981 by 12 percent. The United States clearly is using less coal: Domestic consumption fell by about 114 million tons, or 11 percent, largely due to a decline in the use of coal for electricity. But U.S. coal production fell just 7 percent. The United States, with the world's largest coal reserves, continued to churn out the most carbon-intensive fuel, producing 1 billion tons of coal from its mines in 2012. Emissions Sink The EIA estimates that due largely to the drop in coal-fired electricity, U.S. carbon emissions from burning fossil fuel declined 3.4 percent in 2012. If the numbers hold up, it will extend the downward trend that the U.S. Environmental Protection Agency (EPA) outlined last month in its annual greenhouse gas inventory, which found greenhouse gas emissions in 2011 had fallen 8 percent from their 2007 peak to 6,703 million metric tons of CO2 equivalent (a number that includes sources other than energy, like methane emissions from agriculture). In fact, if you don't count the recession year of 2009, U.S. emissions in 2011 dropped to their lowest level since 1995. President Barack Obama counted the trend among his environmental accomplishments in his State of the Union address last month: "Over the last four years, our emissions of the dangerous carbon pollution that threatens our planet have actually fallen." The reason is clear: Coal, which in 2005 generated 50 percent of U.S. electricity, saw its share erode to 37.4 percent in 2012, according to EIA's new short-term energy outlook. An increase in U.S. renewable energy certainly played a role; renewables climbed in those seven years from 8.7 percent to 13 percent of the energy mix, about half of it hydropower. But the big gain came from natural gas, which climbed from 19 percent to 30.4 percent of U.S. electricity during that time frame, primarily because of abundant supply and low prices made possible by hydraulic fracturing, or fracking. The trend appears on track to continue, with U.S. coal-fired plants being retired at a record pace. But U.S. coal producers haven't been standing still as their domestic market has evaporated. They've been shipping their fuel to energy-hungry markets overseas, from the ports of Norfolk, Baltimore, and New Orleans. Although demand is growing rapidly in Asia—U.S. coal exports to China were on track to double last year—Europe was the biggest customer, importing more U.S. coal last year than all other countries combined. The Netherlands, with Europe's largest port, Rotterdam, accepted the most shipments, on pace for a 24 jump in U.S. coal imports in 2012. The United Kingdom, the second largest customer, saw its U.S. coal imports jump more than 70 percent. The hike in European coal consumption would appear to run counter to big government initiatives across the Continent to cut CO2 emissions. But in the European Union, where fracking has made only its initial forays and natural gas is still expensive, American coal is, well, dirt cheap. European utilities are now finding that generating power from coal is a profitable gambit. In the power industry, the profit margin for generating electricity from coal is called the "clean dark spread"; at the end of December in Great Britain, it was going for about $39 per megawatt-hour, according to Argus. By contrast, the profit margin for gas-fired plants—the "clean spark spread"—was about $3. Tomas Wyns, director of the Center for Clean Air Policy-Europe, a nonprofit organization in Brussels, Belgium, said those kinds of spreads are typical across Europe right now. The EU has a cap-and-trade carbon market, the $148 billion, eight-year-old Emissions Trading System (ETS). But it's in the doldrums because of a huge oversupply of permits. That's caused the price of carbon to fall to about 4 euros ($5.23). A plan called "backloading" that would temporarily extract allowances from the market to shore up the price has faltered so far in the European Parliament. "A better carbon price could make a difference" and even out the coal and gas spreads, Wyns said. He estimates a price of between 20 and 40 euros would do the trick. "But a structural change to the Emissions Trading System is not something that will happen very quickly. A solution is years off." The Tyndall Center study estimates that the burning of all that exported coal could erase fully half the gains the United States has made in reducing carbon emissions. For huge reserves of shale gas to help cut CO2 emissions, "displaced fuels must be reduced globally and remain suppressed indefinitely," the report said. Future Emissions It is not clear that the surge in U.S. coal exports will continue. One reason for the uptick in coal-fired generation in Europe has been the looming deadline for the EU's Large Combustion Plant Directive, which will require older coal plants to meet lower emission levels by the end of 2015 or be mothballed. Before that phaseout begins, Wyns says, "there is a bit of a binge going on." Also, economic factors are at work. Tyndall's Broderick said American coal companies have been essentially selling surplus fuel overseas at low profit margins, so there is a likelihood that U.S. coal production will decrease further. The U.S. government forecasters at EIA expect that U.S. coal exports will fall back to about 110 million tons per year over the next two years, due to economic weakness in Europe, falling international prices, and competition from other coal-exporting countries. The Paris-based International Energy Agency (IEA) calls Europe's "coal renaissance" a temporary phenomenon; it forecasts an increasing use of renewables, shuttering of coal plants, and a better balance between gas and coal prices in the coming years. But IEA does not expect that the global appetite for coal will slacken appreciably. The agency projects that, by 2017, coal will rival oil as the world's primary energy source, mainly because of skyrocketing demand in Asia. U.S. coal producers have made clear that they aim to tap into that growing market.

