## T – Regulation

### 1NC

#### Regulations must be prescribed by Agencies

**GEPA 10**

[Authors names redacted, however one is a Specialist in Education Policy and the other is a Legislative Attorney; March 18, 2010; Congressional Research Service, “General Education Provisions Act (GEPA): Overview and Issues,” https://www.everycrsreport.com/reports/R41119.html; Section 437. Regulations; accessed 7/2/17; AW]

**ED = Department of Education**

For the purposes of this section, a regulation is defined as "any generally applicable rule, regulation, guideline, interpretation, or other requirement" that is prescribed by the Secretary or ED and that is legally binding with respect to an applicable program. Regulations must contain citations to the particular section of statutory law or other legal authority upon which relevant provisions are based, and all regulations must be uniformly applied and enforced in all 50 states. Although the Administrative Procedure Act, which establishes the process that agencies must follow when enacting regulations, contains an exemption for matters pertaining to public property, loans, grants, and benefits,14 GEPA specifies that this exemption shall apply only to regulations that govern the first grant competition under a new or substantially revised program or if the Secretary determines that the requirements of this subsection will cause "extreme hardship" to the program beneficiaries affected by the regulations.

#### Violation – they fiat the court, which is not an agency.

#### Voting issue – to protect limits and ground – there’s a finite base of literature defending agency - forcing specificity encourages rigorous solvency debates – the alternative is any governmental mechanism

### 2NC Violation Evidence

#### “Regulations” are issued by regulatory agencies under executive and legislative jurisdiction

**Ellig, Senior Research Fellow at the Mercatus Center at George Mason University, 2010**

[Jerry, 2010, Pepperdine Policy Review, “The Future of Regulation ,” http://publicpolicy.pepperdine.edu/academics/research/policy-review/2010v3/content/the-future-of-regulation.pdf, Pages: 68-69, Volume: 3, Article: 7, Accessed: 7/2/17, MWM]

Many times in casual conversation the term ‘regulation’ is used to refer to any restriction imposed by the government that defines certain actions as legal or illegal, but the definition is actually more specific. Regulation occurs when a legislature delegates some of its lawmaking power to a regulatory agency, which then issues detailed rules, the purpose of which is to carry out the intention of the legislature. Regulations are issued by a regulatory agency, with the intention of filling in the gaps in legislation. In the case of federal regulation, it fills in the gaps left by the U.S. Congress. Two kinds of regulatory agencies exist at the federal level in the United States. Many regulatory agencies are actually part of the executive branch and their top officials are hired and can be fired by the President. These include agencies, such as the Environmental Protection Agency, the various agencies that regulate transportation within the Department of Transportation, and any position within a Cabinet department. All these regulatory agencies are directly responsible to the President There are also independent regulatory agencies, that is, agencies that are independent of the President, but not independent of Congress. These agencies usually have the word “commission” in their title. The President usually appoints the commissioners, who run these agencies for a fixed term, with the consent of the Senate. The President cannot fire them, and as a result, these agencies tend to function relatively independently of the executive branch. They do not necessarily act independently of Congress, since Congress ultimately approves the budget and writes the laws that the agencies are supposed to implement. Examples of this type of agency are the FCC, Consumer Product Safety Commission, Security and Exchange Commission, and Commodity Futures Trading Commission. The Federal Reserve is also considered an independent regulatory agency.

#### Legal definitions exclude the courts---regulation is done by agencies, not courts---and they are prophylactic not remedial

Coglianese and. Kagan, University of Pennsylvania law ana political science professor and UC berkeley Political Science and Law Professor, 2007

[Cary and Robert , Cary Coglianese is also director of the Penn Program on Regulation, 6/8/2007, Faculty Scholarship. Paper 240, “Regulation and Regulatory Processes”, http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1239&context=faculty\_scholarship, p. xxvii, accessed 7/2/2017, RV]

Even with the broad methodological and substantive diversity reflected in the essays reproduced in this volume, those that we have selected still do not adequately represent the entire range of social scientific approaches to the study of regulation, or the entire range of social control processes that might be considered spheres of ‘regulation’. All branches of law – criminal law, contract law, tort law, traffic law and so on – have some regulatory function, for they are designed to deter behaviours that have been politically defined as harmful or antisocial, and thereby to encourage socially responsible behaviour. But in conventional legal discourse, which we used in our selection criteria for this volume, the term ‘regulation’ has been reserved for bodies of law that are elaborated through the promulgation of specialized rules, enforced by government agencies and aimed at the behaviour of business firms, other large organizations, and professional service providers. Whereas criminal and civil law typically are enforced via prosecutions and lawsuits against alleged violators, brought after a harmful act or omission has occurred, regulation is primarily prophylactic in purpose, designed to prevent harmful actions before they occur. Furthermore, unlike civil law enforcement, where the initial costs are borne by injured parties who must gather evidence and hire lawyers, in regulatory programmes (as in the enforcement of criminal law by police departments) the government shoulders the cost of investigation and prosecution of complaints.

## States CP

### 1NC

#### The state courts of the 50 states of the United States of America should establish a right to education on the basis of adequacy instead of equality

#### The CP resolves prior issues with litigation at the state level and leads to state reform that solves education gaps.

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 17-23, DL)

Plaintiffs based their equal protection arguments either on the idea that public school education constitutes a fundamental right or that district wealth constitutes a suspect classification.' 2 Alternatively, plaintiffs argued that neither an interest in local control nor any other interest constituted a rational basis for a property wealth based system.12 9

In these cases, state Supreme Courts generally utilized an analytical scheme similar to the one used in federal equal protection cases." 3 Where racial classifications were used or where poverty was treated as a suspect classification, strict scrutiny applied and the state generally lost. Where education was treated as a fundamental right,'3' strict scrutiny applied and the state generally lost. Where no fundamental interests or suspect classifications were implicated, the state merely had to demonstrate that the policy was rationally related to a legitimate state objective.' 32 The asserted interest was generally local control 33 and the states usually won (but not always).134 Under this constellation of theories, plaintiffs prevailed about half the time 3 " but with decreasing success over time.' 36

The equality regime was flawed on a number of levels. Professor Enrich argues that equalization threatens to demand too much and to overwhelm other important concerns. 37 Defendants fought equalization schemes in part because of their zero sum aspects-more money for poor schools often meant less money for rich schools or higher taxes in rich communities.""' Even equity's non-zero sum aspects are threatening to parents in wealthy school districts. To the extent that unequal schools give wealthy children a higher likelihood of access to exclusive colleges and concomitant post-graduate economic opportunities, the wealthy have a vested stake in not merely their schools' excellence, but also their superiority.139

Another problem is definitional. Equality has enormous appeal as a rhetorical concept, but its actual meaning is murky in the educational context. 14 The equity of a school finance system can be measured in at least three ways: (1) horizontal equity; (2) vertical equity; and (3) fiscal neutrality. 14 ' Horizontal equity involves a comparison of the per pupil expenditures of the wealthiest districts with the poorest districts. Reform efforts that focus on horizontal equity aim to narrow revenue gaps to eliminate wealth-based allocations of benefits.13 Vertical equity analysis considers the costs associated with educating various kinds of students (for example, special education students, bilingual education students, and gifted students).4 Fiscal neutrality seeks to equalize tax efforts and burdens across school districts.' 4

A central question is how to determine what should be equalized. Possibilities include: (1) disparities in capacity to fund education;' 46 (2) disparities in actual funding provided for schools;'4 7 (3) disparities in caliber of educational services (i.e., inputs);"" or (4) disparities in outcomes.' 49 If the legislature's goal is to advance equity (however defined), there are at least four strategies it can pursue: (1) implementing a foundation program"s to ensure minimum per student expenditures ("leveling up");' (2) spending caps 1s2 and recapture provisions'" that limit the spending of the richest districts ("leveling down"); 15 4 consolidating tax bases and school districts;' and (4) a variety of other strategies to equalize tax bases.15 6

In practice, whatever equalization definition or strategy is adopted, the equity scheme achieved through education finance litigation does not actually eliminate funding disparities. 7 Equality-based reform often fails to account for differences in the costs of teaching poorer children that are associated with higher teaching costs, security costs, repairs, health problems, disabilities, hunger, family disruption, and violence.1 8 Unfunded federal mandates also have a disparate effect on students in poor districts who do not need special education or bilingual education services." 159

Legislatures have had a very difficult time implementing "equity" in a way that actually improves educational opportunity for students in under-performing schools. Even truly equal funding will often fail to provide equal opportunities.16 0 Increases in funding may not immediately overcome the cumulative effect of years of inadequate education. 6 Additionally, as discussed infra Part VI,16' "[t]he effects of racial and socioeconomic isolation ... cannot be adequately addressed by school finance reform, because students in schools with high concentrations of poverty need more than increased funding to improve their achievement.''163 Equality-based theories may fail to distinguish school finance164 from other important variables that influence educational opportunity.

As Professor Enrich explains:

In short, equalization of outcomes, or even of actual services, has proven too ambitious a standard in the political process. And yet, mere equalization of tax capacity, or even the significant progress some states have achieved towards equalization of school budgets, has proven insufficient to put the educational opportunities of disadvantaged children on a 165 par with those of their better-off peers.

Another major problem is that equality-based reform sometimes leads to a leveling down of expenditures. It is possible to create equal situations that are inadequate; this is essentially what happened in California after plaintiffs won a huge victory in Serrano v. Priest.166 California's per pupil expenditures were near the national average in 1976-77, but only thirty-eighth in 1999-2000.167

Finally, after some initial successes, equity was not a particularly successful strategy for plaintiffs, especially in the 1980s. From 1980 on, plaintiffs using equity-based strategies lost in Georgia, 68 New York,' 69 Colorado, Maryland, Oklahoma, 7 2 North Carolina,17 and South Carolina'74 and were only successful in Wyoming and Arkansas.6

3. The Third Wave: State "Adequacy" Suits

Many of the methodological and practical shortcomings of the equity theory can be overcome through the use of an adequacy theory. Adequacy emerged as the dominant theory utilized by plaintiffs during the third wave of education finance reform which began in the late 1980s with plaintiffs' victories in Montana, Kentucky, and Texas. 177 Third wave plaintiffs emphasize adequacy of educational opportunity rather than equality of educational expenditures. 7 They allege that state constitutions prohibit disparities in the quality of education from one district to another regardless of funding levels. Rather than relying primarily on state equal protection clauses, the plaintiffs focus on state education clauses.' 79 At least in theory, this eliminates the slippery slope problem inherent in the earlier equal protection claims because there is little danger of spillover into other areas of government services. 180 According to Professor Thro, state courts responded to this shift in strategy by imposing more aggressive judicial remedies where constitutional violations were demonstrated.18'

Adequacy plaintiffs contend that students are constitutionally entitled to a minimum quality of education. The dispute becomes one about what level of quality is required and what resources are necessary to acquire it. Rather than demanding that every child receive the same dollar amount of educational expenditures, adequacy plaintiffs contend that a certain amount of money may be required to bring the lowest-performing school districts up to the minimum level of quality. Theoretically, then, a school that spent very little money but provided an adequate education would not give rise to a claim (even if other districts spent much more), but a poorly performing school district might give rise to a claim, even if its per pupil expenditures were high.

In determining the level of the state's obligation, it may matter how the state's education clause is phrased. Some state constitutions create an entitlement only to free public schools, while others demand a certain level of quality. Gershon Ratner has divided the state education clauses into four categories, 82 in ascending order of constitutional obligation: (1) committing states to educating their children in very general language; (2) imposing greater obligations by emphasizing the quality of education that must be provided; (3) adding language and preambles to strengthen the legislative duty; and (4) granting the highest level of educational opportunity, including specific duties and using terms like "the paramount duty of the state., 83 There is some debate over whether in practice there is a positive correlation between stronger constitutional language and plaintiff victories in school finance litigation suits.

Building from the language of the education clause, judicial precedent, and other factors, courts must determine what quality standard the state constitution requires. Professor Thro has argued that the outcome of third wave cases is largely determined by the quality standard that the court sets. Where the required quality standard is high, the system fails and where it is low, the system passes."' Professor Thro argues that courts do not use principled criteria for determining the quality standard, but rather impose the value judgment of a majority of their members.' 6

### Solvency – Genric

#### states solve best

Bauries, University of Kentucky Law Professor, 14

[Scott, Summer 2014, Georgia Law Review, “A Common Law Constitutionalism for the Right to Education,” Volume: 48, Number 4, page 1016-1017, DL]

VII. CONCLUSION

This Article takes no position on whether it would be normatively or interpretively correct for any particular state to interpret its own state constitution's education clause to provide for individual rights. That question must be addressed state by state as each case presents it, and evaluated based on the text, history, and structure of each state's constitution. Rather, the point of this Article has been to show that no state has enforced such an interpretation, that this is due to path dependence on federal systemic institutional reform litigation as a paradigm, and that another approach is possible.

It may be that courts in most states, once they consider the implications of an individual right to adequate education, will reject such an interpretation. It may also be that a few states will adopt such an interpretation and later find it unworkable. If so, perhaps educational adequacy litigation will revert back to the systemic variety, or perhaps it will disappear into the political process. But this Article has provided a theoretical and operational grounding on which state courts may, for the first time, actually consider and resolve the question of whether education is actually a positive individual constitutional right.

We should bring the litigation of rights to education out of the shadow of federal institutional reform litigation and refocus it on the individual rights holders under each state's constitution. By doing so, we can diffuse most-perhaps all-of the intractable inter-branch conflicts that the current style of school finance adequacy litigation creates. We likely can also achieve more certain and more stable systemic reform over time. Most importantly, though, by focusing litigation of education rights on those who actually possess those rights, we will, for the first time in education clause litigation, have the ability to link these rights with individual remedies. A common law constitutionalism is the key to making this shift, and to making the right to education a reality.

#### states solve – constitutional guarantees through tenth amendment prove

Urchick, Administrative Law Attorney-Advisor, 7

(Krysten, Spring 2007, Michigan State University College of Law, “U.S. Education Law: Is the Right to Education in the U.S. in compliance with International Human Rights Standards?”, <http://www.law.msu.edu/king/2007/Urchick.pdf>, p. 10, DL)

Despite the reluctance of the Supreme Court to recognize a positive fundamental right to education, the purview of the Tenth Amendment has entrusted the right to education in the U.S. to the states. “With regard to education, states not only control access to education but also have the responsibility to provide every child with a free, appropriate education.” 59 “Most state constitutions do put an affirmative duty on the state to provide education.”60 Not all state courts have recognized the right to education as fundamental but each state has recognized the importance to the citizenry of education.61 For example, some states use strict scrutiny to determine if the right to education in that particular state is being impeded while others view the right as substantial and use an intermediate scrutiny test to determine if the right to education is being impeded.62 Both of these levels of scrutiny, as mentioned earlier, are more stringent and provide more protection to the right to education than that provided by the Supreme Court’s use of rational basis, or the lowest level of scrutiny, to examine the right to education.63 Therefore, under state law, citizens are provided a higher obligation to be afforded the right to education and in some states, guaranteed the positive right to education.64 In addition, the Supreme Court, in Plyler, recognized that if a state undertakes the obligation to provide free public education, it cannot rationally deny a child from receiving it.65 Based on the state constitutions and state courts, the fundamental right to education would appear to be more welcome by them than by the Supreme Court.66 “All fifty states guarantee their citizens the right to a public education.”67 Furthermore, all states have passed laws requiring children to attend school.68 These compulsory attendance laws began in Massachusetts in 1852 until all states had passed these laws in the early 1900’s.69 Compulsory education laws are added evidence that states are committed to advancing education and look positively on its advancement. Currently, the federal courts do not recognize the positive right to education for its citizens. However, it is clear that the federal government and courts place high importance on education in the U.S. and recent emerging statues like NCLB provide evidence which could push the U.S. towards recognizing a federal fundamental positive right to education. As for now, most citizens will have to depend on the state constitutional and statutory grants to gain access to education.

#### **state courts create a better framework – solves state diversity**

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 2, DL)

Forty-eight years after Brown v. Board of Education of Topeka2 and twenty-nine years after San Antonio Independent School District v. Rodriguez,3 American schools remain racially separate and radically unequal in both per pupil expenditures and student performance. In spite of efforts to equalize per pupil spending through state aid formulas, significant disparities exist within most states and among states.4 Although de jure school segregation is illegal, de facto racial segregation actually increased during the 1990s.s In 1998, 70% of African-American children and more than one third of Latino children attended predominantly minority schools. 6

Our legal regime underlies these shameful inequalities and offers great promise for remedying them. Plaintiffs in many states have convinced state courts to declare that state legislatures have failed in their state constitutional obligations to distribute educational resources equally or to provide meaningfully adequate educational opportunities to all students. Sadly, even where legislatures have diligently and swiftly acted to implement reform efforts, courtroom victories have often not translated into success in the classroom for children in under-resourced and underperforming schools.

Applying the lessons of the past five decades of education reform litigation, this Article seeks to sketch an appropriate judicial role in the remedial phase of state constitutional litigation. By ensuring the proper roles for a broad array of local and state actors, courts can create a framework for education reform that maximizes the possibility that successful litigation efforts will eventually lead to adequate educational opportunities for all children.

### Fed Obstacles Bad

#### state adequacy litigation solves achievement for segregation – federal obstacles kill solvency

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 25-27, DL)

C.Adequacy and Race

Efforts to remedy racial segregation have historically been litigated separately from school finance reform and the two fields of law fit together awkwardly. Professor James Ryan makes a powerful argument that education finance reform scholars and litigators have historically failed to pay sufficient attention to the potential relationship between school finance reform and desegregation.2 3 This Article argues that the adequacy approach offers the theoretical flexibility necessary to accommodate core concerns of both school finance and racial segregation cases. Indeed, some scholars and courts seem to be moving in the direction of a more raceconscious approach to school finance reform.0 4

Racial segregation has a demonstrably adverse effect on educational opportunity and on the whole, racial integration improves educational outcomes for most students.2 6 Historical data suggest a correlation between racial integration and improved academic performance of minority students. Professor Orfield demonstrates that the period of desegregation corresponded with a dramatic narrowing of the achievement gap in test scores between whites and African Americans; likewise, he found that 207 during the period of resegregation, the gap widened.. A recent study of Cambridge, Massachusetts school children suggests positive educational effects of racial and ethnic integration. Likewise, a longitudinal study of students at the University of Michigan showed that by exposing students to multiple perspectives, diversity of racial backgrounds helps students to think critically and to understand more complex issues. 2°9 Racial integration in schools benefits students in terms of college attendance rates, employment, and living in integrated settings as adults."0 Socioeconomic diversity also seems to benefit poorer students both academically and socially.2"

This Article argues that a workable constitutional definition of adequacy should include the social and educational benefits of integrated schools.2 2 After a series of dramatic victories during the Warren Court era, plaintiffs have recently faced seemingly insuperable obstacles to desegregating schools through the federal courts. State adequacy litigation rather than traditional federal desegregation litigation offers the most promising avenue for remedying the continuing racial segregation in our school systems.

#### **turn – federal equity law causes increased segregation – the perm fails – states alone solves – Connecticut proves**

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 30-31, DL)

Plaintiffs' recent failure to remedy racial segregation through federal equal protection litigation is particularly troubling given the recent trend towards racial resegregation.23 7 Today, our nation and particularly our public238 education system remain racially separate and radically unequal. Although de jure racial segregation of schools is illegal, defacto segregation in fact increased in the 1990s. 239 In the 1998 academic year, 70% of African-American children attended predominantly minority schools, up from 66% in 1991 and 63% in 1980.240 In 1968, about 20% of Latino students attended largely segregated schools. In 1998, that number has grown to more than one-third of students.241 In New York, 60.3% of African-American students attended schools that were 90-100% minority in 1998; only 13.8% of African Americans attended predominantly White schools.242 Racial segregation produces schools that are deeply unequal in 243 ways that go beyond unequal budgets.