# 1AR

### Restrict = Auth

clauses to war powers suggests that the power of the purse was intended as a particularly potent check on the President's war-making powers. For example, the restriction on Congress's appropriations power requiring that funds for the army must be renewed every two years [n149](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n149) was seen historically as a requirement that Congress not abrogate its oversight role, lest a standing army be maintained and used without the consent of the people. [n150](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.990387.0878898647&target=results_DocumentContent&returnToKey=20_T17912978048&parent=docview&rand=1375713495123&reloadEntirePage=true#n150) Thus, Congress appears to have power to regulate the conduct of war at least to some degree through its appropriations power.¶ 4.

#### Requires reference to Legislation

Black’s Law Dictionary 2013

(ONLINE LEGAL DICTIONARY 2nd Edition, <http://thelawdictionary.org/statutory-restriction/>)

What is STATUTORY RESTRICTION?¶ Limits or controls that have been place on activities by its ruling [legislation](http://thelawdictionary.org/legislation/).¶

#### Restrictions of executive happen any time Congress speaks to its own authority

Glennon 84 (American Journal of International Law¶ July, 1984¶ 78 A.J.I.L. 571¶ LENGTH: 6765 words ARTICLE: THE WAR POWERS RESOLUTION TEN YEARS LATER: MORE POLITICS THAN LAW NAME: Michael J. Glennon \* BIO:¶ \* Professor of Law, University of Cincinnati College of Law; former Legal Counsel, Senate Foreign Relations Committee. The author gratefully acknowledges the research assistance of Timothy Sullivan, a student at the College of Law.)

The Court formally adopted the "fluctuating powers" theory in deciding Dames & Moore v. Regan in 1981: it was not the independent power of the President, but the implied authority given him by Congress, that permitted him to make the hostage Claims Settlement Agreement. [n48](http://www.lexisnexis.com.go.libproxy.wfubmc.edu/lnacui2api/frame.do?tokenKey=rsh-20.8829.541775521533&target=results_DocumentContent&returnToKey=20_T17906898379&parent=docview&rand=1375552423707&reloadEntirePage=true#n48) This same rationale undergirds the restrictions of the War Powers Resolution, the Vietnam Contingency Act and the Lebanon Peacekeeping Resolution (such as they are): whatever the power of the President in the absence of congressional action, once Congress has spoken, the scope of his authority has been contracted because the power to declare war subsumes the lesser power to enact specific limitations upon presidential use of the armed forces incident to the authorization of hostilities.

#### War power authority means PREPARATION for conflict

Manget 87 (<http://media.nara.gov/dc-metro/rg-263/6922330/Box-10-114-7/263-a1-27-box-10-114-7.pdf>, declassified document, “PRESIDENTIAL WAR POWERS” accessed 8/17/13)

Role of Military ¶ The fundamental function of the armed forces is to fight or to be ready to ¶ fight wars. 40 The Supreme Court has recognized the existence of limited, ¶ partial, and undeclared wars:41 Thus, there is a judicially recognized and ¶ legitimate activity of the armed services in times of no armed conflict that ¶ stems directly from the war powers authority of the President. That activity is ¶ the preparation for the successful waging of war, which may come in any form ¶ or level of conflict. Any actions of the Executive Branch that are part of the ¶ fundamental functions of the armed services in readying for any type of ¶ hostility are based on constitutional war powers authority of the President.