The resegregation of public schools came in spite of-not because of-popular opinion.2 " Gallup Poll data show that a large percentage of Americans want integrated schools and believe that integrated schools are good for African Americans. 2 4' Half of those polled also believed racial integration improved the education of whites.2 6 In fact, 59% of Americans believe more needs to be done to improve racial integration in schools.247

Equity strategies of school finance reform at best would accomplish Plessy's goal of a separate but equal America. Though even this deeply flawed goal remains elusive, more ambitious reform measures must seek to fulfill Brown's promise as well.

State litigation under an adequacy theory-rather than federal litigation or state equity litigation-offers the most promise for desegregating public schools. After Keyes v. School District No. 1,24" a federal constitutional challenge would probably not lead to an order desegregating school systems that were segregated defacto because of housing patterns rather than intentional state actions. However, it may sometimes be possible to find the judicial and political will to address racial segregation directly through the state courts

Recently, a progressive decision in Connecticut took seriously the idea that integration was an important component of an adequate education. In Sheff v. O'Neill, 49 minority school children alleged that de facto racial segregation deprived them of an adequate education.5 0 African Americans and Latinos constituted 25.7% of the public school population in Connecticut, but more than 98% of certain school districts in Hartford.2 1' The Connecticut Supreme Court found that the Connecticut constitution imposed on the legislature an affirmative obligation to provide the minority children with an education substantially equal to that enjoyed by non-minority children.2 52 This ruling was made possible in part by a unique clause in the Connecticut constitution that "[n]o person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability. 2 5 3 The court did not require that the discrimination result from intentional government action and held that failure to remedy was sufficient to create a justiciable issue.5 4 The Sheff court proclaimed access to an un-segregated educational environment was a significant component of equal educational 255 opportunity.

In response to the Connecticut Supreme Court's ruling, the state legislature passed a law that sought to reduce racial segregation in schools. The Connecticut state legislature required the state board of education to develop a five-year implementation plan, and allowed the state to sue to enforce the law.5 6 School districts that fail to meet the law's objectives can 257 lose state funding. A subsequent suit claiming that racial segregation in the Hartford schools had in fact increased between 1996 and 1999 was 2581 dismissed as premature.

### state courts – at: standards

#### courts solve standards – interstate administration communication and committees check

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 47-50, DL)

MAKE STATES ACCOUNTABLE FOR OUTCOMES

"Standards-based reform" has become a central component of the federal education policy and the education policy of most states.36' The vices and virtues of high stakes testing have been vigorously debated3 2 and states such as Massachusetts that have linked education reform efforts to high-stakes testing may function as laboratories for what works and what does not.363 Likewise, in determining that educational outcomes in NewYork City were unconstitutionally inadequate, Justice DeGrasse took in account students' performance on standardized tests,364 graduation/dropout rates,365 nature of the degrees received, and performance of those who pursued higher education.

Determining what outcome-based measures to use to evaluate outcomes presents an enormous challenge to courts both in the goal-setting phase and in implementation phase. This may be an area where courts should require the ad hoc committee to submit a recommendation for judicial approval. Additionally, given the dynamic nature of education reform, some flexibility should be retained for judicial modification of the outcome measurement tools based on new information, other states' experiences, or an emerging consensus in the education profession.

A. Environmental Law as a Model for Goal-Setting and Coordinated Implementation

Once the courts, the legislature, the state Department of Education, and the ad hoc committee have developed an approved blueprint, a procedure should be developed to make state legislatures ultimately accountable for outcomes. One way of implementing a dynamic, outcome-oriented approach to education reform where courts act as goal-setters but encourage broad-based and highly localized participation in implementation draws on two areas of environmental law. In the area of criteria pollutants,366 the Clean Air Act367 combines two distinctive governmental roles: federal standard-setting and state implementation. The federal government sets the ends and the states choose the means. First, the Environmental Protection Agency ("EPA") defines a certain number of pollutants it wants to control and certain goals for how much of each a state can have. These goals are called National Ambient Air Quality Standards ("NAAQS") .368 Every state must submit a state implementation plan ("SIP") to the EPA outlining its plan for meeting (or exceeding) these goals.369 It can meet the goals in whatever way it chooses, and the EPA cannot order a state to choose one feasible plan over another.370 If a state fails to submit a SIP or submits a SIP that is inadequate, it becomes subject to sanctions.3 1 After two years, if a state has failed to win EPA approval for its SIP, the EPA must impose a federal implementation plan ("FIP").37 ' The EPA can also request a SIP revision if an existing plan is "substantially inadequate to attain or maintain the relevant [NAAQS]" or •373 meet other requirements.

Superimposed on this model is another structure that classifies parts of the country that continue to exceed the NAAQS as nonattainment areas and imposes substantial additional conditions on polluting activities in order to move them into compliance.374 In contrast, areas that have air quality better than the NAAQS are classified according to a "Prevention 315 of Significant Deterioration" program.

The analogy is somewhat loose, but this Article proposes a framework for school finance reform that follows along roughly the same lines with minor modifications. As discussed above, courts would be the goal-setters, defining the contours of the constitutional requirement-based on inputs and outcomes-and monitoring the state legislatures' efforts in meeting these requirements. After the court has defined the constitutional requirement, the ad hoc committee would be convened to lay out the blueprint for reform. Once the blueprint has been approved by the court, the state legislature should pass legislation designed to implement the plan.

The ad hoc committee should participate alongside the state Department of Education to oversee the implementation of the legislative design. The agency would retain control of the process but would actively solicit feedback from other members of the committee. Each school district would look at its individual needs and obstacles and would submit a district implementation plan annually to the state Department of Education. From the start of the reform process, school districts should be divided between attainment areas and non-attainment areas on the basis of whether a certain percentage of the students are meeting the outcome-based goals over time.3 1 6 For the reasons outlined in Sheff, districts with high degrees of racial segregation should be prima facie considered to be in non-attainment if the constitutional definition of adequacy includes racial integration. The state's ability to provide an adequate education to children in nonattainment areas would be scrutinized more closely than its efforts in historically affluent or high-performing schools-though these schools would not be allowed to deteriorate significantly.

In "attainment areas," districts would still be required to meet the input minima (i.e., teacher training requirements, maximum class sizes, adequacy of physical infrastructure, basic instrumentalities of learning, etc.) and would be required to prevent significant deterioration in outcome measures.

In "non-attainment" areas, the state legislature and the ad hoc committee would work closely with the school districts to create a district implementation plan to meet the outcome-based goals. The same input-based goals should serve as a floor for the non-attainment districts and the state would be required to ensure that the funding was available to purchase these inputs at their local market prices. On top of this input-based floor, there should be a constitutional requirement that the outcome-based goals be met within a certain timeframe. A funding structure should be set up to give non-attainment districts additional assistance in meeting the output-based goals. This implementation plan should focus on the best judgment of the school district and the state as to what measures are necessary to meet the output-based goals.

### state courts – middle-income

#### distribution of middle-income students directly correlate to resolving racial achievement – data proves

Black, Howard University Law Associate Professor and Education Rights Center Director, 12

(Derek, February 21, 2012, Boston College Law Review, “Middle Income Peers as Educational Resources and the Constitutional Right to Equal Access,” Volume: 53, Number 373, p. 437, DL)

In summary, this Article’s study of ten states revealed reoccurring instances of racially inequitable access to middle-income peers. In some instances, the inequitable access was so extensive that it amounted to white students attending predominantly middle-income schools and minorities attending predominantly poor schools. In most other instances, the inequity was still large enough to expose white and minority students to significantly different peer environments. This inequity is not inevitable, but rather is likely a result of deliberate school assignment policies, given that a substantial portion of districts in each state represent the opposite paradigm and provide minorities and whites equal access to middle-income peers. Although a more sophisticated analysis would be necessary to specifically identify the cause, the varying levels of inequity in access also coincided with varying racial achievement gaps. Consistent with other social science studies, this Article’s study found that in all states but one the largest achievement gaps exist in districts that provide the least equitable access to middle-income peers, and the size of the achievement gap falls as access becomes more equitable. Equal access alone does not coincide with the elimination of the achievement gap, but it coincides with drastic reductions in the gap. The achievement gap dropped by approximately fifty percent or more in seven of the eleven states.

#### state court distribution of middle-income students solves their defense and provides best inequality mitigation – any other combination ruins effectiveness

Black, Howard University Law Associate Professor and Education Rights Center Director, 12

(Derek, February 21, 2012, Boston College Law Review, “Middle Income Peers as Educational Resources and the Constitutional Right to Equal Access,” Volume: 53, Number 373, p. 437-439, DL)

Conclusion

Efforts to promote racial and socioeconomic equity through student assignments have largely come to an end in federal court and only amounted to a few—albeit important—cases in state courts. The problems in federal court are tied to relatively well-settled negative precedent, but the same is not true in regard to state claims. The failure of a movement to emerge in state court may be more the result of perception and strategy than doctrine and reality. Insofar as advocates and theorists have sought to use state constitutions as a way to avoid federal doctrinal problems or simply replicate federal claims in state court under a new name, state-based theories of integration may confront the same political and practical limitations they would in federal court. Thus, although the theory of these integration claims may be valid in some states, it is no surprise that most advocates and the few courts that have heard the cases have been tepid.

A halting past, however, does not foreclose the future of state constitutions as an engine of racial equity in student assignments. Rather, it highlights the need for claims that are distinct from traditional integration and conceptually grounded in school finance precedent. This Article’s theory of equitable access to middle-income peers entails both. It is distinct in that equitable access to middle-income peers focuses on segregation within districts rather than between them and does not necessarily challenge historical district boundaries. Thus, it avoids many of the political and administrative complications that have undermined prior advocacy. Also, the focus on school-level segregation provides factually distinct circumstances. Local assignment policies fluctuate over time and involve conscious decisions, whereas state-level policy regarding districts is more static.302 A more compelling set of facts naturally arises with the former.

A theory of equal access to middle-income peers proceeds at the district level, however, not simply to distinguish itself; it proceeds at the district level because it is there that it finds analytical and precedential strength. Courts may be quick to excuse inequalities that are beyond the control of districts,303 but they are far less willing to overlook those inequalities within districts’ control. Some inequalities that stem from the fact that a district is predominantly poor or minority may be largely beyond the control of local school districts. But other inequalities within a district are often a result of district and school policies and, thus, are neither natural nor inevitable. Access to middle-income peers falls in this latter category of inequalities that are within districts’ control.

Once one understands that middle-income students are one of the many resources districts distribute, the equitable and strategic distribution of resources that school finance precedent has forced on schools and districts is directly implicated. Of course, no court has yet explicitly conceptualized middle-income students as resources, but a review of social science literature, as well as the differing academic achievement that accompanies exposure to middle-income peers, proves the concept to be true. Courts already intuit this notion, heavily scrutinizing and condemning the prevailing poor performance of districts with concentrated poverty. And parents already act on it, often flocking to schools based more on the socioeconomic status of the students who attend them than the characteristics of the school facility or the particular staff who teach in them. Once explicit legal analysis catches up to reality and intuition, state constitutional education precedent will squarely apply.

This final step cannot occur soon enough. Far too many districts are depriving minority students of equal access to a key educational resource that will significantly affect their academic achievement. No silver bullets exist in education and much about student achievement is beyond the control of states, districts, and schools. Thus, simply providing equal access will not obliterate these outside factors. But equal access can significantly mitigate their effects. No less than basic equality principles and state constitutional precedent demand as much.

### state courts – kentucky modeling

#### kentucky gets modeled – either that solves or failure is inevitable

Palfrey, Court of Appeals Law Clerk, 2

(Quentin, Fall 2002, Michigan Journal of Race & Law, “THE STATE JUDICIARY'S ROLE IN FULFILLING BROWN'S PROMISE,” Volume: 8, Number 1, p. 23-24, DL)

Many of the most progressive third wave courts follow the lead set by the Kentucky Supreme Court in Rose v. Council for Better Education.1 87 The Rose court held that education was a fundamental right'88 and that Kentucky schools were not "efficient."'89 The decision called for a fundamental overhaul of the public elementary and secondary school system and specified detailed standards necessary to any "efficient" system of education.' 90 The Rose court identified seven capabilities that an educated child must possess:

(i) sufficient oral and written communications skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historic heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient level of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. 191

The Kentucky legislature responded rapidly by enacting the Kentucky Education Reform Act ("KERA"). '92 Reform efforts included a more equitable division of funding among school districts, ungraded primary schools, school-based decision-making, preschool programs, extended school services, a reorganized state Department of Education, and a testing system. 1 3 Results from 1993-1997 were promising, but on the whole the performance gap between advantaged and disadvantaged schools has widened dramatically since KERA's passage.19 4 The Kentucky data suggest that even when courts, legislatures, and other actors work together, school reform efforts face daunting challenges in helping children overcome generations of poverty and underperformance.19

These results are sobering because in many ways Kentucky is a model for reform that other states have sought to emulate. By specifically defining the contours of the constitutional entitlement, the Kentucky Supreme Court created a structure for the legislature to follow and political cover for the painful budgetary decisions that would be required to enact the needed reforms. Kentucky's experience demonstrates that under certain circumstances, courts and legislatures can work together as partners in education reform. On the other hand, as discussed infra Part VI, sometimes effective reforms may require attention to factors outside of the K-12 system that were not fully incorporated into KERA.

### state courts – rodriguez

#### state courts first - empirical analysis proves federalization solvency is minimal – try or die for solvency

Tractenberg, California Public Policy Institute Visiting Fellow, 6

(Paul, April 27, 2006, The Rethinking Rodriguez Symposium, “THE REFUSAL TO “FEDERALIZE” THE QUEST FOR EQUAL EDUCATIONAL OPPORTUNITY, THE ROLE OF STATE COURTS AND THE IMPACT OF DIFFERENT STATE CONSTITUTIONAL THEORIES: A TALE OF TWO STATES”, https://www.law.berkeley.edu/files/tranctenberg\_paper.pdf, p. 34-35, DL)

Might we fruitfully “Rethink Rodriguez” in a different sense, though? Instead of expressing sour grapes about how we could have won in Rodriguez if only…, or instead of speculating about how the world would have been different if the Court’s 5-4 split had been in the opposite direction, or even instead of proposing doctrinal refinements in the original approach that might produce a different result if Rodriguez were re-litigated today, perhaps we should rethink Rodriguez in a more profound way.

Is there a way, however dramatic a departure it might be from Rodriguez, to fashion a single federal approach, judicial or legislative, that could successfully address the national problem of educational inequalities? Personally, I remain ready to be persuaded, but dubious.

Tempting as it might be to hope that a single solution could be found to complex nationwide education problems, especially in an increasingly global world, our experience over the decades with school desegregation should have warned us of the disappointments and dangers lurking there. The Rodriguez decision might have been a blessing in disguise by forcing state courts into the breach. NCLB’s effort to federalize the elimination of the achievement gap might lure us away from, not toward, real and abiding solutions. Like Brown v. Board of Education, NCLB might play a more positive role in highlighting a profound national educational failing than in directly curing it. Perhaps the framers had it right when they left the primary responsibility for education to the states.

## Court Legitimacy DA

### 1NC

#### Establishing a right to education would be a huge, controversial judicial overreach, destroying court legitimacy.

**Lindseth et. al, all are Eversheds Sutherland (US) Law firm attorneys, 2017**

[Alfred A. Lindseth, Lee A. Peifer, Rocco E. Testani, Spring 2017, VOL. 17, NO.2, EducationNext, “Federal Courts Can’t Solve Our Education Ills,” <http://educationnext.org/federal-courts-cant-solve-our-education-ills-forum-san-antonio-rodriguez/>, Accessed 6.28.17 CT @ GDI]

Creating a federal right to education would also force federal courts to take on issues they are not well-equipped to address. School funding cases are complicated enough for state courts, even with state constitutional education clauses to interpret. Indeed, because of differing language in the various state constitutions, state courts have reached a variety of conclusions about their ability to adjudicate claims involving the “equity” or “adequacy” of public school systems. If federal courts undertook a similar journey unmoored from any constitutional text, “it would be difficult,” as the Supreme Court cautioned in Rodriguez, “**to imagine a case having a greater potential impact on our federal system.”** The Rodriguez court further recognized that efforts to make education a federal right overlook “persistent and difficult questions of educational policy, another area in which [the federal courts’] lack of specialized knowledge and experience counsels against premature interference with the informed judgments made at the state and local levels.” And despite 40 years of intervening social-science research, the academic and policy debates described in Rodriguez continue today. Compare the Rodriguez court’s references to a questionable “correlation between educational expenditures and the quality of education” with the following discussion by the Supreme Court of Texas in a 2016 adequacy decision: Some amici curiae have filed Brandeis briefs citing recent studies going both ways on the issue of whether more spending means a better education. . . . Courts should not sit as a super-legislature. Nor should they assume the role of super-laboratory. They are not equipped to resolve intractable disagreements on fundamental questions in the social sciences. Arthur Miller may have referred to a trial as the crucible, but we doubt he saw it as the best place for reducing scientific truth when the scientific community itself has reached an impasse.

#### Court legitimacy key to check Trump

**Beinart, professor of journalism and political science at the City University of New York, 16**

(Peter, June 1, 2016, The Atlantic, “Trump Takes Aim at the Independent Judiciary,” <https://www.theatlantic.com/politics/archive/2016/06/the-gop-front-runner-takes-aim-at-the-independent-judiciary/485087/>, accessed 7/2/17, CD)

Were Trump president, he’d have other methods of intimidation at his disposal. Instead of merely suggesting that, “they ought to look into Judge Curiel,” he could order his Justice Department to do it. To be sure, Democrats, liberal journalists, and principled conservatives would howl. But given the partisan consolidation around Trump since he locked up the nomination, it’s likely that many Republicans would look the other way, or suggest that what Obama did was worse. Already, pro-Trump Republicans like the CNN commentator Jeffrey Lord are echoing Trump’s attack, calling the Trump university trial “rigged,” and suggesting that Curiel, because he received a reward from a Latino lawyers’ group, has a “serious ethnic axe to grind.” Contrary to Trump’s assertion, America’s federal “court system,” although hardly perfect, is not “rigged.” If litigants feel they are treated unfairly, they can appeal. And the judiciary system is certainly not rigged against white billionaires by Latinos “with an ethnic axe to grind.” But the more Americans think the courts are rigged, the stronger Trump’s position. The more he convinces his supporters that judges, like reporters, are corrupt and self-interested, the less public legitimacy they enjoy. And the less public legitimacy they enjoy, the less they can check Trump’s power.

#### Multiple nuclear wars

**Blair**, nuclear security expert and a research scholar at the Program on Science and Global Security at Princeton, **16**

(Bruce, June 11, 2016, Politico Magazine, “What Exactly Would It Mean to Have Trump’s Finger on the Nuclear Button?” <http://www.politico.com/magazine/story/2016/06/2016-donald-trump-nuclear-weapons-missiles-nukes-button-launch-foreign-policy-213955>, accessed 7/2/17, CD)

To a degree we haven’t seen, perhaps, since the candidacy of Senator Barry Goldwater in 1964, the question of Donald Trump’s temperament and judgment on matters of war and peace is stirring attention—and trepidation, particularly when the subject of nuclear weapons comes up. Some people believe that Trump himself is the maniac, the madman with nukes that appears in Trump’s own worst nightmare. And it’s not just Trump’s general-election opponent, Hillary Clinton, who’s hinting at this; his former GOP rival, Marco Rubio, repeated his earlier concerns about Trump only this week, saying America can't give "the nuclear codes of the United States to an erratic individual." Others would side with Trump’s view that the weapons themselves—which pack a destructive force amounting to “Hiroshima times a thousand,” as he put it—are the evil. But these points are not mutually exclusive.¶ What would it mean to have Trump’s fingers on the nuclear button? We don't really know, but we do know this: In the atomic age, when decisions must be made very quickly, the presidency has evolved into something akin to a nuclear monarchy. With a single phone call, the commander in chief has virtually unlimited power to rain down nuclear weapons on any adversarial regime and country at any time. You might imagine this awesome executive power would be hamstrung with checks and balances, but by law, custom and congressional deference there may be no responsibility where the president has more absolute control. There is no advice and consent by the Senate. There is no second-guessing by the Supreme Court. Even ordering the use of torture—which Trump infamously once said he would do, insisting the military “won’t refuse. They’re not gonna refuse me”—imposes more legal constraints on a president than ordering a nuclear attack.¶ If he were president, Donald Trump—who likes to say he doesn't spend a lot of time conferring with others ("My primary consultant is myself," he declared in March)—would be free to launch a civilization-ending nuclear war on his own any time he chose.¶ The “nuclear button” is a metaphor for a complex apparatus that has the president’s brain at its apex. The image of a commander in chief simply pressing a button captures none of the machinery, people and procedures designed to inform the president and translate his or her decisions into coherent action. Although it remains shrouded in secrecy, we actually know a great deal about it, beginning with the president’s first task of opening the “nuclear suitcase” in an emergency to review his nuclear attack options. If we shine our light at the tactical and timing considerations of how a first- or second-strike attack would unfold, and at the inner workings of the nuclear decision process from the standpoint of the White House, we gain a much better idea of a presidential candidate’s fitness for this responsibility. And here it is essential to consider a candidate’s temperament and character—especially in situations of extreme stress. Decisiveness is important, but so is prudence.¶ Let us say the president is awakened in the middle of the night (the proverbial 3 a.m. phone call) by his or her top nuclear adviser and told of an incoming nuclear strike. Since the flight time of missiles fired from launch stations in Russia or China to the White House is 30 minutes, and 12 minutes or less for missiles fired from submarines lurking in the Western Atlantic Ocean (Russian subs historically favor a patrol area to the west of Bermuda), the steadiness and brainpower of the commander in chief in such circumstances are serious questions indeed. The voting public must ask whether a given candidate would remain calm—or panic, become discombobulated and driven to order an immediate nuclear response on the basis of false information.¶ This call has never happened, but if it ever does, the situation would be as stressful and dangerous as things ever get inside the Oval Office. The closest we came to such a call occurred in 1979, when the consoles at our early warning hub in Colorado lit up with indications of a large-scale Soviet missile attack. President Jimmy Carter’s national security adviser, Zbigniew Brzezinski, received back-to-back calls in the middle of the night informing him of the imminent nuclear destruction of the United States. The second call reported an all-out attack. Brzezinski was seconds away from waking Carter to pass on the dreadful news and convince him of the need to order retaliation without delay (within a six-minute deadline). Brzezinski was sure the end was near.¶ Just before he picked up the phone to call Carter, Brzezinski received a third call, this time canceling the alarm. It was a mistake caused by human and technical error. A training tape simulating an all-out Soviet attack had inadvertently slipped into the actual real-time attack early warning network. The impending nuclear holocaust was a mirage that confused the duty crew. (They were fired for taking eight minutes instead of the required three minutes to declare their degree of confidence that an attack against North America was underway.)¶ How would a President Trump behave under such duress, informed of the attack and the imminent destruction of the nation’s capital and himself? He would have only a few minutes to consider the reliability of the attack report and decide whether and how to retaliate. If the attack is real, and he hesitates, a president will likely be killed and the chain of command decapitated, perhaps permanently. During the short countdown to impact, he also will be advised by the head of the Strategic Command in Omaha (or the officer on duty that night if the four-star head of Strategic Command cannot get onto the conference call on time) that the incoming attack will destroy the bulk of the U.S. land-based strategic missile force unless the president makes a timely decision ordering their egress from their underground silos before incoming warheads arrive. Furthermore, he will hear that the loss of this land-based force will mean that the goals of the U.S. war plan will not be realizable. (These goals require the ability to destroy the vast bulk of the Russia target base consisting of just under 1,000 aim points and of the China target base of just under 500 aim points.)¶ Yet if the president yields to this pressure and orders immediate retaliation, then he risks launching on false warning.¶ Voters should want to consider whether Trump or any other candidate possesses the steely nerves and competence to deliberate intelligently and calmly at the moment of truth. How does the candidate process ambiguity? Does he or she interpret ambiguous or contradictory data in black-and-white terms or in ways that reinforce his or her bias? Does the candidate rush to conclusions? Does he or she appear to place too much stock and faith in the performance of technical systems, such as the sensor systems in early warning networks, and underestimate the fallibility of people and machines?¶ It is of course not unreasonable to believe that the nuclear responsibilities of any president are above the pay grade of every living human being—that no one is really up to the task. The only real protection against nuclear disaster is total elimination of nuclear weapons.¶ And yet until that far-off day we expect our president at least not to act rashly under pressure, and to ensure with near-absolute certainty that the United States never launches a nuclear strike on the basis of spurious indications of an incoming attack. It is possibly asking too much, however, because even the most level-headed commander in chief simply cannot process all that he or she needs to absorb under the short deadlines imposed by warheads flying inbound at the speed of 4 miles per second. The risks of mistaken launch based on false warning, human error in control systems, and panic in the face of imminent death are very real and probably inherent in the hair-trigger nuclear postures of the United States and Russia.¶ Most presidents during the Cold War lived in dread of this moment knowing all too well the attendant risks. Ronald Reagan expressed incredulity that he would be allowed only six minutes to decide whether to trigger Armageddon based on blips on a radar screen. There is no guarantee that the next president will exercise due caution when the balloon appears to have gone up.¶ Although no president during the atomic age appears to have ever lost his grip on reality to such an extent that an insane nuclear act might have resulted, top advisers to President Richard Nixon tried to constrain his launch authority during the Watergate scandal that ultimately forced his resignation. His secretary of Defense, James Schlesinger, quietly instructed the Pentagon war room to double check with him if Nixon contacted it to order up a nuclear strike. Nixon’s mental stability, and his heavy drinking, caused concern within his inner circle that he might behave erratically out of despair and depression. Alcoholism in a future nuclear monarch is of course quite beyond the pale.¶ Trump’s teetotaling lays that concern to rest, but his quick temper, defensiveness bordering on paranoia and disdain for anyone who criticizes him do not inspire deep confidence in his prudence. Can we trust a President Trump to remain grounded and sensible under extraordinary pressure in a crisis that appears to be crossing the nuclear Rubicon?¶ Yet a harried decision to launch on warning in the belief that the United States is under nuclear attack is not even the most plausible scenario a President Trump might face today. That is more likely to be a crisis that escalates by design or inadvertence to the nuclear brink and then spins out of control. To be sure, the U.S. and Russian launch on warning postures have certainly put them at the mercy of false alarms. (Russia adopted the practice during the Cold War and maintains it today despite having a decrepit early warning network that has shortened President Vladimir Putin’s decision time to two to four minutes.) Computer glitches and human error have generated serious false alarms in the past, and every day events happen that trigger the sensors and require a closer look—peaceful space launches (satellites and astronauts), missile test launches, conventional combat missile launches, fighter jets taking off on after-burners, and even wildfires. But close calls have been fairly rare—about three serious false alarms in the United States and three in the Soviet Union/Russia that could have led to a very bad call by their leaders have occurred.¶ By comparison, there have been dozens of intense confrontations between the nuclear adversaries in the past, almost all of which tested the mettle, composure and restraint of their leaders. The next president will become embroiled in ongoing low-boil nuclear standoffs with Russia, China and North Korea that could morph quickly into a full-blown nuclear crisis. In such situations, actions thought to be defensive and reassuring to allies are often viewed as offensive by the opponent, whose reaction starts another cycle of action-reaction.¶ The United States and Russia today are entwining themselves in this trap over Ukraine, U.S. missile defenses in Europe and other disputes. Military buildups with nuclear dimensions are underway, and nuclear threats have been made explicitly by Russian officials including Putin and implicitly by each side’s nuclear force operations—for instance, flying strategic bombers close to each side’s territory. Both Putin and President Barack Obama are reminding each other, to a degree we haven’t seen since the Cold War, that they have nuclear buttons at hand.¶ \*\*\*¶ Trump would actually have not one but several fingers on the nuclear button. One finger would be an active digit ready to point up or down for an attack to his nuclear commanders. Other fingers would shape the size and composition of U.S. nuclear forces and the strategy for their use. Additional fingers would determine nuclear actions taken in his absence or demise by presidential successors from his vice president, the Cabinet that he appoints or by generals to whom he may pre-delegate his launch authority.¶ As with his predecessors, Trump’s power over the life and death of entire nations would be practically unbounded. Today, the nuclear deluge he could command would consist of thousands of weapons, each 10 or 20 times more deadly than the bomb dropped on Hiroshima. Nearly 2,000 U.S. strategic nuclear weapons aimed primarily at Russia and China (at a ratio of roughly 2 to 1), with additional dozens aimed at each of several other nations—North Korea, Iran and Syria—would be at a President Trump’s disposal from his first minutes in office. The city of Moscow alone lies in the bore sights of more than 100 U.S. nuclear warheads.¶ There are no restraints that can prevent a willful president from unleashing this hell.¶ If he gave the command, his executing commanders would have no legal or procedural grounds to defy it no matter how inappropriate it might seem. As long as the president can establish his or her true identity by his or her personal presence in the Pentagon’s nuclear war room or its alternates (places like Site R at Fort Richie near Camp David), or by phone or other means of communications linking him or her to these war rooms using a special identification card (colloquially known as “the biscuit” containing “the nuclear codes”) in his or her possession (or, alternatively, kept inside the “nuclear briefcase” carried by his or her military aide who shadows the president everywhere he or she works, travels and plays), a presidential nuclear decision is lawful (putting international humanitarian law aside). It must be obeyed as long as it is constitutional—i.e., the president as commander in chief believes he or she is acting to protect and defend the nation against an actual or imminent attack.¶ But within these broad constraints there is no wiggle room for evasion or defiance of the president’s orders. That’s true even if the national security adviser, the secretary of defense (who along with the president makes up the “national command authority”) and other top appointees and advisers disagree with the president’s decision. It does not matter whether the United States has already come under attack by nuclear or non-nuclear weapons. It does not even matter if the commander in chief simply orders the use of nuclear weapons on an ordinary day for reasons unknown to all but him or her. Under the president’s open-ended mandate to decide when the national interest is threatened, ordering up a nuclear strike is his or her prerogative, and obeying the order is incumbent upon the military servants of civilian authority.

### Legitimacy High – 2NC

#### Courts avoiding controversy now—especially in civil rights

**Feldman, Political Science J.D., University of California, 2017**

[Adam, 6.5.17, Empirical Scotus, “A Ban The Court Would Love to Avoid,” <https://empiricalscotus.com/2017/06/05/avoid-the-ban/>, Accessed 7.2.17 CT @ GDI]

The Court has also been moving away from tackling this type of case. On one hand, the Court has increasingly decided cases by one vote over recent decades. This is apparent in the figure below which looks at the Court’s one vote margin splits as a percentage of all of its decisions by term (which also shows the anomalous 2015 term where due to the Court’s eight Justice composition for much of the term led the Justices to only split by one vote twice, both with 4-3 margins).

Over the same time and especially recently, **the Court has taken dramatically fewer cases dealing with civil rights** (the general area where the travel ban case as well as immigration-related matters lie). This is apparent in the following figure looking at the Court’s slate of cases dealing with civil rights compared to the Court’s propensity to take cases in other areas with typically high case counts – criminal procedure and economic activity (case counts taken from the Supreme Court Database).

It is even more apparent when looking at the trajectory of the Court’s civil rights docket in isolation.

Likewise, the Court has not engaged in many recent cases reviewing executive power. The Court decided both for and against the Obama Administration in its two recent forays into this area with Zivotofsky v. Kerry and NLRB v. Canning. In Zivotofsky, the Court held with a majority opinion authored by Justice Kennedy in favor of the executive’s power to recognize foreign states. Justices Scalia, Roberts, and Alito dissented. In Canning, the Court defined limits on the President’s recess appointments power by holding unanimously that pro-forma sessions of Congress are insufficient periods for the President to make appointments to federal offices. With a new administration in power though (post-Obama), the Justices may be swayed in disparate directions.

One case type that the Court clearly has taken diminished involvement in over time are those where the United States is a party. The figure below looks at the Court’s involvement in cases where the United States is a direct party as a percentage of the Court’s total caseload by term.

When the Court has heard cases involving the United States it has been increasingly less likely to divide by a one vote margin.

The figure above shows this diminished trend that has fallen from a high of almost 11% of the Court’s merits rulings per term to around 1% in many recent terms (and with none in 2015).

Clearly not all of these trends can be claimed as fallout from the Court’s ruling in Bush v. Gore, but this fallout only raises expectations that the Court will not decide such a case in a partisan manner. Assuming the Justices would split along ideological lines in any merits ruling dealing with the travel ban, **the Justices would do well to avoid implicating themselves in this morass from the get-go. This would accord with the Court’s case choice trends**.

#### Courts have perception of legitimacy—public supports courts in favor of Trump

**Bump, Washington Post Correspondent, 2017**

[Philip, 4.26.17, The Washington Post, “In Federal Courts v. Trump, public opinion is on the side of the courts,” <https://www.washingtonpost.com/news/politics/wp/2017/04/26/in-federal-courts-v-trump-public-opinion-is-on-the-side-of-the-courts/?utm_term=.584a7a20ebb8>, Accessed 7.2.17 CT @ GDI]

It must be very frustrating for President Trump to think he has power in his grasp, only to see constitutional levers pulled to snatch it away. No politician has been more frustrated by such a situation since, oh, November, when Hillary Clinton won the popular vote but her opponent earned more votes in the electoral college. But those are the rules.

On Wednesday morning, the 2016 victor took to Twitter to rail against a California district judge’s decision to temporarily block the administration’s proposal to withhold funding from “sanctuary cities” — jurisdictions that offer limited protection to undocumented immigrants with the aim of encouraging their participation in things such as police investigations.

Let us set aside for a moment the fact that the judge in San Francisco was not actually a member of the Court of Appeals for the 9th Circuit. Let us also set aside that this wasn’t really a case of “judge shopping,” where litigants seek to file a suit in a friendly jurisdiction. Both San Francisco and Santa Clara County are sanctuary areas, part of a group of jurisdictions specifically targeted by the Justice Department on this issue last week. That they filed suit is hardly surprising.

So let’s instead focus on a little quirk of the decision that sets it apart as a constitutional check from what happened to Clinton. In the case of both the sanctuary cities decision and that second case mentioned, Trump’s it’s-not-a-ban travel ban, popular national opinion seems to lie with how the judges ruled.

Fox News Channel asked about both subjects in March. On the subject of funding for sanctuary cities, the poll was explicit, framing the idea in a very Trump-friendly way: “Some so-called ‘sanctuary’ cities refuse to assist federal authorities detain and deport illegal immigrants. Do you favor or oppose penalizing those cities by taking away their federal funding?” Nonetheless, more than half of respondents — including a plurality of independents and a majority of Democrats — opposed the move.

The question about the revised travel ban had similar results. Bear in mind, this was a question about the second ban, the one the Trump administration crafted with the specific (although unsuccessful) aim of avoiding the legal opposition that foundered the first version. Here, too, a majority — including a majority of independents — held an opinion contrary to the president’s.

It’s fair to note that polling on the immigration ban was, for some time, rather mixed, depending in part on how the ban was described in the poll.

Let’s instead pose a more direct question. In the most recent Washington Post-ABC News poll, we asked respondents how they felt about the court decision itself, and whether they were sympathetic to the repeated administration insistence that these decisions were an unwarranted rejection of Trump’s legal authority. A majority — nearly 6 in 10 — said the courts were acting fairly within the scope of their constitutionally defined check on the executive branch.

Although the partisan splits in each of these questions was obvious, we’ll note something here: More than a third of Republicans agree that the court’s decision on the travel ban was a fair exercise of its power.

#### Gorsuch confirmation preserved courts legitimacy—ended politicized battles

**Long, University of East Anglia American Studies Lecturer, 2017**

[Emma, 3.22.17, Newsweek, “THE U.S. SUPREME COURT'S LEGITIMACY MUST NOT FALL VICTIM TO PARTY POLITICS,” <http://www.newsweek.com/neil-gorsuch-us-supreme-court-democrats-572072>, Accessed 7.2.17 CT @ GDI

The Supreme Court is first and foremost a legal institution, but it’s also a political one: Its place as one of three equal branches of the American government and its role in interpreting controversial aspects of the Constitution mean it cannot avoid being so. But too often in recent years politicians and commentators have discussed the court in explicitly partisan terms.

The effect has been to imply, and sometimes to overtly state, that the court’s members made decisions as Republicans or Democrats, not as judges whose political and legal world views might lead them to personally support one party over another. From here, it’s a very short step to argue, as Cruz and other Republicans did during the 2016 election cycle, that they could not allow the court to be “lost” or “taken over” by a liberal majority.

This is wrong. The court is not a branch to be “captured” by one party or another—and the Senate’s job is not to judge a nominee’s political views, but to assess their ability to perform the role to which they’ve been nominated.

This has too often been forgotten in recent years. Since the 1973 ruling in Roe v Wade that protected, within limits, women’s right to terminate a pregnancy, potential nominees have been judged, in part, on their views on particular hot button issues, particularly abortion, the death penalty, and gun control.

This process arguably reached its nadir in the 1987 hearings on Ronald Reagan’s nomination of Robert Bork to the court. Intellectually capable, Bork was rejected because his politics were considered unacceptably conservative for the court at that time. In 2006, Samuel Alito found his nomination hearings more challenging than John Roberts had just a few months earlier, in part because he was a legal conservative nominated to a seat vacated by Sandra Day O’Connor, considered to be at the court’s ideological center.

The process has been a gradual one, with both Republicans and Democrats playing their part, but it has been corrosive nonetheless. The consequences for the court itself are coming into view. Whereas it traditionally enjoyed greater public approval than either the president or Congress, the court has seen its approval ratings plummet. A July 2016 Gallup poll showed its public approval rating at 42 percent, a severe drop since the 1990s.

The more politicized the court becomes, **the more its legitimacy is threatened**. Its justices are unelected and serve for life, with no power except their institutional role and persuasion to convince the country to abide by their decisions. That means its legitimacy rests not just on the principle of the rule of law, but on the idea that there is some distance between interpreting the law and making political decisions.

If Americans come to believe that politics is the only deciding factor in the court’s decision making, the court’s legitimacy, and so its ability to compel compliance, may be drastically weakened. Should that happen, all Americans will lose, regardless of party affiliation.

And so the stakes of Gorsuch’s hearings could scarcely be higher. Senators of both parties would do well to remember that. For the good of the court as an institution, Democrats in particular need to rigorously and thoroughly vet Gorsuch—and assuming nothing genuinely untoward comes to light, **they should support his nomination**.

#### Gorsuch nomination more publicly supported—44% support to 32% opposed

**Maniam, Pew Research Center research assistant, 2017**

[Shiva, 2.16.17, Pew Research Center, “More favor than oppose Gorsuch nomination to Supreme Court,” Accessed 7.2.17 CT @ GDI]

A few weeks after President Donald Trump’s announcement of Neil Gorsuch as his nominee to the Supreme Court, 44% of Americans say they favor the Senate confirming him to the high court, while 32% are opposed; roughly a quarter (24%) offer no opinion.

Initial reactions to past Supreme Court nominees have tended to be more positive than negative, though many of the justices were not well known by the public at the time of their nominations.

Overall views of Gorsuch’s nomination are similar to views of Barack Obama’s choice of Merrick Garland nearly a year ago. Last March, 46% favored Senate confirmation of Garland, 30% were opposed and 24% had no opinion.

Garland was Obama’s pick to fill the seat vacated by the late Justice Antonin Scalia. His nomination was never considered by the Senate. Republicans declined to hold hearings on Garland in order to leave the seat open so the next president could choose Scalia’s successor.

As was the case with Garland, there is a substantial partisan gap over Gorsuch’s nomination. Nearly eight-in-ten Republicans and Republican-leaning independents (78%) believe the Senate should vote to confirm Gorsuch. Only 9% of Republicans are against his confirmation, while 13% offer no opinion.

By contrast, Democrats and Democratic leaners oppose Gorsuch’s confirmation by a roughly two-to-one margin (50% vs. 23%), while roughly a quarter (27%) do not offer an opinion.