### Solvo

The Defense Committee of the Cabinet or DCC is key to Sharif legitimacy and Pakistan stability

Rafiq ’13 (Arif Rafiq, Arif Rafiq is an adjunct scholar at the Middle East Institute and president of Vizier Consulting, LLC, which provides strategic guidance on Middle East and South Asian political and security issues, “Nawaz Sharif 3.0 – How Will He Govern?”, <http://thediplomat.com/2013/06/17/nawaz-sharif-3-0-how-will-he-govern/3/?all=true>, June 17, 2013)

On June 5, Pakistan's National Assembly elected Nawaz Sharif as the country's prime minister. Though it’s his third time in office, almost fourteen years have passed since Sharif last led Pakistan. There is a legitimate question, then, as to how exactly he will govern. Pakistan has changed in many ways since 1999, when Sharif was overthrown by General Pervez Musharraf. New players have joined the power elite alongside the politicians and military brass. An activist judiciary brought down a once-powerful army ruler and continues to challenge elected politicians, the bureaucracy, and the military. Private cable news channels, of which there are now around two dozen, team up with the high courts and serve as a check on pretty much everyone, feeding what has become a public addiction to political infotainment and a strong desire for accountability. Alongside political battles, there are multiple hot wars being fought on Pakistani soil. Islamic militants are now the country’s chief security threat. The Pakistani Taliban has killed thousands of Pakistanis, including a former prime minister. It holds a veto power over the future of the country’s northwest. And for over a decade, not only have tens of thousands of U.S. troops been stationed in neighboring Afghanistan, but Washington has also seen Pakistan as an undeclared theater of conflict, regularly targeting it with drone strikes and other covert intelligence operations, in addition to providing it with billions of dollars in aid annually. For his part, Sharif too has changed since he was unseated from power. The Nawaz Sharif we see today is a kinder, gentler statesman – in marked contrast to his confrontational style two decades ago. His party, the Pakistan Muslim League – Nawaz (PML-N), provided a measured opposition to the Pakistan Peoples Party (PPP) government that had ruled for the past five years. The PML-N cooperated with the PPP to pass three major constitutional amendments – just a few of many indicators of the elite political culture's shift toward greater cooperation and restraint. Indeed, Sharif represents a new brand of center-right politics in Pakistan, one that is outspoken against military interference in politics, strongly in support of constitutionalism and the rule of law, and keen on using conciliation and compromise to resolve internal disputes. This time around, the Nawaz Sharif ver. 3.0 appears intent on reducing corruption, enhancing economic growth, putting the military back in the barracks, achieving "zero problems" with neighboring Afghanistan and India, institutionalizing civilian rule, and resolving the country's major ethnic secessionist dispute in Balochistan. In these respects, Sharif's "REPAIR" agenda echoes the priorities of Turkey's Recep Tayyip Erdogan upon taking office. And while such an analogy might be unflattering at the moment given Erdogan's use of force against Taksim Square protesters this month, Sharif's past is similar to Erdogan's present excesses. Buoyed by a two-thirds majority in the National Assembly after the 1997 elections, Sharif clashed with the courts, cracked down on the media, tried to enhance his constitutional powers, and was heavily inclined toward majoritarian and even quasi-Islamist policies. Fortunately for Pakistan, it's unlikely that Sharif will revert to old form. He is well aware that Pakistan is far too fractured and its challenges too grave for him to go on an authoritarian binge once again. What Sharif does have is a strong electoral mandate, support from the business community, and space given to him by the military to push forward much – but not all – of his REPAIR agenda. To succeed, Sharif must prioritize among his goals and implement them in the right sequence. Institutionalizing civilian control over national security policymaking should take precedence over exposing or punishing the military for its unlawful activities in the past. The two could be mutually exclusive if Sharif takes the military head on and fails. The Charter of Democracy, which Sharif signed in 2006, calls for the creation of a Truth and Reconciliation Commission to investigate the military's illegal actions post-1996. Creating such a body while Sharif needs the army to fight a war against the Pakistani Taliban would be unwise. Sharif should keep the big picture in mind. Five years from now, if Sharif’s government completes its tenure, succeeds in bringing the country out of its current economic and security