Today’s partisan dynamic is the inverse of partisan views of Garland’s nomination last March. At that time, 67% of Democrats and just 23% of Republicans supported his confirmation.

In the new survey, those who said Gorsuch should not be confirmed were asked in an open-ended question why they opposed his confirmation. Among the roughly one-third of the public that said this, 37% mention Gorsuch’s ideology or partisanship as the reason why they oppose his confirmation. Roughly two-in-ten (19%) cite aspects of Gorsuch’s personal characteristics, while 10% say the Senate should have confirmed Garland for the same open seat last year.

### Turns Case – Democracy

#### Decks rule of law

Taylor, Brookings Institution nonresident senior fellow, 16

(Stuart, Why Trump’s Assault on the Judiciary Is the Most Dangerous Thing He’s Done, <http://www.politico.com/magazine/story/2016/06/donald-trump-2016-judge-gonzalo-curiel-attack-213946>)

If a President Trump defies the judiciary outright, he would be the first president in recent memory to do so. Our nation has long depended on the executive branch to enforce the legal rulings of a judicial branch with no enforcement power of its own. Trump has said, with menacing ambiguity: “They ought to look into Judge Curiel, because what Judge Curiel is doing is a total disgrace. OK? But we will come back in November. Wouldn’t that be wild if I am president and come back and do a civil case? Where everybody likes it. OK. This is called life, folks.” Was this a hint that Trump would retaliate in unspecified ways against any judge who crosses him—in this case, a judge who risked his life as a federal prosecutor going after violent drug dealers from a Mexican cartel? These attacks on the rule of law cross a more dangerous line than did Trump's crude attacks on news outlets whose reporting he dislikes; or his long history of filing bogus libel suits to silence critics; or his threats to use such suits as weapons if he becomes president; or his trashing of President George W. Bush as a liar who deceived the nation into invading Iraq; or his disparaging John McCain and other former prisoners of war for being captured alive; or even his near-incitements of mob violence against anti-Trump protesters, his astonishing call for a ban on all Muslims seeking to enter the country for an undetermined period, and his vow to deport en masse more than 11 million illegal immigrants—men, women, and children.

#### Crushes democracy

Economist 16 (How a Trump presidency could undermine the rule of law, 6-1-16, <http://www.economist.com/blogs/democracyinamerica/2016/06/don-and-judge>)

The principle of judicial independence means that presidents and presidential candidates respect the rule of law and the judgments of judges. It means, for example, that Barack Obama and his team of lawyers defend the legality of his immigration orders protecting 5m people from deportation on the merits rather than by engaging in a name-calling campaign to discredit and delegitimise the federal judge in Brownsville, Texas who unilaterally stopped the programme before it could be implemented. But Mr Trump’s furious tirade against Judge Gonzalo Curiel defies all norms of presidential decorum and decency, and the sentiment fuelling it threatens to undermine the delicate balance of power between the executive and judicial branches. Mr Trump railed against Mr Curiel at a rally last week at the convention centre in San Diego, a 15-minute walk from the courtroom where the judge sits. “I have a judge who is a hater of Donald Trump, a hater. He’s a hater. His name is Gonzalo Curiel.” Buoyed by the booing crowd, Mr Trump continued: “He is not doing the right thing. And I figure, what the hell? Why not talk about it for two minutes?” The two minutes slid into 12: “We’re in front of a very hostile judge” who “was appointed by Barack Obama”, Mr Trump complained. “Frankly, he should recuse himself because he’s given us ruling after ruling after ruling, negative, negative, negative.” And then Mr Trump casually tossed out a note about Mr Curiel’s identity: “What happens is the judge, who happens to be, we believe, Mexican, which is great. I think that’s fine”. Generously granting that it’s “great” and “fine” for Mr Curiel to have Mexican roots, but implying precisely the opposite, Mr Trump neglected to note that the federal judge is in fact an American citizen who was born in Indiana in 1953. But the dog-whistle was audible to everybody: the judge’s Hispanic heritage, Mr Trump charged, disqualifies him to oversee his case. The precipitating cause of Mr Trump’s outburst was Mr Curiel’s agreement to unseal around 1,000 pages of internal documents, many of which paint a damaging portrait of the tactics used by Trump University employees trying to drum up business. A sales handbook describes in painstaking detail the “roller coaster of emotions” potential students will experience when deciding whether to pay thousands of dollars for Mr Trump’s investment insights. The key is “managing the emotions of the client” and mastering “the psychology of the sale”, the handbook instructs. It starts with trust-building and ends with queries about the credit limits on the prospective student’s credit cards. Rather than express regret over evidence that Trump University workers were under orders to exploit potential clients by encouraging them to take on debt in order to afford the Trump Gold Elite package costing $35,000, Mr Trump reacted by projecting shame on Mr Curiel: “I think Judge Curiel should be ashamed of himself,” he said. “I’m telling you, this court system...ought to look into Judge Curiel. Because what Judge Curiel is doing is a total disgrace, Okay? But we’ll come back in November. Wouldn’t that be wild if I’m president and I come back to do a civil case?” Wild indeed. If Mr Trump wins the White House, he will have a bully pulpit at his disposal from which he could unravel basic principles of American democracy.

### UQ – Courts Can Check Trump

#### Courts can restrain trump but it’s not guaranteed

Samuda, master in public policy candidate at Harvard Kennedy School, 2017

[Charlie, 2/6/2017, Progress Online, "Checks and balances under siege", http://www.progressonline.org.uk/2017/02/06/checks-and-balances-under-siege/, accessed 7/2/2017, RV]

Judges have always shaped American politics. The next big fight will be over the confirmation of Neil Gorsuch as supreme court justice. Senate Democrats – furious that their opponents refused to give Barack Obama’s nominee a fair hearing just months ago – can try to block the appointment. This would mean another fight over legitimacy if Republicans choose to ‘go nuclear’ and to carry out an unprecedented change of rules in the upper house to get their way. Leaving the supreme court aside, lower courts also matter a lot and hear far more cases than supreme court justices. The judicial stay that paused parts of Trump’s Muslim ban over the weekend came from an American Civil Liberties Union case in a federal court in Brooklyn, not Washington. Recent history shows that even after the courts have spoken, the state’s word is not final. The weekend saw reports of border officials refusing to comply with the courts verdict on the immigration ban over the weekend, an early warning of what may happen when the judiciary tries to limit Trump. Rulings upholding Obamacare did not stop conservative states doing everything in their power to slow down the local implementation of the Affordable Care Act. Just a few years ago many Republican politicians rushed to embrace Kim Davies, a Kentucky county clerk who refused to sign marriage licences for same-sex couples despite her legal obligations. State houses and governor’s mansions are also sources of political power. In a mirror image of the Michigan governor in Designated Survivor, some progressive local politicians have led the way in standing up to Trump. Here in Boston, Mayor Marty Walsh has refused to abandon his support for the town remaining a sanctuary city – one that refuses to enforce extreme measures against undocumented immigrants. Others, such as Chicago mayor Rahm Emanuel, have also stood firm. These cities have been targeted by the White House, but in practice the president has limited powers to stop them. The best hope for action on climate change is also at the local level since many mayors and governors will press ahead with environmental reforms regardless of decisions made in Washington. What it means for the long-term health of the federal system to have mayors and governors constantly going their own way is anyone’s guess. Trump has already made the unthinkable possible in foreign and domestic policy. Pointing to the constitution in response feels hollow and moves such as putting white-supremacist Steve Bannon on the National Security Council show just how much damage a president can do without touching congress, the courts or the states. So there are no guarantees that American democracy will be saved by its institutions. If there is some comfort to be found it is that America’s multi-layered system has always contested power and questioned the legitimacy of its presidents. But Trump’s attack on each layer of government means that these check and balances may not hold up forever. For now, though, his tiny hands can only reach so far.

### Activism Link

#### Activism drains legitimacy

Earle, Vermont Law School, Adjunct Professor, 93

[Caroline S., J.D. Candidate, 1993, Indiana University School of Law-Bloomington; B.A., 1990, McGill University, Montreal, Canada; Fall 1993; Indiana Law Journal, “The American Judicial Review Quagmire: A Canadian Proposal,” http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1569&context=ilj, p. 1362, accessed 7/2/17, AW]

26. John Hart Ely notes that commentators have been ominously portending the "destruction" of the activist Supreme Court for years. He notes that the Court has thrived despite these predictions, and suggests that it will continue to do so. ELY, supra note 9, at 46-48. Ely's attention, however, is directed toward executive and/or legislative reaction to Supreme Court activism. In contrast, my point is that the Supreme Court is sowing the seeds of its own "destruction." Judicial activism has served to undermine the Supreme Court's legitimacy with the people. Minorities, who in the past have looked to the Court for protection of their rights, may feel that the Court is increasingly susceptible to majority impulse. Similarly, those in the majority may fear the influence of special interest groups on the Court and also may view the politicization of the Court as inconsistent with its unelected and effectively unchecked status.

#### Judicial restraint is key to Court legitimacy

**Rosen 6** – Professor of Law at George Washington University (Jeffrey, The Most Democratic Branch, 2006, pg. 13)

In some of the most controversial cases, in other words, the Court may be uncertain about whether the institutional representatives of the people, such as Congress and the president, can plausibly represent the people's constitutional views. In the face of-uncertainty, history suggests that courts can best maintain their democratic legitimacy-in both the political and the principled sense-by practicing judicial restraint.

### Due Process Link

#### Due process rulings drain courts perception of their finite PC

Post 3 (Robert C. Post -- David Boies Professor of Law, Yale Law School. Harvard Law Review --- November)

Beginning in 1997 in City of Boerne v. Flores, 37 and culminating last Term in Hibbs, 38 the Rehnquist Court has introduced an entirely new framework for analyzing the scope of Congress's power under Section 5 of the Fourteenth Amendment "to enforce, by appropriate [\*12] legislation, the provisions of this article." 39 The essential premise of this framework is that Congress can enact Section 5 legislation "to enforce" rights that the judiciary would protect in litigation pursuant to Section 1 of the Fourteenth Amendment, 40 but that Congress cannot use its Section 5 power to enforce Congress's own independent interpretation of Section 1. As Hibbs announced last Term, it "falls to this Court, not Congress, to define the substance of constitutional guarantees," 41 because "the ultimate interpretation and determination of the Fourteenth Amendment's substantive meaning remains the province of the Judicial Branch." 42 Continues: The Court eventually reformed its own conception of constitutional law to reflect the change in constitutional culture evidenced by statutes like the EEOA, 111 in the process graciously acknowledging in Justice Brennan's plurality opinion in Frontiero v. Richardson 112 the Court's [\*26] debt to Congress's articulation of the transformation in national understandings of the significance of sex discrimination. 113 Far from claiming that equal protection doctrine should be autonomous from constitutional culture, the plurality opinion in Frontiero openly defended its decision to look to the changing constitutional beliefs of Congress as a source for its own reconstruction of constitutional law. It is striking, therefore, that although Hibbs purports to employ the enforcement model to compel Congress to conform to the Court's own jurisprudence of sex discrimination, that jurisprudence itself derives from changes in constitutional culture reflected in Congress's innovative constitutional interpretations. If Rehnquist's obfuscation of that jurisprudence in Hibbs can perhaps be explained as an effort to avoid confrontation and so conserve the Court's "exhaustible" supply of "prestige and institutional capital," 114 Frontiero's explicit incorporation of popular understandings into the Court's own doctrine cannot. The Court's decision in the 1970s to alter its equal protection doctrine to disfavor gender classifications was not a(n) mere attempt to escape controversy. It was an effort to understand the legal requirements of the constitutional equality principle, and it used as one source of that understanding the evolving constitutional culture of the nation. Continues: There is no area of constitutional law where these issues are more fraught than substantive due process, where the Court interprets the Due Process Clause 387 to prohibit certain forms of substantive state regulation. Because substantive due process doctrine has historically engaged in remarkably candid efforts to interpret and apply cultural values, Scalia would abandon the doctrine altogether, viewing it as an improper "springboard[] for judicial lawmaking." 388 But his view has not prevailed, and the doctrine has occasioned fierce debates about the proper relationship of the Court to cultural controversy. These debates are fueled by ferocious divisions within the Court about the constitutional values that substantive due process is meant to protect. Although the Court seems to agree that "the Due Process Clause guarantees more than fair process, and the "liberty' it protects includes more than the absence of physical restraint," 389 the Justices bitterly disagree about the constitutional function of the doctrine. 390 Modern substantive due process began with Justice Harlan's magisterial [\*86] dissent in Poe v. Ullman, 391 in which he conceived the doctrine as marking "the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty [\*87] and the demands of organized society." 392 Harlan portrayed the Court as continuously reassessing this balance: The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint. 393

### RTE Link Wall – 2NC

#### The plan is the court answering a political question which is very convtroversial

**Lindseth et. al, all are Eversheds Sutherland (US) Law firm attorneys, 2017**

[Alfred A. Lindseth, Lee A. Peifer, Rocco E. Testani, Spring 2017, VOL. 17, NO.2, EducationNext, “Federal Courts Can’t Solve Our Education Ills,” <http://educationnext.org/federal-courts-cant-solve-our-education-ills-forum-san-antonio-rodriguez/>, Accessed 6.28.17 CT @ GDI]

More broadly, the federal government was designed to have limited, enumerated powers, as reflected in the Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Regardless of the incentives contained in federal laws like the Elementary and Secondary Education Act, the Supreme Court has repeatedly held that the federal government may encourage but may not simply “commandeer” state governments to implement or enforce federal policies.

These constitutional principles are especially important in the context of education. Historically, responsibility for designing and reforming systems of public education has rested with the states. Unlike the federal Constitution, all 50 state constitutions have provisions that explicitly address education. Many of these provisions speak merely in broad terms, but they still serve as points of reference for state and local governments charged with establishing and maintaining public schools. Legal challenges to a state’s legislative and executive policies on public education **necessarily implicate separation-of-powers** **concerns** **about the courts’ abilities to answer political questions** and resolve policy debates. But at least state courts have an education clause to begin their analysis of any right to education.

By contrast, given the lack of an education clause in the U.S. Constitution, federal courts attempting to define an implicit right to education would need to start from scratch. Without the benefit of any constitutional text or interpretive history to lend meaning to the term “education,” federal courts would be fabricating a new substantive right out of whole cloth.

#### Positive rights from the fed destroy separation of powers-saps legitimacy

Lindseth, Harvard Law JD et al, 17

[Alfred Lindseth, Rocco Testani J.D., magna cum laude, University of Michigan Law School and Lee Peiper Counsel in Commercial Litigation and Education Law at Eversheds Sutherland] Spring 2017, “RODRIGUEZ RECONSIDERED: Is There a Federal Constitutional Right to Education?” <http://educationnext.org/files/ednext_xvii_2_forum.pdf>, accessed 6-29-2017, pg. 71-77 BP]

Various commentators and two new lawsuits, however, argue that Rodriguez should be reconsidered. These advocates urge the courts to create a federal constitutional right to education. Although the word “education” appears nowhere in the federal Constitution, advocates for recognizing that such a right is implied typically argue that it would ensure “equal educational opportunity” and foster more effective participation in civil society. These advocates may be well-intentioned, but their arguments rest on shaky legal reasoning and would translate into bad policy First, as a matter of constitutional law, Rodriguez was correctly decided. With a nod to Brown v. Board of Education, the Supreme Court’s 1954 decision banning state-imposed racial segregation in schools, the Rodriguez court recognized “the vital role of education in a free society.” But the court also emphasized the restraint inherent in our federal constitutional scheme: “The importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause,” the court wrote in its opinion, and “education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.” And finally, the court noted, “it is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws.” This analysis reflects the fact that the federal Constitution protects us from certain kinds of governmental action—such as state-imposed segregation, prohibitions on free speech, or invasions of personal privacy—but does not create expansive positive rights or guarantee governmental assistance. Federal courts typically refuse to create new substantive rights, and in a 1989 case, DeShaney v. Winnebago County Department of Social Services, the Supreme Court “recognized that the [Constitution’s] Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests.” Declaring education to be an implicit fundamental right would raise difficult constitutional questions about essentials such as food, shelter, and health care—none of which are mentioned in the federal Constitution. More broadly, the federal government was designed to have limited, enumerated powers, as reflected in the Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Regardless of the incentives contained in federal laws like the Elementary and Secondary Education Act, the Supreme Court has repeatedly held that the federal government may encourage but may not simply “commandeer” state governments to implement or enforce federal policies. These constitutional principles are especially important in the context of education. Historically, responsibility for designing and reforming systems of public education has rested with the states. Unlike the federal Constitution, all 50 state constitutions have provisions that explicitly address education. Many of these provisions speak merely in broad terms, but they still serve as points of reference for state and local governments charged with establishing and maintaining public schools. Legal challenges to a state’s legislative and executive policies on public education necessarily implicate separation-of-powers concerns about the courts’ abilities to answer political questions and resolve policy debates. But at least state courts have an education clause to begin their analysis of any right to education.

#### The link snowballs – the plan sets the stage for federal intervention in every part of education

Lindseth, Harvard Law JD et al, 17

[Alfred Lindseth, Rocco Testani J.D., magna cum laude, University of Michigan Law School and Lee Peiper Counsel in Commercial Litigation and Education Law at Eversheds Sutherland] Spring 2017, “RODRIGUEZ RECONSIDERED: Is There a Federal Constitutional Right to Education?” <http://educationnext.org/files/ednext_xvii_2_forum.pdf>, accessed 6-29-2017, pg. 71-77 BP]

Asking federal courts to wade into these thickets is a mistake. State officials and courts have already grappled with many of these issues, and creating a federal right to education would destabilize policies and decisions that have shaped local school systems for generations. On this point, the Rodriguez court observed that the school-funding systems in Texas and “virtually every other state [would] not pass muster” under strict federal judicial scrutiny. “Nor indeed,” the court explained, “in view of the infinite variables affecting the educational process, can any system assure equal quality of education except in the most relative sense.” Proponents of a federal right to education presume that federal judges would succeed where local policymakers have supposedly failed. But the federal judiciary lacks the capacity and expertise to solve entrenched problems like the achievement gap from the bench. Federal judges are not school superintendents, education experts, or central planners. What evidence shows that federal courts would produce better results than the state and local governments that have been designing and experimenting with education policy for years? And what benchmarks would allow the federal courts to decide when they had achieved the amorphous goal of “equal educational opportunity”? Numerous racial-desegregation cases, in which the goal of integration to remedy intentional discrimination is relatively clear, have lasted for decades. Adding constitutional equity and adequacy claims to the federal dockets, in the service of an implicit right to education, could lead to an era of federal judicial supervision with no end in sight. It may well be the case that additional funds devoted to particular policies could improve certain facets of American public education. But the Rodriguez court correctly held that because “the Constitution does not provide judicial remedies for every social and economic ill,” broad educational goals are “not values to be implemented by judicial intrusion into otherwise legitimate state activities.” Given the substantial risks (and uncertain rewards) of federal judicial intervention, any acknowledgment of constitutional rights to education should be left to the states.

### Yes Spillover – 2NC

#### Loss of legitimacy spills over to all facets of legitimacy

**Balkin 1** – Professor of Constitutional Law and the First Amendment at Yale Law School (Jack, June, 110 Yale L.J. 1407 ln)

If the American people like and accept George W. Bush, then they will tend to explain his election as legitimate because the election was effectively a tie. But if people dislike Bush, or lose trust and confidence in his abilities as President, then the opinion that he does not deserve to hold office will increase. That will increase the popular sense of frustration at the Court that put him in office. Although there is no reason logically why an unpopular or incompetent president should be regarded as having less of a right to hold office than a popular or competent one, the different forms of legitimacy do affect each other in practice, because all of them in one way or another concern people's psychological attitudes toward government officials. Hence a loss in one facet of legitimacy tends to cause a loss in the others as well. If Bush proves to be inefficacious, or if he cannot inspire confidence, people will begin to doubt the procedural legitimacy of his election and the moral legitimacy of his right to rule. And this loss of legitimacy will have ramifications for the Supreme Court.