morass, conducts free and fair elections, and is either re-elected or passes on power to another democratically-elected government, the door to military dictatorship could be firmly shut. Avoiding confrontation with the military doesn't mean that Sharif should let it run the show when it comes to Pakistan's foreign policy. In fact, Sharif must push forward with bolstering civilian-led national security policymaking bodies. Rather than having private meetings with the army chief as has been common, Sharif should hold weekly meetings for the Defense Committee of the Cabinet (DCC), Pakistan's equivalent of a national security council. The DCC needs someone akin to a national security advisor on top – a retired civil servant able to work with the military, but not necessarily an ex-officer. And it needs a permanent staff, selected from among the best and the brightest of the country's bureaucracy, who can think outside the box and integrate inputs from various ministries, including defense, finance, and water and power. With the prime minister at its helm, the DCC must be the chief forum in which Pakistan's civilian and military leaders get together to discuss domestic and regional security challenges. Hardline elements in the military will likely resist Sharif’s efforts toward normalizing relations with India and rolling back Pakistan’s heavy-handed Afghanistan policy. But he will have potential allies among a broad segment of Pakistan’s political class, which is keen on peace with all of the country’s neighbors. Sharif’s government should use all-parties conferences and parliamentary committees, such as the Senate Foreign Relations Committee, to get the opposition to buy into his peace initiatives and reduce the maneuvering space of conservative forces in the military. Sharif could use the same approach to resolve the insurgency in Balochistan, which – like Turkey’s Kurdish region – is home to a marginalized ethnic group that is pushing for greater autonomy or even secession. Baloch nationalist politicians have a high degree of confidence in Sharif, who has been among the most outspoken against military operations in the region. Their initial demands are almost exclusively focused on the powerful military and intelligence agencies. The Baloch seek an end to unlawful detentions and extrajudicial killings by the military, and want internally displaced persons to be allowed to return to the Dera Bugti region. Working with the provincial government as well as other major national parties, Sharif must put an end to the human rights abuses in the province and develop a framework for dealing with the bigger, more complicated issues behind the insurgency: autonomy, language rights, and resource control. The cruel irony is that Sharif’s pursuit of zero problems with neighbors could result in greater problems at home. Peace with India might result in more jihadists joining the fight against the Pakistani state, as had happened after 9/11 when Musharraf sided with Washington in the war on terror and sought to normalize ties with New Delhi. Similarly, a political settlement in Afghanistan that makes too many concessions to the Afghan Taliban might actually embolden Pakistan’s Taliban factions in their war against Islamabad. A civil war in Afghanistan also bears the same risks. But neither a full-fledged assault on militants in Pakistan nor a continued approach of pitting different militant groups against one another would bring an end to Pakistan’s misery. Instead, Sharif must work with his army to develop a comprehensive exit strategy for the use of jihadists as proxies – a strategy that is national in focus, encompasses all militant organizations, and moves in sequence with progress in resolving disputes with neighbors. Less – or even zero – problems with neighbors and recalcitrant forces within would amplify Sharif’s ability to deal with his primacy focus: reviving Pakistan’s dormant economy. An end to the Balochistan insurgency would allow Pakistan to fully develop the Gwadar port as an energy and trade corridor that links China’s landlocked Xinjiang region by road and rail to the Arabian Sea. Pakistan could see gas flowing in from Afghanistan or Iran and Foreign Direct Investment from India as well as the United States and Europe. But meaningful external capital inflows require Sharif’s government to be vigilant about collecting corporate and income taxes as well as arrears on electricity bills owed by both household and business consumers. Sharif might have to butt heads with his base – middle-class traders and industrialists – and fight against the predatory instincts of Pakistani politicians, including those in his own party who see politics as a get-rich-quick scheme. But the payoff for real economic and anti-corruption reform, namely a return to rapid GDP growth experienced during much of the last decade, would far outweigh the risks from continued stagflation and near-insolvency.

# Ptx

### Impact d

Their impact presses on central asia just dumb

Fettweis ‘10 (Chris Fettweis, Professor of national security affairs @ U.S. Naval War College, Georgetown University Press, “Dangerous times?: the international politics of great power peace” Google Books)

Simply stated, the hegemonic stability theory proposes that international peace is only possible when there is one country strong enough to make and enforce a set of rules. At the height of Pax Romana between 27 BC and 180 AD, for example, Rome was able to bring unprecedented peace and security to the Mediterranean. The Pax Britannica of the nineteenth century brought a level of stability to the high seas. Perhaps the current era is peaceful because the United States has established a de facto Pax Americana where no power is strong enough to challenge its dominance, and because it has established a set of rules that a generally in the interests of all countries to follow. Without a benevolent hegemony, some strategists fear, instability may break out around the globe. Unchecked conflicts could cause humanitarian disaster and, in today’s interconnected world economic turmoil that would ripple throughout global financial markets. If the United States were to abandon its commitments abroad, argued Art, the world would “become a more dangerous place” and, sooner or later, that would “rebound to America’s detriment.” If the massive spending that the United States engages in actually produces stability in the international political and economic systems, then perhaps internationalism is worthwhile. There are good theoretical and empirical reasons, however, the belief that U.S. hegemony is not the primary cause of the current era of stability. First of all, the hegemonic stability argument overstates the role that the United States plays in the system. No country is strong enough to police the world on its own. The only way there can be stability in the community of great powers is if self-policing occurs, ifs states have decided that their interest are served by peace. If no pacific normative shift had occurred among the great powers that was filtering down through the system, then no amount of international constabulary work by the United States could maintain stability. Likewise, if it is true that such a shift has occurred, then most of what the hegemon spends to bring stability would be wasted. The 5 percent of the world’s population that live in the United States simple could not force peace upon an unwilling 95. At the risk of beating the metaphor to death, the United States may be patrolling a neighborhood that has already rid itself of crime. Stability and unipolarity may be simply coincidental. In order for U.S. hegemony to be the reason for global stability, the rest of the world would have to expect reward for good behavior and fear punishment for bad. Since the end of the Cold War, the United States has not always proven to be especially eager to engage in humanitarian interventions abroad. Even rather incontrovertible evidence of genocide has not been sufficient to inspire action. Hegemonic stability can only take credit for influence those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. Ethiopia and Eritrea are hardly the only states that could go to war without the slightest threat of U.S. intervention. Since most of the world today is free to fight without U.S. involvement, something else must be at work. Stability exists in many places where no hegemony is present. Second, the limited empirical evidence we have suggests that there is little connection between the relative level of U.S. activism and international stability. During the 1990s the United States cut back on its defense spending fairly substantially, By 1998 the United States was spending $100 billion less on defense in real terms than it had in 1990. To internationalists, defense hawks, and other believers in hegemonic stability this irresponsible "peace dividend" endangered both national and global security "No serious analyst of American military capabilities," argued Kristol and Kagan, "doubts that the defense budget has been cut much too far to meet Americas responsibilities to itself and to world peace."" If the pacific trends were due not to U.S. hegemony but a strengthening norm against interstate war, however, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable Pentagon, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums; no security dilemmas drove mistrust and arms races; no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat ofinternational war was not a pressing concern, despite the reduction in U.S. capabilities. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and it kept declining as the Bush Administration ramped spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. It is also worth noting for our purposes that the United States was no less safe.

### Uq

#### Stuck in senate

Williams 3/27 (Andrew Williams, Andrew W. Williams is a partner with McDonnell Boehnen Hulbert & Berghoff LLP. Dr. Williams' practice primarily consists of patent litigation, prosecution, and opinion work in the areas of biotechnology, pharmaceuticals, and chemistry., Dr. Williams is a contributing author to the Patent Docs weblog, a site focusing on biotechnology and pharmaceutical patent law, “Senate Judiciary Committee Takes Up, Then Tables, Patent Reform”, <http://www.patentdocs.org/2014/03/senate-judiciary-committee-takes-up-then-tables-patent-reform.html>, March 27, 2014)