#### Illegitimacy spills over to all areas of law

**Feldman 3** – Ph.D. Candidate, Jurisprudence and Social Policy at University of California, Berkeley (Yuval, 2003, U. Ill. J.L. Tech. & Pol'y 105 ln)

The loss of legitimacy could spill into areas of law that are currently in congruence with the norm. [124](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all#n124) Consequently, an employee could say, "If you forbid everything I will listen to nothing." [125](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all#n125) Recent empirical findings back the notion of illegitimacy spillover in Nadler's work. [126](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all#n126) Using experimental techniques, she demonstrates that people exposed to unjust laws were more likely to report a decrease in their general intention to obey laws unrelated to the unjust law they were told about. [127](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all#n127)

### Trump IL – 2NC

#### Checks Trump unless it makes controversial decisions

Lemieux, College of Saint Rose, professor of political science, 17

[Scott, focuses on the Supreme Court and constitutional law; January 31, 2017; The Week, “Federal judges have an obligation to check Trump's immigration orders,” http://theweek.com/articles/676915/federal-judges-have-obligation-check-trumps-immigration-orders, accessed 7/2/17, AW]

Now, the courts are in a position to provide a meaningful check on arbitrary and discriminatory actions by the executive branch. And this provides a solid opportunity to rethink the extreme level of deference generally accorded to the legislative and executive branches on immigration policy. The legal case against Trump's partial ban is strong. On its face, targeting religious minorities without any serious national security justification violates the Establishment Clause of the 1st Amendment and the Due Process clause of the 5th. The strength of the case against the order was emphasized by Acting Attorney General Sally Yates announcing her refusal to defend the order in court. In response, Trump fired her. With Jeff Sessions set to take over the job, Trump's action was substantively unnecessary, but it reflects his dislike of criticism and insecurity, insecurity that it this case is eminently justified. While intuitively, an order as obviously discriminatory and irrational as Trump's should be an easy case for the federal courts, there is one potential barrier: the so-called "plenary power" doctrine. The federal courts have traditionally been very deferential to immigration policies established by the legislative and/or executive branches. Policy choices that, in other contexts, would be obviously found to violate basic standards of equal protection or due process have been upheld in the context of immigration. However, this doctrine is in serious need of revision by the courts, and has been undermined over time. As Jonathan Hafetz of the Seton Hall School of Law explains, the doctrine is anomalous in American constitutional law. Article I, for example, establishes many plenary congressional powers, but few people argue that exercises of these powers are therefore beyond the power of judicial review. It's reasonable to argue that the executive branch's exercise of its powers over immigration are entitled to a presumption of constitutionality, but it's far less obvious that this presumption should not be rebuttable. Even if one is sympathetic to the plenary power doctrine as applied to immigration in the abstract, the most important justifications for judicial deference are not applicable to this particular order and the process that produced it. The first defense for extreme judicial deference pertains to the national security justifications offered by the Trump administration for its actions. Many have argued that the courts should be very deferential to the executive in cases of national security, that they lack the knowledge and expertise of the executive branch. Sometimes, it seems clear that this deference has gone too far in the past. For example, when the Supreme Court indefensibly upheld the internment of people of Japanese descent by the Roosevelt administration in 1944, it was clear that the order lacked any serious military justification and was motivated in large measure by racial animus that long predated the bombing of Pearl Harbor, but the justices either overlooked this or chose not to find out because of the tradition of deference to the executive branch in wartime. But even if one argues that Korematsu was the case of a good doctrine carried too far, a high level of deference is particularly inappropriate as applied to this current case. The process behind Trump's order was slapdash and inept to a degree that would be comic if the consequences weren't so dire for so many innocent people. The relevant agencies were mostly cut out of the loop, and there was disagreement within the administration over the implications of the order. The driving force behind it appears to be Trump's chief strategist Stephen Bannon, an alt-right publisher and writer with no relevant national security experience. Even if the premise that the judicial branch should defer to the expertise of the executive branch is generally sound — and this is dubious in itself — it would be bizarre to apply it in a case in which no actual expertise appears to have been involved the executive action. The second justification for judicial deference is that, particularly on an issue as central to the function of government as national security, unelected judges should be extremely wary of overriding the decisions of elected officials who are accountable to the people. While there is some truth to this in general, there are also some obvious limitations to the argument — most notably, very few people think democracy is just simple majoritarianism, and there are many counter-majortarian features that structure the elected branches in the United States. In the case of the Trump administration, though, an extreme level of deference based on democratic norms seems especially inappropriate. Trump's mandate to speak for the American people is shaky at best. Despite the FBI putting a probably decisive thumb on the scales less than two weeks before the election, Trump lost the popular vote by nearly three million votes, thanks to the fact that we select the president based on an anachronistic mechanism originally designed to limit democracy and overrepresent the interests of slaveholders. Rules are rules, and Trump is entitled to exercise the formal powers of his office. The courts should not overrule his actions based on mere policy disagreement. But in this context, to argue that on national security issues, democratic norms require a level of deference from the courts that would require judges to overlook what would otherwise be clear violations of the Constitution would be perverse.

#### Immigration proves – court success was because of public support

**Washington Post 17**, 2-13-2017, "A judicial decision serves to check Trump's high-handed executive order," Guam Daily Post, https://www.postguam.com/forum/a-judicial-decision-serves-to-check-trump-s-high-handed/article\_52c272be-f0f4-11e6-8a72-cb5e123bd6ac.html

It can be said the judiciary has put a brake on a heavy-handed political tactic by U.S. President Donald Trump. A judicial decision was made to allow a temporary suspension of Trump's executive order that restricted the entry of people from seven Muslim-majority countries in the name of preventing terrorist attacks. A federal appeals court, the U.S. equivalent of a Japanese high court, upheld a lower court ruling. The U.S. government had claimed that the president has authority to restrict the entry of aliens into the United States, and that courts cannot intervene in the matter. But the appeals court rejected the argument, saying the claimed unreviewability "runs contrary to the fundamental structure of our constitutional democracy." The court also said the government failed to present evidence that any alien from any of the seven countries has perpetrated a terrorist attack in the U.S. The president does not necessarily have unreviewable authority over national security. The separation of three powers - executive, legislative and judicial - should be respected. Such a strict message was sent to the Trump administration. After the executive order was issued on Jan. 27, travel visas granted to people from the seven countries, including Iraq and Iran, became invalid. Refugees, international students and others were denied entry into the U.S. at airports, where chaos erupted. On Feb. 3, a district court in Washington state handed down a ruling to halt the executive order, siding with the state's claim that the order would cause "irreparable harm" to education and industry. The court decision was applied nationwide, allowing the entry of people subject to the executive order to resume. Reconsider current tactics The administration is considering continuing the court battle. The unconstitutionality of the executive order itself will be scrutinized in court separately. Each case could be brought to the Supreme Court. It is alarming that Trump has repeatedly criticized the judiciary on Twitter and by other means, fueling fears of terrorism without giving specific evidence. Blasting the district court judge who ordered the injunction as "ridiculous," Trump tweeted, "many very bad and dangerous people may be pouring into our country." He also wrote bluntly, "If something happens blame him and court system." Such a tenacious personal attack on the judge is highly abnormal. A series of such remarks imply his arrogant idea that courts should rule in line with the administration's position. He apparently lacks an understanding of judicial independence. Over the entry restrictions, opinion polls began to see a majority of respondents expressing opposition to such measures. If he continues to discard unfavorable survey results and news coverage as "fake," it will not help eliminate the divisions in society.

### Enviro Impact – 2NC

#### Weakening the court prevents sustainable development

Stein, former Judge of the NSW Court of Appeal and the NSW Land and Environment Court, 05

[Paul, Chair of the IUCN CEL Specialist Group on the Judiciary; December 2005; IUCN, “Judges and the Rule of Law Creating the Links: Environment, Human Rights and Poverty,” https://portals.iucn.org/library/sites/library/files/documents/EPLP-060.pdf, pp. 53-54, accessed 7/2/17, AW]

The Johannesburg Principles state: “We emphasize that the fragile state of the global environment requires the judiciary, as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilization, and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.” There can be no argument that environmental law, and sustainable development law in particular, are vibrant and dynamic areas, both internationally and domestically. Judge Weeramantry (of the ICJ) has reminded us that we judges, as custodians of the law, have a major obligation to contribute to its development. Much of sustainable development law is presently making the journey from soft law into hard law. This is happening internationally but also it is occurring in many national legislatures and courts. Fundamental environmental laws relating to water, air, our soils and energy are critical to narrowing the widening gap between the rich and poor of the world. Development may be seen as the bridge to narrow that gap but it is one that is riddled with dangers and contradictions. We cannot bridge the gap with materials stolen from future generations. Truly sustainable development can only take place in harmony with the environment. Importantly we must not allow sustainable development to be duchessed and bastardized. A role for judges? It is in striking the balance between development and the environment that the courts have a role. Of course, this role imposes on judges a significant trust. The balancing of the rights and needs of citizens, present and future, with development, is a delicate one. It is a balance often between powerful interests (private and public) and the voiceless poor. In a way judges are the meat in the sandwich but, difficult as it is, we must not shirk our duty. Pg. 53-54

#### Extinction

**Barry, Wisconsin land resources PhD, 2013**

(Glen, “ECOLOGY SCIENCE: Terrestrial Ecosystem Loss and Biosphere Collapse”, 2-4, <http://forests.org/blog/2013/02/ecology-science-terrestrial-ec.asp>)

Blunt, Biocentric Discussion on Avoiding Global Ecosystem Collapse and Achieving Global Ecological Sustainability Science needs to do a better job of considering worst-case scenarios regarding continental- and global-scale ecological collapse. The loss of biodiversity, ecosystems, and landscape connectivity reviewed here shows clearly that ecological collapse is occurring at spatially extensive scales. The collapse of the biosphere and complex life, or eventually even all life, is a possibility that needs to be better understood and mitigated against. A tentative case has been presented here that terrestrial ecosystem loss is at or near a planetary boundary. It is suggested that a 66% of Earth's land mass must be maintained in terrestrial ecosystems, to maintain critical connectivity necessary for ecosystem services across scales to continue, including the biosphere. Yet various indicators show that around 50% of Earth's terrestrial ecosystems have been lost and their services usurped by humans. Humanity may have already destroyed more terrestrial ecosystems than the biosphere can bear. There exists a major need for further research into how much land must be maintained in a natural and agroecological state to meet landscape and bioregional sustainable development goals while maintaining an operable biosphere. It is proposed that a critical element in determining the threshold where terrestrial ecosystem loss becomes problematic is where landscape connectivity of intact terrestrial ecosystems erodes to the point where habitat patches exist only in a human context. Based upon an understanding of how landscapes percolate across scale, it is recommended that 66% of Earth's surface be maintained as ecosystems; 44% as natural intact ecosystems (2/3 of 2/3) and 22% as agroecological buffer zones. Thus nearly half of Earth must remain as large, connected, intact, and naturally evolving ecosystems, including old-growth forests, to provide the context and top-down ecological regulation of both human agroecological, and reduced impact and appropriately scaled industrial activities. Given the stakes, it is proper for political ecologists and other Earth scientists to willingly speak bluntly if we are to have any chance of averting global ecosystem collapse. A case has been presented that Earth is already well beyond carrying capacity in terms of amount of natural ecosystem habitat that can be lost before the continued existence of healthy regional ecosystems and the global biosphere itself may not be possible. Cautious and justifiably conservative science must still be able to rise to the occasion of global ecological emergencies that may threaten our very survival as a species and planet. Those knowledgeable about planetary boundaries—and abrupt climate change and terrestrial ecosystem loss in particular—must be more bold and insistent in conveying the range and possible severity of threats of global ecosystem collapse, while proposing sufficient solutions. It is not possible to do controlled experiments on the Earth system; all we have is observation based upon science and trained intuition to diagnose the state of Earth's biosphere and suggest sufficient ecological science–based remedies. If Gaia is alive, she can die. Given the strength of life-reducing trends across biological systems and scales, there is a need for a rigorous research agenda to understand at what point the biosphere may perish and Earth die, and to learn what configuration of ecosystems and other boundary conditions may prevent her from doing so. We see death of cells, organisms, plant communities, wildlife populations, and whole ecosystems all the time in nature—extreme cases being desertification and ocean dead zones. There is no reason to dismiss out of hand that the Earth System could die if critical thresholds are crossed. We need as Earth scientists to better understand how this may occur and bring knowledge to bear to avoid global ecosystem and biosphere collapse or more extreme outcomes such as biological homogenization and the loss of most or even all life. To what extent can a homogenized Earth of dandelions, rats, and extremophiles be said to be alive, can it ever recover, and how long can it last? The risks of global ecosystem collapse and the need for strong response to achieve global ecological sustainability have been understated for decades. If indeed there is some possibility that our shared biosphere could be collapsing, there needs to be further investigation of what sorts of sociopolitical responses are valid in such a situation. Dry, unemotional scientific inquiry into such matters is necessary—yet more proactive and evocative political ecological language may be justified as well. We must remember we are speaking of the potential for a period of great dying in species, ecosystems, humans, and perhaps all being. It is not clear whether this global ecological emergency is avoidable or recoverable. It may not be. But we must follow and seek truth wherever it leads us. Planetary boundaries have been quite anthropocentric, focusing upon human safety and giving relatively little attention to other species and the biosphere's needs other than serving humans. Planetary boundaries need to be set that, while including human needs, go beyond them to meet the needs of ecosystems and all their constituent species and their aggregation into a living biosphere. Planetary boundary thinking needs to be more biocentric. I concur with Williams (2000) that what is needed is an Earth System–based conservation ethic—based upon an "Earth narrative" of natural and human history—which seeks as its objective the "complete preservation of the Earth's biotic inheritance." Humans are in no position to be indicating which species and ecosystems can be lost without harm to their own intrinsic right to exist, as well as the needs of the biosphere. For us to survive as a species, logic and reason must prevail (Williams 2000). Those who deny limits to growth are unaware of biological realities (Vitousek 1986). There are strong indications humanity may undergo societal collapse and pull down the biosphere with it. The longer dramatic reductions in fossil fuel emissions and a halt to old-growth logging are put off, the worse the risk of abrupt and irreversible climate change becomes, and the less likely we are to survive and thrive as a species. Human survival—entirely dependent upon the natural world—depends critically upon both keeping carbon emissions below 350 ppm and maintaining at least 66% of the landscape as natural ecological core areas and agroecological transitions and buffers. Much of the world has already fallen below this proportion, and in sum the biosphere's terrestrial ecosystem loss almost certainly has been surpassed, yet it must be the goal for habitat transition in remaining relatively wild lands undergoing development such as the Amazon, and for habitat restoration and protection in severely fragmented natural habitat areas such as the Western Ghats. The human family faces an unprecedented global ecological emergency as reckless growth destroys the ecosystems and the biosphere on which all life depends. Where is the sense of urgency, and what are proper scientific responses if in fact Earth is dying? Not speaking of worst-case scenarios—the collapse of the biosphere and loss of a living Earth, and mass ecosystem collapse and death in places like Kerala—is intellectually dishonest. We must consider the real possibility that we are pulling the biosphere down with us, setting back or eliminating complex life. The 66% / 44% / 22% threshold of terrestrial ecosystems in total, natural core areas, and agroecological buffers gets at the critical need to maintain large and expansive ecosystems across at least 50% of the land so as to keep nature connected and fully functional. We need an approach to planetary boundaries that is more sensitive to deep ecology to ensure that habitable conditions for all life and natural evolutionary change continue. A terrestrial ecosystem boundary which protects primary forests and seeks to recover old-growth forests elsewhere is critical in this regard. In old forests and all their life lie both the history of Earth's life, and the hope for its future. The end of their industrial destruction is a global ecological imperative. Much-needed dialogue is beginning to focus on how humanity may face systematic social and ecological collapse and what sort of community resilience is possible. There have been ecologically mediated periods of societal collapse from human damage to ecosystems in the past (Kuecker and Hall 2011). What makes it different this time is that the human species may have the scale and prowess to pull down the biosphere with them. It is fitting at this juncture for political ecologists to concern themselves with both legal regulatory measures, as well as revolutionary processes of social change, which may bring about the social norms necessary to maintain the biosphere. Rockström and colleagues (2009b) refer to the need for "novel and adaptive governance" without using the word revolution. Scientists need to take greater latitude in proposing solutions that lie outside the current political paradigms and sovereign powers. Even the Blue Planet Laureates' remarkable analysis (Brundtland et al. 2012), which notes the potential for climate change, ecosystem loss, and inequitable development patterns neither directly states nor investigates in depth the potential for global ecosystem collapse, or discusses revolutionary responses. UNEP (2012) notes abrupt and irreversible ecological change, which they say may impact life-support systems, but are not more explicit regarding the profound human and ecological implications of biosphere collapse, or the full range of sociopolitical responses to such predictions. More scientific investigations are needed regarding alternative governing structures optimal for pursuit and achievement of bioregional, continental, and global sustainability if we are maintain a fully operable biosphere forever. An economic system based upon endless growth that views ecosystems necessary for planetary habitability primarily as resources to be consumed cannot exist for long. Planetary boundaries offer a profoundly difficult challenge for global governance, particularly as increased scientific salience does not appear to be sufficient to trigger international action to sustain ecosystems (Galaz et al. 2012). If indeed the safe operating space for humanity is closing, or the biosphere even collapsing and dying, might not discussion of revolutionary social change be acceptable? Particularly, if there is a lack of consensus by atomized actors, who are unable to legislate the required social change within the current socioeconomic system. By not even speaking of revolutionary action, we dismiss any means outside the dominant growth-based oligarchies. In the author's opinion, it is shockingly irresponsible for Earth System scientists to speak of geoengineering a climate without being willing to academically investigate revolutionary social and economic change as well. It is desirable that the current political and economic systems should reform themselves to be ecologically sustainable, establishing laws and institutions for doing so. Yet there is nothing sacrosanct about current political economy arrangements, particularly if they are collapsing the biosphere. Earth requires all enlightened and knowledgeable voices to consider the full range of possible responses now more than ever. One possible solution to the critical issues of terrestrial ecosystem loss and abrupt climate change is a massive and global, natural ecosystem protection and restoration program—funded by a carbon tax—to further establish protected large and connected core ecological sustainability areas, buffers, and agro-ecological transition zones throughout all of Earth's bioregions. Fossil fuel emission reductions must also be a priority. It is critical that humanity both stop burning fossil fuels and destroying natural ecosystems, as fast as possible, to avoid surpassing nearly all the planetary boundaries. In summation, we are witnessing the collective dismantling of the biosphere and its constituent ecosystems which can be described as ecocidal. The loss of a species is tragic, of an ecosystem widely impactful, yet with the loss of the biosphere all life may be gone. Global ecosystems when connected for life's material flows provide the all-encompassing context within which life is possible. The miracle of life is that life begets life, and the tragedy is that across scales when enough life is lost beyond thresholds, living systems die.

#### Loss of legitimacy collapses other environmental rules

**Silverstein, Spent two decades covering corporate and political affairs, 2017**

[Ken, 3/1/17, Forbes, “Can The Courts Check Trump's Desire To Emasculate EPA?,” https://www.forbes.com/sites/kensilverstein/2017/03/01/can-the-courts-check-trumps-desire-to-emasculate-epa/?utm\_source=yahoo&amp;utm\_medium=partner&amp;utm\_campaign=yahootix&amp;partner=yahootix&amp;yptr=yahoo#f54831d7f82b, Accessed: 7/2/17, MWM]

When President Trump said last night that the time has come to put “small thinking behind us,” he may not have fully thought through his comments. During his national address, he spoke of clean air and clean water, for example, while also saying he would rollback the regulations to protect them. That’s the paradox of the whole Trump administration — the ability to say whatever is pleasing but then to contradict oneself within the same setting. And such is the case with this presidency, which seems hellbent on taking America back to the 1950s while forsaking the progress being made today. The country’s future rest not with the technologies that are losing traction but with those that have been ebbing their way into the mainstream of American business. To that end, today’s cutting edge fuels and tools are comprised of wind and solar as well as energy storage and microgrids and are changing the way energy is generated and delivered. “With climate change threatening many businesses and our entire economy, it’s surprising that President Trump didn’t even mention it. We need more federal support for clean energy technologies,” said David Levine, chief executive of the American Sustainable Business Council, which represents 250,000 businesses. “The administration unreasonably favors high-carbon fuels like coal over clean energy from wind and solar,” he continued. “This strategy will kill domestic jobs, since renewable energy creates more jobs than fossil fuels. And it will give other countries a competitive advantage over us if we fail to build the a clean energy industry here at home.” Trump’s passing comments in the speech about his “commitment” to the environment were delivered without context, although earlier that day he had signed an executive order to weaken clean water rules and he is expected to do the same for those tied to carbon reductions. Business ranging from Microsoft and Intel Corp. to DuPont and General Mills favor such clean air rules. However, the president has given his EPA Administrator Scott Pruitt the authority to rewrite Obama-era rules that would protect smaller rivers, streams and bays from pollution. Meantime, Trump is expected to do the same for Obama’s Clean Power Plan, which would cut carbon emissions by 32% by 2030 — a ruling now in the courts and one that the EPA administrator had sued to have thrown out while he served as Oklahoma’s attorney general. The think tank, Energy Innovation, however, says that tossing the Clean Power Plan would cost the economy $100 billion by 2030 and $600 billion by 2050. Under that scenario, it adds that a lot more coal plants would remain active while fewer wind and solar farms would get rolled out. The Trump administration’s budget proposal, meanwhile, is reported to cut EPA’s funding by 25% and to lay off 20% of its employees. The budget would go from roughly $8 billion to $6 billion, which would be at 1991 levels. Trump’s disdain for environmental regulations is driving this; he tried to get out of a multi-million payment to South Carolina for land his son’s business had polluted there. But the cuts would also be necessary to pay for a $54 billion increase in defense spending. The economy and the environment do not need to be at odds with one another, noted Pruitt during his talk with EPA staffers last week. “Regulations ought to make things regular,” he said, adding that Congress has given the states more leeway to draw their own conclusions. But the state regulatory bodies don’t have the muscle that the federal government does — that some states are biased toward their domestic industries, giving them greater latitude to craft the laws of those states. Oklahoma is a case-in-point: oil and gas companies contribute to the campaigns of state legislators and office holders. And by extension, they help write the laws there — rules that may not adhere to federal standards. Witness the close interaction between Pruitt and the companies there. The real Donald Trump, no doubt, feels that environmental regulations curb business growth and that such rules therefore should be limited. Any fallout from those policies can externalized — costs to be picked up by others at a later date, which is similar to how he has handled business matters in South Carolina. But, thankfully, America’s policies — no matter what they are — cannot simply be rewritten with the stroke of a pen, or through executive order. If existing laws are to be changed or thrown out, the process requires that it must either be done legislatively or through the judicial branch that would decide such rules to either be unconstitutional or outside the bounds of congressional intent. Legislatively, it will be difficult to just erase long-standing rules given that it would take 60 votes in the U.S. Senate — a body that is now almost evenly split. But what Trump and the Republican-led Congress can do is to override Obama-era rules finalized in the waning months of that presidency. As such, the president’s only legislative achievement thus far is to wipe off from the books the so-called Stream Protection Rule that gives coal mining companies more leeway when it comes to casting aside their debris. That is something that was done under the Congressional Review Act, which only requires a simple majority in the U.S. Senate. So much for the commitment to clean water. (The other big legislative achievement has been to allow the mentally ill to buy assault weapons.) “Big changes to any agency or statute require Congress, and I just don't get the sense that Trump wants to use his poker chips on EPA-reform,” says Rob Barnett, an analyst with Bloomberg Intelligence. “Trump is probably hoping that Scott Pruitt can revamp the EPA via regulation, but the regulatory process is slow and some changes desired by Trump and Pruitt could be blocked by the courts.” It’s the type of checks-and-balances that the Founding Fathers had intended. But it’s the kind of roadblocks that Trump loathes. The separation of powers is the one safeguard that will not just shield the country from an autocracy but its also the constitutional principle that will better protect the nation’s air and water.

## Democracy Answers

### Civic Engagement High – 1NC

#### Civic engagement increasing now

**Liu, Atlantic Writer, 2017**

(Eric, “How Trump Is Reviving American Democracy,” 2-22, https://www.theatlantic.com/politics/archive/2017/03/how-donald-trump-is-reviving-our-democracy/518928/

There are two ways to look at the effect of Donald Trump’s presidency on American democracy. One is that he is a menace to the republic: that his attacks on journalists, federal judges, and constitutional norms undermine the rule of law. The other is that he is the greatest thing to happen to America’s civic and political ecosystem in decades. These views are not mutually exclusive. In fact, they are causally related. The president’s attacks on established institutions have triggered a systemic immune response in the body politic, producing a surge in engagement among his opponents (and also his fans). Since the early 1970s, the nation’s civic health—from membership in civic groups to attendance at public meetings to newspaper reading—has been in steady, severe decline. Economic inequality has fed political inequality in a viciously self-reinforcing loop of disenfranchisement and concentration of clout. But now millions of people, once cynical bystanders, are participating earnestly. In mass marches and packed congressional town meetings, Americans have taken vocal stands for inclusion. At airports and campuses and street corners they have swarmed in defense of Muslim and undocumented neighbors. Membership in the ACLU and the League of Women Voters has swelled, as have subscriptions to leading newspapers. The ranks of Trump’s supporters, meanwhile, are filled with first-time or first-time-in-a-long-time participants in politics. He has given voice to communities long disregarded by cosmopolitan political elites. Heartened by his election and his willingness in office to buck convention, they are now rallying to his defense. Trump has also generated a boom in popular civic education. Across the country, people are creating political clubs, discussion circles, teach-ins. My organization, Citizen University, has launched regular gatherings called Civic Saturdays—a civic analogue to church—that have drawn overflow crowds. Indivisible, an insiders’ guide to pressuring Congress, has sparked intense local organizing and activism. Google searches for the Emoluments Clause, recusal rules, and judicial review have spiked. And iCivics.org, the civics video gaming platform created by former U.S. Supreme Court Justice Sandra Day O’Connor, has seen a doubling of game-playing this year. This civic surge, it’s important to note, crosses ideological lines. Many principled libertarians and conservatives, troubled by Trump’s recklessness, are now cheered by rising popular interest in the ideals of liberty and limits on government power.

### Civic Engagement High – 2NC

#### Trump’s election was a spark in the powder-keg---civic engagement is spreading exponentially and will last

**Liu, Atlantic Writer, 2017**

(Eric, “How Trump Is Reviving American Democracy,” 2-22, https://www.theatlantic.com/politics/archive/2017/03/how-donald-trump-is-reviving-our-democracy/518928/

There are more civic antibodies here than viruses. The conservative Federalist Society is fielding new inquiries from left and right about its Article I Project, which aims to restore congressional primacy against an overreaching executive. Civic start-ups like Free the People are sparking interest among Millennials in a hip libertarianism. The right-leaning American Enterprise Institute held a symposium recently positing that Trump’s arrival is a “Sputnik moment” for civic education. All this energy, now visible and palpable, had been gathering long before Trump became president and has extended well beyond the borders of the United States. From the Arab Spring to the Brexit, from the Tea Party to $15 Now and Black Lives Matter, we live in an age of bottom-up power: citizens self-organizing to challenge entrenched monopolies and orthodoxies. Trump’s election itself was evidence of this. The surge will likely outlast his presidency. Americans today are rushing to make up for decades of atrophy and neglect in civic education and engagement. But as they do so it’s important to remember that citizenship is about more than know-how. It’s also about “know-why”—the moral purposes of self-government. Citizenship in a republic requires not just literacy in power but also a grounding in character. Power literacy means understanding systems of law, custom, and institutions—and acting with skill to move those systems. Civic character is more than personal virtue. It is about character in the collective—mutuality, reciprocity, respect, service, justice—and the prosocial ethics of being a member of the body. Perhaps the most heartening part of today’s civic renewal is that people are exercising both power and character. They are practicing strategies of action while reckoning with questions of first principle. On campuses and public squares, they are debating the rights and responsibilities of dissent. On social media and in person, they are asking just what makes a leader legitimate and a representative truly representative. Every time Trump acts or speaks against disfavored minority groups, they also are reminded that democracy alone—that is, a process of majority rule—is not enough. As Abraham Lincoln argued during his 1858 debates against Stephen Douglas about slavery, a democratic process is legitimate only when coupled with a moral sense. America today is beginning to rediscover its moral sense. The president and his advisers will keep challenging moral and civic norms. Yet that is precisely why over the long term I am optimistic. As Americans have shown each other the last two months, the deepest source of this nation’s greatness and resilience is the decentralized way that citizens will reclaim their power. There are more civic antibodies here than viruses. We should thank Donald Trump for giving us the chance to prove it.

### Plan Insufficient – 1NC

#### Trump shreds democracy for several reasons --- overwhelms the plan

**Klass, Washington Post reporter, 2017**

(Brian, “The five ways President Trump has already damaged democracy at home and abroad,” 4-28, [https://www.washingtonpost.com/news/democracy-post/wp/2017/04/28/the-five-ways-president-trump-has-already-damaged-democracy-at-home-and-abroad/?utm\_term=.378fd150795e)](https://www.washingtonpost.com/news/democracy-post/wp/2017/04/28/the-five-ways-president-trump-has-already-damaged-democracy-at-home-and-abroad/?utm_term=.378fd150795e)//PS)

In just 100 days, President Trump has **damaged American democracy** while simultaneously **accelerating democracy’s global decline.** No, Trump [is not](http://www.salon.com/2016/03/11/trumps_not_hitler_hes_mussolini_how_gop_anti_intellectualism_created_a_modern_fascist_movement_in_america/) a dictator or a fascist, as some wrongly claimed. But he certainly has authoritarian tendencies and a baffling admiration for despots. He has a penchant for attacking democratic institutions and appears willing to sacrifice them in a heartbeat on the altar of his ego. And he has spouted several dangerous lies that a sizable portion of his political base unfortunately believes to be true. As a result, he has already managed to do major damage to democracy at home and abroad in five important ways. First, **he has undercut the integrity of U.S. elections**. Trump [falsely claimed](http://www.factcheck.org/2017/01/trumps-bogus-voter-fraud-claims-revisited/) that millions of people voted illegally last year. That’s not true. Every serious study into voter fraud has concluded that it is a minuscule problem. North Carolina conducted a vote audit for 2016, and found [one case](http://www.vox.com/policy-and-politics/2017/4/26/15424270/voter-fraud-north-carolina) of in-person voter impersonation — out of millions of ballots cast. And yet tens of millions of Americans now wrongly believe that millions voted illegally. That is a serious challenge to public faith in the bedrock of American democracy. Trump also actively solicited and took advantage of Russian meddling in U.S. elections. He [invited](http://www.factcheck.org/2017/01/trumps-bogus-voter-fraud-claims-revisited/) Russia to hack and publish Hillary Clinton’s emails. He mentioned [WikiLeaks 164 times](https://thinkprogress.org/trump-mentioned-wikileaks-164-times-in-last-month-of-election-now-claims-it-didnt-impact-one-40aa62ea5002) in the final month of the campaign (Trump’s CIA director subsequently labeled WikiLeaks as a “[hostile intelligence service](https://www.theguardian.com/us-news/2017/apr/14/cia-director-brands-wikileaks-a-hostile-intelligence-service)“). The hacking of the Democratic National Committee was a brazen cyberattack on U.S. democracy and yet Trump has consistently been an apologist who plays down the hack rather than working to ensure it never happens again. (By the way, there is still an active FBI investigation into whether he or his campaign colluded with Russia in that attack). Second, he has **attacked democratic institutions such as** [**the free press**](https://pen.org/trump-the-truth/?utm_source=Communications&utm_campaign=daedf9e06c-EMAIL_CAMPAIGN_2017_02_10&utm_medium=email&utm_term=0_c67d07604c-daedf9e06c-247582957&mc_cid=daedf9e06c&mc_eid=6b8fc34308) **and** [**the independent judiciary**](http://www.nbcnews.com/news/us-news/experts-trump-undermines-judiciary-twitter-attack-judge-robart-n717626). He has repeatedly dismissed credible, corroborated, truthful reporting as “fake news.” But Trump has also maligned judges in highly personal and reckless ways simply because they ruled against his administration. His White house claimed that some judges (who were simply doing their job) provided a “[gift to the criminal gang and cartel element in our country](http://thehill.com/homenews/administration/330597-white-house-blasts-egregious-ruling-on-sanctuary-cities).” He has called others “so-called judges” and claimed that it would be the fault of the courts if a terrorist attacked occurred during his presidency. **This** incendiary language is unacceptable and **erodes public trust in checks and balances** that are at the core of the U.S. democratic system. Third, he has brazenly **violated basic standards of transparency and government ethics**. Democracy requires transparency. If citizens are not informed about the workings of their government, they cannot hold it accountable. Just take his continuing **refusal to release his tax returns** — something that has been done by every presidential candidate since the 1970s. At first he used the extraordinarily flimsy excuse of an audit, but now [he has even abandoned that fig leaf](http://www.cbsnews.com/news/gary-cohn-says-people-are-wasting-time-asking-for-trump-tax-returns/). Until Trump issues his tax returns, we don’t know whether he is governing for American interests or his bank account. Meanwhile, the Trump administration [has announced](http://www.cnn.com/2017/04/17/politics/donald-trump-transparency-visitor-logs-taxes/) that it won’t release White House visitor logs — so nobody can see who is coming and going to meet the president. Is there an endless stream of lobbyists? Or perhaps some high-profile foreign agents, like the ones he previously hired for his campaign? We have no clue, because Trump reversed an Obama-era policy to tell the American people who is coming to the taxpayer-funded White House. This lack of transparency also **bleeds into ethics violations and conflicts of interest that have gone unpunished** — from using taxpayer dollars to [promote](https://www.theatlantic.com/business/archive/2017/04/state-department-mar-a-lago/524376/) Trump businesses to currying favor with foreign leaders apparently to [receive](https://www.usatoday.com/story/news/world/2017/03/09/china-approves-trump-trademarks/98953422/) lucrative [trademarks](https://www.washingtonpost.com/opinions/ivanka-trumps-foreign-entanglements-put-americas-reputation-on-the-line/2017/04/23/eb41325e-26ba-11e7-a1b3-faff0034e2de_story.html?tid=a_inl&utm_term=.fc6ba9be4c06) abroad. Fourth, Trump has hurt democracy abroad by **leaving pro-democracy reformers out in the cold**. When protesters took to the streets in [Belarus](http://www.bbc.com/news/world-us-canada-39393351) and [Russia](https://www.nytimes.com/2017/04/26/world/europe/open-russia-khodorkovsky-putin-opponent-protests.html) demanding democratic reforms, Trump said nothing. That was a strategic mistake. These were protests in favor of democracy and against regimes that oppose the United States, so it should have been a no-brainer. Instead, Trump stayed silent as protesters were beaten in the streets. It was a missed opportunity and a gift to the forces that seek to undermine democratic reform abroad. Fifth, Trump has **endorsed and applauded dictators and despots**, giving awful rulers a free pass to destroy democracy and violate human rights. He uncritically embraced President Abdel Fatah al-Sissi of Egypt, a military dictator who routinely tortures dissidents. He [called to congratulate](https://www.washingtonpost.com/news/democracy-post/wp/2017/04/18/trump-to-erdogan-congrats-on-dismantling-democracy/?utm_term=.9de513e82786) President Recep Tayyip Erdogan of Turkey on winning a rigged referendum that dismantled democracy in a NATO member state. Those signals have certainly not been lost on authoritarian rulers around the world who recognize that **Trump does not care about democracy or human rights abroad**. As a result, a decade of decline for **democracy around the world will almost certainly accelerate.** Donald Trump is a unique threat to democracy in a way that we haven’t experienced before. Initial fears may have been overblown, but it’s clear that he already is slowly but meaningfully eroding democracy at home and abroad. **We must be vigilant. There are 1,361 days left**.

### Plan Insufficient – 2NC

#### Trump’s “America First” philosophy crushes any chance at international democracy promotion

**Haldevang, Quartz geopolitics reporter, 2017**

(Max, "Trump's "America First" foreign policy is not official. Here's what it says," 1-20, https://qz.com/890868/donald-trumps-america-first-foreign-policy-is-now-official-heres-what-it-means/

If for some reason Donald Trump’s stormy inauguration speech didn’t convince you that the US is abdicating from its global leadership role, perhaps the newly-published “America First Foreign Policy” manifesto will. Published minutes after the inauguration on the revamped http://www.whitehouse.org, the first line reads: “The Trump Administration is committed to a foreign policy focused on American interests and American national security.” It’s a far cry from Jimmy Carter’s “foreign policy of human rights,” George W. Bush’s democracy promotion or Barack Obama’s cautious pragmatism. Where other presidents have focused on bringing international harmony through either better trade relations, support for civil society institutions, or bolstering international institutions, Trump’s credo is “peace through strength.” The slogan “America First” itself is highly divisive—in its first iteration, it was a rallying cry for anti-semitic groups campaigning to stop the US fighting in World War II. The Anti-Defamation League, started in 1913 to combat anti-semitism, urged Trump to stop using it in April last year. Here are the four ways Trump plans to deliver on the policy: Beating ISIL and other “radical Islamic terror groups” At a time when the US has been under literal attacks from another country in the cyber realm, beating Islamic terrorism will be the Trump administration’s “highest priority,” implying that terrorism is the greatest threat to the country. This section does, coincidentally, contain the document’s only reference to cyber warfare—but in the context of nullifying terrorist groups’ propaganda and recruitment networks. A massive military spending program “Our military dominance must be unquestioned,” the manifesto asserts, noting that the size of the US Navy and Air Force have shrunk since 1991. Given that America’s defense budget is bigger than the next 10 countries combined, this would seem a pretty moot point—but it’s a big populist crowd pleaser from the new strongman president. The size of the Air Force and Navy are perhaps odd examples to pick, however, since warfare has changed considerably in recent decades, moving toward “nonlinear war” from old-fashioned big battles, and privileging the ability to rapidly respond to military provocations and being able to weaponize information. Reoriented diplomacy “The world must know that we do not go abroad in search of enemies, that we are always happy when old enemies become friends, and when old friends become allies,” the manifesto reads. This sentence more than anything encapsulates how the world order could change under Trump. “Old enemies” becoming friends is a clear olive branch to Russia, while support for current allies (whom he hasn’t shied away from disparaging) is notably absent. Trump has long said he thinks America is being ripped off in the current alliances like NATO that define the global order, and favors a new deal-making approach where he can see tangible benefits from relations with countries, like Russia. Redefining global trade The second half of the manifesto retreads Trump’s oft-repeated trade priorities, with the message being that global trade must benefit the American worker. It’s a radically statist approach to an issue seen by recent presidents as benefiting the entire world economy and helping create peaceful bilateral relations. The memo’s language confirms that; there’s not a single sentence about how trade deals affect relations with other countries or subtle global power balances. Instead, the new administration says it will take a zero-sum approach—with every negotiation starting from the basis of how American workers will be helped. The president is “committed to renegotiating NAFTA,” its says. “If our partners refuse a renegotiation that gives American workers a fair deal, then the President will give notice of the United States’ intent to withdraw from NAFTA.” While China isn’t mentioned directly, expect a Cold War-era approach to relations with the world’s other superpower. Leader of the free world no more In sum, the warm, fuzzy conceit of America, the well-meaning, oft-blundering global super-cop trying to spread democracy has officially disappeared. Today’s foreign policy announcements reveal an administration that sees international relations as a dog-eat-dog realm. As Trump argued in his inauguration speech, “it is the right of all nations to put their own interests first. We do not seek to impose our way of life on anyone but rather to let it shine as an example.” That example? Pure self-interest.