Earlier today, the Senate Committee on the Judiciary held an Executive Business Meeting in which the Patent Transparency and Improvements Act was considered, then held over for another week. Nevertheless, several members of the committee provided comments indicating where they stand on the issue. While everyone expressed the opinion that patent trolls "need to go," and almost everyone believed that legislation was possible this year, there were a few voices of caution. In addition, there were many references to undisclosed "staff-level discussions," with the consensus being that these discussions were being made in good faith, but that they were still on-going. After the initial matter of discussing judicial and executive nominations (some of which were voted on, and some of which were held over), Chairman Leahy provided his statement on the issue (a copy of which can be found at the committee's website). After commenting on how so-called "patent trolls" are harming businesses in his state, Vermont, he pointed out that he was working closely with other members of the committee on a Manager's Amendment to incorporate additional provisions into his bill. For example, Leahy and Lee's Patent Transparency and Improvements Act does not currently contain any provision related to fee-shifting, so presumably one will be included. He also mentioned that he had convened a series of briefings in the past few months, with the outcome being an expectation of incorporating changes to the "customer stay" provision in the bill. Sen. Leahy expressed appreciation for the different perspectives that have been expressed, including those of inventors, small businesses, federal judges, and the university community. He at least professed the desire to craft a properly tailored bill that will deter abusive conduct while that the same time not harm legitimate businesses seeking to enforce their rights. After Sen. Leahy's comments, Sen. Grassley spoke out in support of patent reform legislation. He indicated that he was willing to work on compromise language, but that any such compromise could not be so weak as to be ineffective to deter so-called "trolls." These comments prompted Sen. Leahy to bring up the example of Robert Kearns, a sole-inventor who obtained patents on the intermittent windshield wiper after working on his invention in the proverbial basement. Mr. Kearns spent most of his adult life asserting his patents against Ford and Chrysler, accusing them of stealing his ideas. Sen. Leahy's illustration was apropos. If Mr. Kearns were to have brought his suit in today's climate, it seems more than likely that the automobile industry would have labeled his activities as "troll-like." This is why the process of narrowly tailoring legislation is so difficult -- just how do you differentiate between legitimate and illegitimate patent assertion when Mr. Kearns' activities could be characterized either way. Of course, the patent community has reason to be concerned when Sen. Leahy invoked Potter Stewart's infamous proclamation, in this case as applied to patent trolls -- "I know it when I see it." Sen. Feinstein was the first Senator to seriously express concern and caution over the possibility of patent litigation reform. She indicated that she was between "sixes and sevens on this" issue. Her dilemma stems from the fact that she represents California, which according to her, accounts for 26% of U.S. patents. Moreover, her state apparently has the top five cities in the country with regard to participation in the patent system, with another three cities in the top ten. Nevertheless, she recognizes that there is a growing "patent troll" problem, despite the recent passage of the AIA. She expressed the desire to change incentives for "trolls," but to not harm legitimate patent holders. Sen. Feinstein concluded by noting her conflicting interests. Sen Hatch expressed optimism that the Senate could craft a bipartisan solution. Not surprisingly, he highlighted the need for fee-shifting, and addressing the issue of fee-shifting "recovery-proof" parties. Sen. Hatch warned that we need to protect against insolvent shell companies by holding the real-parties-in-interest accountable. Sen. Cornyn also expressed optimism of getting something done this year despite all the talk of a division between the parties, and the typical lament that nothing happens in election years. In his remarks, Sen. Schumer suggested that he would hold the Committee accountable for passing real reform. If any provision is introduced that is not meaningful, Sen. Schumer indicated that he will be the first to speak out against it. He indicated that this is an issue of vital importance, and credited the patent system as the reason that the U.S. has the foremost economy in the world. Finally, Sen. Klobuchar provided perhaps the bleakest picture of the so-called "patent-troll" problem. However, as when most individuals throw around statistics and antidotes about this problem, she provided very little support for her allegations. For example, she stated as fact that 62% of all patent lawsuits initiated last year were by trolls. However, as we have noted often in this forum, these numbers are far from certain, and they (along with the reasons behind them) have been hotly contested by both sides of the issue. Moreover, Sen. Klobuchar cited as an example of abusive tactics the plight of a maker of medical devices for babies being targeted by the owner of a patent with a picture of a truck on the front. Even though no more detail was provided, it is presumed that she is referring to the case of Rydex Technologies suing Medtronic based on the sale of its insulin pumps, because allegedly the pumps used similar technology as that for monitoring how tractor trailer trucks are fueled. The technology apparently related to wirelessly transmitting information to a remote device about fluid delivery. Without speaking to the merits of that case (which apparently settled), this example betrays the danger in oversimplifying any dispute for dramatic effect. Sen. Klobuchar ended up disparaging all patent attorneys when she reported on a meeting with 30 or so patent lawyers, indicating sarcastically: "that was fun." However, instead of feeling slighted, this author felt as though she was speaking directly to him when she apologized for that comment to any "patent lawyers watching on C-Span." In all, the committee's comments regarding the need for caution was refreshing, especially in view of the speed with which the Innovation Act passed through the House. Nevertheless, stating an interest in narrowly tailoring legislation is one thing, but making it reality is another. As always, we will continue to monitor the progress of this bill, and any amendments that are made to it.

#### PC doesn’t solve

Shapiro 3/26 (Gary Shapiro, Shapiro is president and CEO of the Consumer Electronics Association (CEA)®, the U.S. trade association representing more than 2,000 consumer electronics companies, and author of the New York Times best-selling books, Ninja Innovation: The Ten Killer Strategies of the World's Most Successful Businesses and The Comeback: How Innovation Will Restore the American Dream, “Senate should finish off the patent trolls”, <http://thehill.com/blogs/congress-blog/technology/201701-senate-should-finish-off-the-patent-trolls>, March 26, 2014)