### Democratic Peace Wrong – 1NC

#### **DPT wrong – their stats are the result of contractual economies not democratic norms**

Mousseau, Poli Sci Prof @ University of Central Florida, 16

(Michael, Grasping the scientific evidence: The contractualist peace supersedes the democratic peace, Conflict Management and Peace Science

1–18)

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, may be spurious and accounted for by institutionalized market ‘‘contractualist’’ economy. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the profound implication that the spread of democracy will end war. New economic norms theory, on the other hand, yields the contrary implication that universal democracy will not end war. Instead, it is market-oriented development that creates a culture of contracting, and this culture legitimates democracy within nations and causes peace among them. The policy implications could hardly be more divergent: to end war (and support democracy), the contractualist democracies should promote the economies of nations at risk (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, the impact of democracy is zero regardless of how contractualist economy or interstate conflict is measured. There is no misinterpreted interaction term in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an erroneous research design. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a statistical artifact since it does not exist among neighbors where everyone has an equal opportunity to fight.

### Democratic Peace Wrong – 2NC

#### DPT either empirically disproven or not statistically significant

Rosato 11 PhD, Department of Political Science, The University of Chicago, Assistant Professor of Political Science at the University of Notre Dame. The Handbookon the Political Economy of War By Christopher J. Coyne, Rachel L. Mathers

Democratic wars There is considerable evidence that the absence of war claim is incorrect. As Christopher Laync(2001, p. 801) notes, 'The most damning indictment of democratic peace theory, is that it happens not to be true: democratic states have gone to war with one another." For example, categorizing a state as democratic if it achieves a democracy score of six or more in the Polity dataset on regime type - as several analysts do - yields three inter-dcmocratic wars: the American Civil War. the Spanish American War and the Boer War/' This is something defenders of the theory readily admit - adopting relatively inclusive definitions of democracy, they themselves generate anywhere between a dozen and three dozen cases of inter-democratic war. In order to exclude these anomalies and thereby preserve the absence of war claim, the theory's defenders restrict their definitions of democracy. In the most compelling analysis to date, Ray (1993, pp. 256-9, 269) argues that no two democracies have gone to war with one another as long as a democracy is defined as follows: the members of the executive and legislative branches arc determined in fair and competitive elections, which is to say that at least two independent parties contest the election, half of the adult population is eligible to vole and the possibility that the governing party can lose has been established by historical precedent. Similarly, Doyle (1983a, pp. 216-17) rescues the claim by arguing that states" domestic and foreign policies must both be subject to the control of the citizenry if they are to be considered liberal. Russett, meanwhile, argues that his no war claim rests on defining democracy as a stale wilh a voting franchise for a substantial fraction of the population, a government brought to power in elections involving two or more legally recognized parties, a popularly elected executive or one responsible to an elected legislature, requirements for civil liberties including free speech and demonstrated longevity of at least three years (Russett 1993, pp. 14-16). Despite imposing these definitional restrictions, proponents of the democratic peace cannot exclude up to five major wars, a figure which, if confirmed, would invalidate the democratic peace by their own admission (Ray 1995, p. 27). The first is the War of 1812 between Britain and the United States. Ray argues that it does not contradict the claim because Britain does not meet bis suffrage requirement. Yet this does not make Britain any less democratic than the United States at the time where less than half the adult population was eligible to vote. In fact, as Laync (2001, p. 801) notes, "the United States was not appreciably more democratic than un re formed Britain." This poses a problem for the democratic peace; if the United States was a democracy, and Ray believes it was, then Britain was also a democracy and the War of 1812 was an inter-democratic war. The second case is the American Civil War. Democratic peace theorists believe the United States was a democracy in 1861, but exclude the case on the grounds that it was a civil rather than interstate war (Russett 1993, pp. 16-17). However, a plausible argument can be made that the United Stales was not a stale but a union of stales, and thai this was therefore a war between states rather than within one. Note, for example, that the term "United States" was plural rather than singular at the time and the conflict was known as the "War Between the States."7 This being the case, the Civil War also contradicts the claim.8 The Spanish-American and Boer wars constitute two further exceptions to the rule. Ray excludes the former because half of the members of Spain's upper house held their positions through hereditary succession or royal appointment. Yet this made Spain little different to Britain, which he classifies as a democracy at the time, thereby leading to the conclusion that the Spanish-American War was a war between democracies. Similarly, it is hard to accept his claim that the Orange Free State was not a democracy during the Boer War because black Africans were not allowed to vote when he is content to classify the United States as a democracy in the second half of the nineteenth century (Ray 1993. pp. 265, 267; Layne 2001. p. 802). In short, defenders of (he democratic peace can only rescue their core claim through the selective application of highly restrictive criteria. Perhaps the most important exception is World War I, which, by virtue of the fact that Germany fought against Britain, France, Italy, Belgium and the United States, would count as five instances of war between liberal states in most analyses of the democratic peace.9 As Ido Oren (1995, pp. 178-9) has shown. Germany was widely considered lo be a liberal state prior to World War I: "Germany was a member of a select group of the most politically advanced countries, far more advanced than some of the nations that arc currently coded as having been "liberal' during that period." In fact, Germany was consistently placed toward the top of that group, "either as second only to the United States ... or as positioned below England and above France." Moreover, Doyle\*s assertion that the case ought to be excluded because Germany was liberal domestically, but not in foreign affairs, does not stand up lo scrutiny. As Layne (1994, p. 42) points out. foreign policy was "insulated from parliamentary control" in both France and Britain, two purportedly liberal states (see also Mcarshcimcr 1990, p. 51, fn. 77; Layne 2001, pp. 803 807). Thus it is difficult to classify Germany as non-liberal and World War I constitutes an imporiant exception to Ihe finding. Small numbers Even if restrictive definitions of democracy enable democratic peace theorists to uphold their claim, they render it unsurprising by reducing the number of democracies in any analysis. As several scholars have noted, there were only a dozen or so democracies in the world prior to World War I, and even fewer in a position to fight one another. Therefore, since war is a rare event for any pair of states, the fact that democracies did not fight one another should occasion little surprise (Mearsheimer 1990, p. 50; Cohen 1994, pp. 214, 216; Layne 1994, p. 39; Henderson 1999, p. 212).10 It should be a source of even less surprise as the number of democracies and the potential for conflict among them falls, something that is bound to happen as the democratic bar rises. Ray\*s suffrage criterion, for example, eliminates two great powers - Britain and the United States - from the democratic ranks before World War I. thereby making the absence of war between democracies eminently predictable." A simple numerical example should serve to illustrate the point. Using a Polity score of six or more to designate a state as a democracy yields 716 purely democratic dyads out of a total 23240 politically relevant dyads between 1816 and 1913. Assuming that wars arc distributed according to the proportion of democratic dyads in the population and knowing that there were 86 dyads at war during this period, we should expect to observe three democratic-democratic wars between the Congress of Vienna and World War I. If we actually observed no wars between democracies, the democratic peace phenomenon might be worth investigating further even though the difference between three and zero wars is barely statistically significant." Increasing the score required for a state to be coded as a democracy to eight - a score that would make Britain democratic from 1901 onwards only and eliminate states like Spain and the Orange Free State from the ranks of the democracies - makes a dramatic difference. The number of democratic dyads falls to 171. and the expected number of wars is now between zero and one. Now the absence of war finding is to be expected. In short, by adopting restrictive definitions of democracy, proponents of the democratic peace render their central claim wholly unexceptional. In sum, proponents of the democratic peace have unsuccessfully attempted to tread a fine line in order to substantiate their claim that democracies have rarely if ever waged war against one another. On the one hand, they admit that inter-democratic war is not an unusual phenomenon if they adopt relatively inclusive definitions of democracy. On the other hand, in their attempts to restrict the definition of democracy and thereby save the finding they inadvertently make the absence of war between democracies trivial.

#### Group constraints deter autocratic aggression- 4 reasons

War finance- wars are expensive, threaten autocratic control- democracies change leadership so much it doesn’t matter

CMR- civilian autorcats are afraid of coups- want weak militaries

Domestic focus- the military has to be used internally AND autocrats have to appease groups

Higher costs of losing- death v losing office

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There is also little evidence for Ihe other implication of the group constraint claim, namely that group constraints must be weaker in autocracies than in democracies. If the mechanism is to explain why democracies remain at peace but autocracies do not, then there must be good evidence that democratic leaders face greater group constraints. The evidence suggests, however, that autocratic leaders often respond to groups - themselves or their supporters that have powerful incentives to avoid war. One reason for autocrats to shy away from conflict is that wars are expensive and the best way to pay for them is to move to a system of consensual taxation, which in turn requires the expansion of the franchise. In other words, autocratic leaders have a powerful incentive to avoid wars lest they trigger political changes that may destroy their hold on power. Another reason to avoid war is that it allows civilian autocrats to maintain weak military establishments, thereby reducing the chances that they will be overthrown. Different considerations inhibit the war proneness of military dictators. First, because they must often devote considerable effort to domestic repression, they have fewer resources available for prosecuting foreign wars. Second, because they are used for repression their militaries often have little societal support, which makes them ill equipped to fight external wars. Third, military dictators are closely identified with the military and will therefore be cautious about waging war for fear that they will be blamed for any subsequent defeat. Finally, time spent fighting abroad is time away from other tasks on which a dictator's domestic tenure also depends. Thus there may be fewer groups with access to the foreign policy process in autocracies - in extreme cases only the autocrat himself has a say - but these often have a vested interest in avoiding war. This being the case, it is not clear that group constraints are weaker in autocracies than they are in democracies

### Desegregation Fails

#### Desegregation ineffective – its unconstitutional, results in parental opposition, and justifies cultural erasure

**Thernstrom, Harvard history professor, 2006**

(Stephan, The Benefits of Racial and Ethnic Diversity in Elementary and Secondary Education, “Demographic Perspectives on Diversity, Racial Isolation, and the Seattle School Board's Plan to “Cure” Residential “Segregation”,” The United States Commission on Civil Rights (Briefing), November 2006, pgs. 85-104, http://www.usccr.gov/pubs/112806diversity.pdf)

The United States Commission on Civil Rights briefing for which this paper was written was framed as a discussion of “the benefits of diversity in elementary and secondary education.” I take this formulation as overhasty shorthand for a broader consideration of this controversial topic. Surely any serious exploration of the issues must give attention to the costs as well as the benefits of diversity. Furthermore, the important question for the formulation of public policy is not the effects of diversity in general; it is the question of the efficacy of engineering diversity in educational institutions by using the power of the state to exclude children from certain schools because of their race or ethnicity. Whatever benefits might flow from diversity that “comes naturally,” it does not follow that diversity created by compulsory race-driven pupil assignment plans will have the same impact. The costs of engineering racial balance in our public schools are high, I believe, and they far outweigh any benefits that can be demonstrated from the existing social science literature. **Telling families that the race of their children bars them from attending a school** they prefer is **morally repugnant and** probably **unconstitutional**. When a school district has deliberately segregated students by race, race-conscious policies may be required to remedy that wrong. But, **in the absence of that intentional segregation, race-based pupil assignment denies a fundamental right guaranteed by the equal protection clause of the Fourteenth Amendment.** Furthermore, it must be remembered that **race-conscious admissions policies often fail to produce the racial balance for which they are designed**. Parents vote with their feet. The problem is commonly called “white flight,” but in fact the “flight” is by parents of all races who have the resources to afford private school, to home-school their child, or to move to the suburbs. Boston is a classic example, where a majority-white system was quickly transformed into one in which white enrollments barely reach the double digits. Black, Latino, and Asian parents with incomes above the poverty line joined whites in abandoning the Boston public schools, with only a pyrrhic victory for integration.18 “We had to destroy the village to save it.” Four key terms have been thrown about with casual abandon in the record of Parents Involved v. Seattle School District: “diversity,” “racial isolation,” “racial quota,” and “de facto residential segregation.” I offer some observations to clarify these murky concepts, and provide some basic demographic information of central relevance to the dispute. Measuring Diversity Diversity is an astonishingly elastic and amorphous concept. If our constitutional right to the equal protection of the laws can be suspended whenever an instrument of government makes the claim that it is acting to enhance diversity, we should be worried. Policies that purport to enhance diversity are difficult to evaluate, because the concept is rarely given a clear operational definition. The sharpest and clearest definition of a diverse population is one that precisely mirrors the composition of the total population in all of the characteristics thought to be relevant. A large random sample of the population of the United States would fully capture its diversity, within the range of the sampling error. If all students in the Seattle Public Schools were randomly assigned to a high school and given no other choice, each school would mirror the diversity of the city's public school population of high school age. In practice, though, it likely would not do so. Some parents would likely refuse to let their child attend the designated school. Their refusal could produce considerable slippage, so that the actual population attending the public high schools of the city would deviate somewhat from the perfect diversity the pupil assignment plan sought to create. How much deviation from pure proportional representation can be allowed without losing the alleged diversity benefits the plan seeks to provide? No one can say with any authority, but the Seattle School Board purports to know. When the present suit was filed, Seattle school officials allowed a deviation of plus or minus 10 percent in the proportion of white pupils and students of color in any particular school. For the 2001-2002 school year, with a legal challenge to its plan pending in court, the board broadened the band of possible deviation to plus or minus 15 percent. Where did the original 10-point formula come from? Why the change to 15 points? Not from any evidence about how the alleged educational and social benefits of diversity would be affected. Judge O’Scannlain’s opinion for the Ninth Circuit panel reports that the School Superintendent had strongly recommended that the band of permissible deviation be increased even more, to 20 percent, because he was convinced that such a broadening would not diminish the benefits of diversity.19 (It is unclear what evidence he considered in reaching this conclusion.) The board was unmoved by his argument and settled upon 15 percent. Thus the school district over the years has arbitrarily decided, without benefit of any evidence that has been made public, exactly how many of the city’s students would be assigned to a high school on the basis of the color of their skin or ethnic origins. Whether the board broadened the band, narrowed the band, or left it unchanged, we are expected to believe that they have always acted so as to maximize diversity. Added to the sheer arbitrariness of the school board in fixing the band of possible deviation from strict proportional representation is an equally arbitrary fixation on race/ethnicity as the only kind of diversity that schools require. This criticism has been well developed in the majority opinion of the Ninth Circuit panel and in some of the dissents in the Ninth Circuit's en banc opinion, and I will not dwell on it here. Suffice it to say that **social class, poverty status, and the language spoken in the home of students are surely elements of any meaningful conception of diversity; so too is religion**. Race is far from the sole basis of social division in our society. If school authorities are allowed to say that a certain school is unavailable to a child because it has “enough” whites already, would it be equally acceptable to deny a pupil’s choice because the school had “enough” Jews or Catholics? Even if we were to accept the board's narrowing of the concept of diversity to apply to groups based on race or ethnicity, an even more troubling feature of the Seattle plan is the astonishing crudity of the racial classifications used to determine which pupils may attend “oversubscribed” schools—those with more applicants than empty seats. Although the city's public schools employ several racial and ethnic categories in collecting data about their students, the fine distinctions made in the school records are ignored when it comes to engineering diversity in the high schools. Instead, race is simplified into a binary category; students are either white or “of color,” and that’s all that matters. African Americans, Alaskan Natives, Cambodians, Dominicans, Filipinos, Koreans, and Samoans, in the eyes of the school board, have so much in common that they are interchangeable for this purpose. No effort is made to balance the distribution of each of these and other racial groups across schools. For some reason, the school system pays no heed at all to the manifest diversity within the “student of color” category. In its parochial view, diversity stops when you cross the color line. No school is allowed to have “too few” or “too many” whites; once there are enough whites to fall within the arbitrarily determined band of permissible deviation, diversity has been assured. Schools that have three times as many Asian as black students or three times as many black as Asian students are not regarded as problematic at all, though it could easily be argued that such imbalances diminish diversity and reduce interracial contact. It is passing strange in the opening years of the twenty-first century to have public policies framed in the bipolar racial terms appropriate in Mississippi half a century ago. At the time of Brown v. Board, the United States was a basically biracial society (though there were always people who didn't fit in either category). But that is hardly true any more, and certainly not true in Seattle. The largest minority population enrolled in the Seattle public schools consists of Asian Americans, 23 percent of the total, just a shade above the African American proportion. But the school authorities apparently view Asians as somehow racially disadvantaged and in need of the leavening presence of white classmates, even though their educational performance matches or exceeds that of whites, and their parents are both more highly educated and more affluent than the typical white American.20 (Note that Asian Americans account for half of enrollments at both Berkeley and UCLA today, and that non-Hispanic white students are in fact an “underrepresented minority,” although the University of California refuses to call them that.) Since the 1970s, all federal agencies have been required to gather statistical information about the race and ethnicity of the citizens they serve, distinguishing at a minimum whites, African Americans, American Indians, Asians, Latinos, and persons of mixed race. Why Seattle's schools ignore these distinctions is a puzzle. A Seattle high school with a student body that is 26 percent white and 74 percent Asian American has “enough” whites to be adequately balanced racially, and so too does one that is 26 percent white and 74 percent African American. Both schools offer the alleged educational and social benefits of diversity, and are indistinguishable when viewed through the curious spectacles worn by members of the Seattle School Board. And if white enrollment were allowed to slip two or three points lower in these two schools, both would suddenly become “racially concentrated” schools and hence lacking in diversity. The tool Seattle has chosen to meet its diversity goals is a very dull axe that is only capable of chopping a log into two large chunks. It is difficult to fathom how school officials who have striven for decades to create racially integrated schools and who profess a deep attachment to fostering diversity could be so locked into seeing the world in black and white terms—so oblivious to the profound cultural and socioeconomic differences within the “students of color” category. Seattle’s pupil assignment scheme is a relic of another era. If it is not abandoned altogether, as I would prefer, it surely needs to be redesigned to reflect the far more complex racial scene today. If engineering diversity has all the benefits that defendants in this case claim, then they need to put in place a racial balance plan that is sensitive to current realities.

## Inequality Answers

### Desegretation Fails – 1NC

#### Degregation and racism in other sectors of society undermine the transformative effect of the plan

**Adamson, Seattle law professor, 2007**

(Bryan, “A Thousand Humiliations: What Brown Could Not Do”, The Scholar: St. Mary's Law Review on Minority Issues, lexis)

VI. Conclusion

"Even the smallest victory is never to be taken for granted. Each victory must be applauded, because it is so easy not to battle at all, to just accept and call that acceptance inevitable." -Audre Lorde No measure of a court's equitable power, no measure of a government's dismantling of de jure barriers, no number of buses could solve what James Baldwin and others have seen as our nation's core moral failing: racism. Brown set the stage for dismantling racism, segregation, and discrimination in public school systems. However, addressing the racism, segregation, and discrimination in politics, suburbanization, housing, and transportation policy went unabated for too long, and frustrated the ability of Brown's edict to be wholly fulfilled.

Though we recently commemorated the fiftieth anniversary Brown, reflection is still warranted. For many, that reflection invites a profound sense of disappointment in light of the promise Brown signaled for African-Americans, educational achievement, and racial integration. However, as the history of Brown makes painfully clear, courts "cannot produce social reform on its own, and [] judges are unlikely to challenge established social consensus." n143 Given that the issue of educational achievement for African-Americans has shifted to the statehouses across the country, the same can be said of legislators.

Today, with the benefit of hindsight, we can all reflect upon the Brown decisions and implementations with an arched eyebrow of skepticism. To the extent that skepticism has transformed itself into disappointment, it is worth considering that perhaps, just perhaps, our expectation for what Brown could achieve for African-Americans was outsized, or at least, misplaced. What we hoped for was not necessarily what Brown promised. While Brown set us "on the path of rejecting the kind of racial exclusion that had made African Americans a people apart since before the nation's founding," n144 Brown could not break through that smothering pattern of a thousand humiliations beyond courts' reach.