Recent strong action by Congress and the White House against patent trolls is a rare and welcome example of policymakers doing exactly what they were put in place to do: work in a serious, bipartisan way to address a grievous problem that is harming our economy and killing American jobs. Sadly, none of this fierce urgency seems to have impacted the Senate, which is treading water despite the introduction of several strong bills targeting patent abuse. Senate inaction is disturbing because there is no time to waste. American businesses are being swamped by bogus patent threats, which are increasing at an alarming rate. While I represent the innovation industry, this is not just about tech companies: restaurants, realtors, retailers, the gaming industry, and even coffee shop owners are now losing billions to patent extortionists. Of course, the brunt is borne by small businesses, which now make up 90 percent of patent troll victims. The trolls are crafty: it makes good sense to target startups and entrepreneurs without legal resources for a prolonged patent fight. In fact, one in three startups has been blindsided by patent litigation, and 40 percent of small technology companies say abusive patent suits have had a serious, negative impact on their businesses. One troll infamously demanded $1,000 per worker from small companies that use a basic document scanner feature. Another attacked small businesses like coffee shops that were using Wi-Fi routers. In 2011 alone, patent abusers raked in at least $29 billion on these types of threats, costing the U.S. economy $80 billion. If you are a troll, there is little downside: you face few costs or consequences for spamming the world with patent demands, even if the underlying claim is bogus. Essentially, this is an economic issue. Patent lawsuits are incredibly simple and inexpensive to bring, and extremely complex and costly to defend. Fighting a patent lawsuit can easily cost more than seven figures. No wonder so many victims are forced to “pay the toll to the troll” or simply shut their doors and go out of business. Fixing the problem requires changing the economic incentives and imposing a penalty on the trolls for their so-called “business model.” To truly free innovators and spark our economy, the system should follow the model of other countries and put the burden of frivolous lawsuits squarely on the shoulders of the trolls. That is why any Senate patent troll fix must include a fee shifting provision similar to the one found in the House bill. With this provision, if a troll brings a bogus lawsuit and loses, it could pay the winning party’s legal fees. Fee shifting gives defendants a chance to fight back against racketeers who capitalize on the outrageous expense of patent litigation to extort settlements. It does not disadvantage legitimate patent holders bringing actions to enforce their claims. Finally, it imposes a price tag on the patent trolls, which is important since the trolls overwhelmingly lose when their weak patents are actually litigated. A similarly important provision involves bonding – requiring patent trolls to put up some money at the outset of new litigation. Many trolls work through networks of dozens or even hundreds of thinly-capitalized shell companies. If the defendant manages to win a judgment against the troll, the troll simply declares bankruptcy and disappears, leaving the defendant empty-handed. A bonding provision would allow a court, if it suspects that a patent is weak, to require that plaintiff put aside money to cover the defendant's eventual legal fees. If the troll litigates and loses a bogus claim, it would be rightfully liable for the costs, and could no longer simply vanish into thin air. There is no silver bullet to the patent troll problem, but simple, common-sense reforms like these would go a long way to driving the trolls back under the bridge. Patent trolls are scaring off investors and killing innovation, putting a serious drag on our economy. This must end, for the sake of small businesses and the people they employ. The Senate must follow the president and Congress and enact solutions that drive at the heart of the problem, instead of tiptoeing around the edges. Let’s end the patent troll plague once and for all, and allow innovators to thrive.

#### Senate committee kills bill

Adweek 3/27 (Adweek, Online News, “Senate Patent Troll Bill Gets Delayed in Committee”, <http://www.adweek.com/news/technology/senate-patent-troll-bill-gets-delayed-committee-156572>, March 27, 2014)

Sen. Patrick Leahy The Senate's version of a bill to curb patent troll abuses suffered a slight setback Thursday when Sen. Patrick Leahy (D-Vt.), chairman of the judiciary committee, was forced to push back consideration of his bill to next week. Advocates for patent troll reform have been anxiously waiting for the Senate to catch up to the House, which easily passed a bill last year. Just last month, the White House urged the Senate to "finish the job." But a number of members on the Senate judiciary committee, including Sens. John Cornyn (R-Tex.), Orrin Hatch (R-Utah), and Chuck Schumer (D-N.Y.) pushed for more changes to Leahy's bill, effectively derailing Leahy's goal to move his bill out of committee as planned.

The rest of the uniqueness ev they read do not say that political capital is key to getting it done

It says Obama is pushing – and then it’ll pass

#### Won’t pass – committee opposition

Bachman 3/27

Katy, Washington Bureau Chief, “Senate Patent Troll Bill Gets Delayed in Committee”. Adweek Online. 3/27/24, <http://www.adweek.com/news/technology/senate-patent-troll-bill-gets-delayed-committee-156572>

Advocates for patent troll reform have been anxiously waiting for the Senate to catch up to the House, which [easily passed a bill last year](http://www.adweek.com/news/technology/bipartisan-patent-troll-bill-easily-passes-house-154318). Just last month, the White House [urged the Senate](http://www.adweek.com/news/technology/white-house-pushes-forward-combatting-patent-trolls-155843) to "[finish](http://www.adweek.com/news/technology/senate-patent-troll-bill-gets-delayed-committee-156572) the job." But a number of members on the Senate judiciary committee, including Sens. John Cornyn (R-Tex.), Orrin Hatch (R-Utah), and Chuck Schumer (D-N.Y.) pushed for more changes to Leahy's bill, effectively derailing Leahy's goal to move his bill out of committee as planned. "I don't think we should pass a bill if it doesn't change the system," said Schumer. "But at the same time, we have to have minority support. We have to get a bill done."

### 1AR – IMF Thumper

The date of the IMF cards

#### Obama back off of IMF reform triggers losers-lose

Deb Riechmann and Donna Cassata (writer for Nanaimo Daily News) March 27, 2014 “In show of solidarity with Obama, Congress backs bills to aid Ukraine, punish Russia” www.nanaimodailynews.com/news/in-show-of-solidarity-with-obama-congress-backs-bills-to-aid-ukraine-punish-russia-1.931430

The votes came as Obama wrapped up a European trip in which he enlisted the support of allies in challenging Russia's aggression. The rare congressional unity stood in sharp contrast to recent partisan divisions over the Ukraine package, which had been caught up in disputes over new tax regulations on groups claiming tax-exempt status and International Monetary Fund reforms.¶ In retreat two days ago, Senate Democrats backed down and stripped the IMF reform language from the bill, a defeat for the Obama administration, which had promoted the IMF provisions.

### Losers win

#### Principled loss even on unpopular issues is good politics- key to approval ratings

Davis, 11 -- special counsel to President Clinton

[Lanny, formerly served under the Clinton and Bush W. administrations, Washington attorney specializing in legal crisis management, "Column: Obama, be a sharp-elbowed centrist," USA Today, 8-17-11, www.usatoday.com/news/opinion/forum/2011-08-17-obama-leadership-economy\_n.htm, accessed 3-8-14]

Such bold and decisive moves by this president would be criticized as brash by some, reckless by others. But the American people would see the strength in a man standing up to the extremes of both parties to simply do what is best for this country. At a time when many Americans doubt the ability of the federal government to even function, **these optics matter greatly**. A decisive president — a leader leading — cannot be underestimated. Time to take a risk Thus, Obama can no longer afford, as has often been his custom, to wait for Congress to act and then step in as a final mediator. He needs to take the risk to put a stake in the ground and lead, if necessary to get out in front of congressional and party leadership, even of public opinion. He needs to simply do what he thinks is right. By doing so, President Obama can show that he represents all the American people and is willing to fight for the national interest, that he is willing to strive to be Teddy Roosevelt's "man in the arena … who at the best knows in the end the triumph of high achievement and who at the worse, if he fails, at least he fails while daring greatly." If anyone on the left or the right objects to Obama throwing a few elbows in the process, he can offer them simple advice, as he would in a basketball game: Get out of the way. That would be good politics for 2012. It would also be good for the nation.

#### AND- that turns the entirety of the DA --- Popularity is key to the agenda

Friedman, 8 -- Stratfor chief intelligence officer

[George, "Obama: First Moves," Stratfor, 2008, www.stratfor.com/weekly/20081124\_obama\_first\_moves?ip\_auth\_redirect=1, accessed 11-16-10)

Presidents are not as powerful as they are often imagined to be. Apart from institutional constraints, presidents must constantly deal with public opinion. **Congress is watching the polls**, as all of the representatives and a third of the senators will be running for re-election in two years. No matter how many Democrats are in Congress, their first loyalty is to their own careers, and collapsing public opinion polls for a Democratic president can destroy them. Knowing this, they have a strong incentive to oppose an unpopular president — even one from their own party — or they might be replaced with others who will oppose him. **If Obama wants to be powerful, he must keep Congress on his side, and that means he must keep his numbers up**. He is undoubtedly getting the honeymoon bounce now. He needs to hold that.