### Desegretation Fails – 1NC

#### Desegregation policies made without first confronting broader societal racism fail and are met with huge white resistance

**Adamson, Seattle law professor, 2007**

(Bryan, “A Thousand Humiliations: What Brown Could Not Do”, The Scholar: St. Mary's Law Review on Minority Issues, lexis)

I. Introduction Even measuring the Brown v. Board of Education decisions n1 by the most modest standard is to acknowledge a dream not realized. While Brown represented, most unequivocally, a blow to segregation in public schools, some fifty years later, many public schools have become racially identifiable again. Today, 37% of African-Americans and Latinos attend schools which are overwhelmingly comprised of minorities. n2 In Detroit, 80% of the White students attend schools with only 3% African-American; 80% of African-Americans attend schools which are only 4% of White. n3 In Texas, 40% of its 1.8 million students attend "overwhelmingly" Hispanic schools. n4 In Cleveland, over half of all African-American students attended racially isolated schools in the 1970's and 1980's. n5 In 2001, that number actually rose to over 65%. n6 Prior to Brown, the education gap between Whites and African-Americans was overwhelming. In 1950, 6.5% of America's nonwhite population had no formal education, 24.9% had completed less than five years of schooling, and over 31% were functionally illiterate. n7 Contrast that with Whites in 1950: only 2.1% had no formal education, only 6.6% had completed less than five years of schooling, and only 8.7% could be considered functionally illiterate. Today, these disparities have narrowed, but are no less distressing. According to the National Assessment of Educational [\*189] Progress, in 2003, 65% of African-Americans in K-12 were unable to read at that their grade level, compared to 25% of Whites. n8 Over 15% of African-Americans could not read proficiently upon leaving high school. n9 Furthermore, only 50.2% African-Americans graduated from high school in four years, versus 74.9% of Whites. n10 African-American college enrollment and completion rates are similarly low. African-Americans earn only 50% of the college degrees that Whites earn. It is no mystery that educational outcomes have a significant, if not dispositive impact on earning power and sustained economic prosperity. Thus, it should come as little surprise that African-American wage earnings are only 67% of those earned by Whites. n11 Before Brown, it ws presumed that the primary cause for then-existing achievement gaps and the racial identity of public schools was the system of de jure segregation which relegated African-American children to inferior educational resources, high classroom populations, and racial isolation. It was the Brown litigation that brought those problems into relief, including the psychological damage caused by de jure segregation and its pernicious impact on academic achievement. The promise abided that public school desegregation would ensure equal, thus better educational opportunities for African-Americans. However, given the current racial make-up of public urban schools, and the persistent achievement gaps, many view the promise of Brown woefully unfulfilled. It might be said that Brown was supposed to do two things: 1) provide immediate relief to the litigants and the school districts, and 2) provide a directive steeped in constitutional doctrine to eliminate all vestiges of segregation and discrimination in not only those schools directly involved in the litigation, but public school systems nationwide. n12 However, it quickly became clear that Brown could not "simply" be about school segregation and discrimination. To be an unmitigated success, Brown would have to address the segregation and discrimination that infected virtually every aspect of our country. Brown could never do that. For all of Brown's potential, it was simply incapable of addressing the myriad social, political, and economic forces [\*190] that profoundly impacted the decision itself, and equally as important, would frustrate the desegregation remedies prescribed. As the late Roy Wilkins described, the states "insisted and wove into a smothering pattern a thousand different personal humiliations, both public and private, based upon color." n13 The purpose of this Article is to illuminate how the Brown decisions - flawed in themselves - had to overcome that "smothering pattern" of racism and discrimination in areas beyond the courts' equitable and temporal reach. In sum, Brown proved to be no match for rank racism, unchecked political power, judicial capitulation, housing segregation and even interstate highway construction policies. Part One of this Article examines the Brown decisions and the aftermath. Part Two revisits the desegregation saga post-Green v. County School Board of New Kent County, Virginia, n14 and the subsequent political and judicial forces which would doom desegregation efforts. Part Three examines the role that suburbanization and interstate highway transportation policies contributed to the frustration of desegregation efforts. This Article concludes by positing that in the context of modern public school reform, the promise of Brown is still elusive due to proposed legislative solutions, which once again, marginalize the interests of African-Americans. II. What Brown did not do A. Brown I as a Triumph of Racial Restorative Justice? Well, Not Quite Certainly, there has been plenty of justifiable praise for Brown's impact. It has been described in almost mythic terms, noted as "a defining moment in American history," n15 and is credited for the growth of the black middle class. n16 Many more, however, have cast sobering eyes toward [\*191] its legacy. Derrick Bell has remarked upon Brown's "unassertive and finally failed implementation" because it did not boldly rebuke the likelihood that Whites were only going to abide by desegregation remedies that converged with their interests, if at all. n17 In a similar vein, Charles Ogletree observed that the Brown II's "with all deliberate speed" directive was a bow to White resistance to desegregation and ensured that Brown would never be "implemented as a social imperative." n18 Professor Lani Guinier, reflecting upon Brown, noted that the decision allowed to continue, "uninterrupted," White America's compulsion to use race as a scapegoat, which ultimately led to our re-stigmatization. n19 Gary Orfield commented that the Brown holding would have been remembered as a failure, but for the civil rights movement. n20 Still others have placed the current racial disparities in academic achievement, as well as the re-segregation of public school systems throughout the country, squarely on the shoulders of African-Americans. n21

#### Other racist structures and backlash inevitably overwhelms desegregation efforts

**Adamson, Seattle law professor, 2007**

(Bryan, “A Thousand Humiliations: What Brown Could Not Do”, The Scholar: St. Mary's Law Review on Minority Issues, lexis)

Nine years after Brown II, the Supreme Court proclaimed that "the time for mere 'deliberate speed' has run out." n63 It was four years after that, in Green v. County School Board of New Kent County, Virginia, n64 [\*200] the Supreme Court ordered school districts under desegregation plans to identify any policy or practice "traceable to the prior de jure system of segregation" that "continued to have discriminatory effects." n65 Once identified, remedies were now bound to address "not just ... the composition of student bodies ... but ... every facet of school operations." n66 The Green decision empowered those who sought broad remedies to eradicate the discrimination that impacted public schools and the education of African-American children. Emboldened plaintiffs set out to eliminate all vestiges of de jure segregation "root and branch." n67 Predictably, racial discrimination impacting school segregation could be found virtually everywhere: faculty and staff hiring; training and retention; establishing school district boundary lines; distribution of education expenditures; student discipline; special education placement; physical plant conditions; educational achievement and opportunities for students in reading, math, science, communication, and other curricular fundamentals; vocational education placement, counseling and career guidance; extra-and co-curricular activity support; school transportation; employment; and especially in housing. n68 By identifying the "hard" and [\*201] "soft" indicia of school segregation and discrimination, courts belatedly began to use their equitable powers to demand broad remedies. Consequently, between 1966 and 1975, 523 school districts had desegregated. n69 Ultimately, these gains would be short-lived, as politicians, housing discrimination, suburbanization, and federal interstate highway plans would hinder efforts to achieve Brown's goals. B. "Root and Branch": Too Little, Too Late "Southern White Democrats will desert their party in droves the minute it becomes a black party." - Kevin Phillips, campaign strategist to Richard Nixon, 1967 n70 As quickly as the Supreme Court stepped in to accelerate the pace of desegregation, another backlash brewed. Particularly, the implementation of busing plans caused white citizens from Los Angeles to Boston to violently defy desegregation orders. It was during this time that Americans saw the image which came to symbolize the rank anti-black hatred: attorney Theodore Landsmark, outside of Boston City Hall, being held by a White man as another man attacks him with the spire of the pole waving the American Flag. n71 More insidiously, President Richard Nixon stepped in to hasten the retreat. His hostility to busing well-documented, n72 Nixon set out to challenge and stall desegregation orders, part of his overall "Southern Strategy" for Republicans to claim - once and for all - the southern vote. n73 He fired Leon Panetta, his Assistant Secretary of Health, Education, [\*202] and Welfare, for his aggressive pursuit of desegregation. n74 In Swann v. Charlotte-Mecklenburg School District, n75 Attorney General John Mitchell explained that the Nixon Administration "supported Charlotte in principle, in that we are taking the position that the Fourteenth Amendment does not require racial integration as a matter of law." n76 After the Swann decision, which ordered a busing desegregation remedy, Nixon signed legislation stopping all busing until all appeals had been filed, or the appeal times had lapsed. n77 Nixon then trained his eye upon Supreme Court appointments. In addition to his appointment of Harry Blackmun and William Rehnquist, Nixon also appointed Lewis Powell, Jr. to the Supreme Court with the expressed hope that he would be instrumental in "eliminating busing and decelerating housing desegregation efforts." n78 Powell did not disappoint; his presence on the high court proved pivotal in two of the most devastating anti-desegregation decisions ever issued. Powell's vote was dispositive in the Milliken v. Bradley n79 decision, which held that an inter-district, urban-suburban Detroit, Michigan busing remedy to achieve racial balance was unconstitutional. n80 The Supreme Court's rejection of urban-suburban remedies ensured that Detroit and other metropolitan school districts-especially in northern cities-could only watch helpless as the districts tipped toward minority-majority composition. Milliken also ensured that it would be only a matter of time when northern school districts would throw up their hands and argue the impossibility of Brown, and for the release from desegregation orders. In another decision, San Antonio Independent School District v. Rodriguez, n81 Powell wrote for the 5-4 majority, reversing the district court finding that Texas' property tax-school funding mechanism violated the Equal Protection Clause. n82 Holding that there was neither a constitutional right to a public education nor financial equalization, n83 it would take twenty [\*203] years and two more iterations of school finance litigation to only partly nullify Rodriguez's impact. Ronald Reagan continued the assault on desegregation started by Nixon to solidify the white southern Democratic base. After refusing an invitation to speak before the National Association for the Advancement of Colored People at its annual convention, Reagan instead went to Philadelphia, Mississippi - the town made infamous by the murders of Goodman, Cheney, and Schwerner at the height of the civil rights movement - to kick off his presidential campaign, and extol the virtues of "state's rights." n84 In 1981, he rescinded the Emergency School Aid Act, which had documented success at supporting desegregation remedies, and attempted to eliminate Desegregation Assistance Centers. n85 The head of his Department of Justice Civil Rights Division, William Reynolds, n86 also hostile towards school desegregation and busing, set about dismantling those efforts. n87 Finally, it was Reagan's Supreme Court appointees, Kennedy, O'Connor, and Scalia, and Bush's appointment of Thomas who ensured the end of all court-ordered desegregation plans owed to the Brown decisions. n88 As the causal connection between de jure segregation and present vestiges became more attenuated, the increasingly conservative Supreme Court would begin to ensure that court-ordered desegregation - regardless of successes or failures - would come to a halt. In Missouri v. Jenkins, n89 the Supreme Court set time limits on equalizing funding. Freeman v. Pitts n90 limited equitable remedies, and held that districts would not have to show correction of all violations as a condition of finding unitary status. n91 Finally, in Oklahoma v. Dowell, n92 even though the Oklahoma City School District had not met all of the goals set out in the desegregation [\*204] order, the Supreme Court affirmed the dissolution of the desegregation order. The school board promptly voted to return to segregated neighborhood schools. With this, "the Supreme Court exhumed some of Plessy's basic assumptions," n93 viz., segregated schools would be a reality again, but with no assurance that they would be equal.

### Education Not Key – 1NC

#### K-12 does not determine later income—econometric data proves

**Rothstein, Berkeley public policy professor, 2017**

(Jesse, “Inequality of Educational Opportunity? Schools as Mediators of the Intergenerational Transmission of Income,” April, http://www.irle.berkeley.edu/files/2017/Inequality-Of-Educational-Opportunity.pdf

8 Conclusion

Chetty et al.’s (2014) pathbreaking work showed that there is dramatic variation in intergenerational income mobility across geographic areas within the United States. This raises the intriguing possibility that we can identify policies that account for this variation and, by exporting these policies from high- to low-mobility areas, move closer to equality of opportunity. CHKS presented suggestive correlations that indicated that school quality might be an important contributing factor. This paper has investigated this suggestion further, by asking whether high- and low-income children’s academic outcomes are more equal in areas where their adult economic outcomes are more equal – that is, in areas with more intergenerational mobility. I find that there is statistically significant variation across commuting zones in the gradients of educational attainment, academic achievement, and non-cognitive skills with respect to parental income. Intergenerational income transmission is reasonably strongly correlated with the educational attainment gradient and with the labor market return to education, but does not covary strongly with either academic achievement or non-cognitive skill gradients (with the exception of gradients computed from teacher reports of children’s non-cognitive skills). I find that only about one-tenth of the across-CZ variation in intergenerational income [end page 35] mobility is attributable to differences in children’s earnings deriving from differences in skill accumulation. A slightly larger share is attributable to differences in the labor market returns to children’s skills. About one-third is attributable to differences in the labor market return to parental income holding skills (and the returns to skills) constant. The remaining, largest portion derives from differences in spousal and non-labor income, primarily reflecting differences in the likelihood of having a working spouse. Although this evidence is observational rather than causal, it strongly suggests that differences in elementary and secondary school quality are not an important determinant of variation in income mobility. (This is not to say that school quality is not important for other reasons, of course, or even that it does not contribute to overall mobility in a way that is roughly constant across CZs.) There appears to be more of a role for access to higher education in driving economic mobility, though even here the contribution is not large relative to the overall variation. Further investigation into the determinants of local intergenerational mobility should focus on differences in the returns to education, in the returns to family income conditional on children’s human capital, and in the relative propensity of children from high- and low-income families to have working spouses. Plausible factors driving the former might include institutions determining local income inequality, such as state income taxation and union density. The second, reflecting direct effects of parental income on children’s earnings conditional on children’s human capital, might reflect variation in the importance of labor market networks or in spatial or social stratification of the labor market. The third seems to reflect differences in the likelihood of marriage rather than variation in assortative mating; insofar as this reflects differences across CZs in the likelihood that romantic partners will be formally married rather than differences in the likelihood of partnership, it may not represent meaningful variation in equality of opportunity. \* CHKS = Chetty et al. 2014

### Education Not Key – 2NC

#### Education won’t help inequality—economic growth absorbed by top 1%

**Horowitz, Globe Staff writer, 2015**

[Evan, 7.27.15, Boston Globe, “Education can’t fix inequality,” <https://www.bostonglobe.com/metro/2015/07/27/why-education-can-cure-inequality/AU2VsWbt2TQBo4jpQ8LcyI/story.html>, Accessed 7.2.17 CT @ GDI]

The hidden assumption behind the idea that we can counter inequality by improving schools and getting more kids through college is that college grads are on the winning end of inequality, and non-college grads on the losing side.

But modern inequality isn’t driven by the gap between college-educated workers and high school grads. All the action is at the top of the income ladder, where the extremely rich have pulled away from everyone else.

Since 1979, wages for the top 1 percent in the United States have grown nine times faster than wages for the bottom 90 percent. That’s not a tale of the well-educated doing better than the less-well-educated. It’s about the super-rich outearning everyone else — including college graduates, who haven’t gotten a raise in over a decade.

So even if we did improve our schools — and even if those improvements really led to faster economic growth — there’s little reason to think the gains would be widely shared. They would likely be absorbed by the top 1 percent, as has been happening for decades now.

To test this theory, a team of researchers from the Hamilton Project at the Brookings Institution put together a simulation, where they estimated how different things would be if millions of high-school grads had made it through college. They found no meaningful change in overall inequality.

#### Education isn’t the ultimate answer to inequality

Toles, editorial cartoonist and writer of the Tom Toles Blog, 2016

[Tom, 7/4/2016, The Washington Post, “If you think education is the solution to income inequality, you may have flunked statistics”, https://www.washingtonpost.com/news/opinions/wp/2016/10/04/if-you-think-education-is-the-solution-to-income-inequality-you-may-have-flunked-statistics/?utm\_term=.d1e15c3be0d4, accessed 7/2/2017, RV]

The big topic that the big discussions love to talk around is wealth inequality. We are like the alcoholic that doesn’t want to admit we have a problem.

First it was ‘There isn’t sufficient evidence of growing inequality.’ Then it was ’Maybe it doesn’t matter as long as everyone is benefitting.’ Then it was ‘Maybe it matters to individuals, but it won’t have a negative impact on the economy as a whole.’ Then it was ‘Maybe it will affect the economy, but our political system can handle it.’ Then it was “There’s nothing we can do collectively, so get more education and you’ll be fine individually.’

The ‘more education’ solution always begged a couple of questions. Does it really do anything about inequality or does it just rearrange the individuals within the inequality. The other question is whether education even works at all in this equation.

More education, of course, is a good in itself. More information in your head and more skills are going to benefit you and likely the nation as well in global completion. But now it’s time for the ‘That being said…’

That being said, education may not be any answer at all to wealth inequality, and there is some new evidence on that topic.

If you’ve borrowed a lot of money to improve your place in the economic distribution, and that didn’t pay off, then what? Then we are back to the question we’ve been avoiding all this time: our current policy of facilitating wealth inequality through our tax system. Our tax code used to be more progressive, and we had less wealth disparity. It’s not rocket science, it’s a policy choice. When we had higher marginal tax rates, there was less reason to jack up the high end of income. Now there is all the reason in the world.  “We have minimum wages, but there isn’t a wage ceiling,” an author of the report said. “There’s much more room for discrimination and inequality at the top. What’s happened is that the top one percent have really pulled away.”

#### Education is increasing the racial inequality gap

Guo, Washington Post Reporter, 2016

[Jeff, 10/3/2016, The Washington Post, “Why black workers who do everything right still get left behind”, <https://www.washingtonpost.com/news/wonk/wp/2016/10/03/why-black-workers-who-do-everything-right-still-get-left-behind/?utm_term=.193b529714aa>, accessed 7/2/2017, RV]

It used to be that low-skilled black workers suffered the greatest disadvantage relative to their white counterparts. But there has been a strange reversal in the past 40 years. EPI finds that the black-white wage gap has become wider — and is widening faster — among those with *more*education.

This chart illustrates the history of the wage gap among men with less than 10 years of job experience. The early years are the most crucial in a person’s career, and also the most sensitive to fluctuations in the job market.

In 1980, black men entering the job market with just a high school diploma earned 15 percent less than similar white men on average. In contrast, black men with bachelor’s degrees or more earned only 5 percent less than similar white male college graduates.

College, in other words, once seemed a surefire route to something approaching racial equity. Nowadays, the picture is more complicated.

While the racial wage gap among less-educated men has held steady at about 15 percent, that gap for men with college diplomas increased significantly in the 1980s, and now hovers between 15 and 20 percent. In 2014, the penalty for being educated-while-black was about 18 percent. The penalty for less-educated black men was 16 percent.

A similar pattern exists for women. Among less-educated women with less than 10 years of job experience, the black-white wage gap was 6.2 percent in 2014. But among college-educated women, the wage gap was closer to 12 percent.

The authors of the report — Valerie Wilson, director of EPI's program on race, ethnicity and the economy, and William Rodgers III — calculate how different factors have contributed to these changes.

Among early-career men, for instance, the earnings disparities between white and black workers have widened by about 3 percent since 1979. These disparities would have been even wider had African Americans not made gains in college attainment during this time. But that educational progress was overshadowed, the researchers say, by two major forces: increasing discrimination and increasing income inequality.

“We have minimum wages, but there isn’t a wage ceiling,” Wilson said. “There’s much more room for discrimination and inequality at the top. What’s happened is that the top one percent have really pulled away.”

Income growth in recent decades has been limited, more or less, to the highest echelon of earners, a group that is overwhelmingly white. Out of every 1,000 households in the top 1 percent, only two are black, while about 910 are white. And so, as economic forces lifted the incomes of the 1 percent, the blacks on lower rungs of the economic ladder have been largely left behind.

Much of those income gains were concentrated among financial-sector workers and corporate executives — occupations where blacks remain highly underrepresented. In part, African Americans  are not given the same opportunities to rise; lawsuits have accused Merrill Lynch, for instance, of systematically discriminating against its black brokers. And in part, black workers simply don’t have the right connections to get ahead.

Finance and management still remain very white-dominated, and those are the occupations that are seeing the highest rates of return,” Harvard sociologist Devah Pager, who was not involved in the study, said in an interview.“And to an extent, those kind of jobs are filled through elite networks that African Americans have been historically excluded from.”

These facts help explain why a recent Pew Research Center survey shows that African Americans with more education perceive more economic inequality. Among blacks with four-year college degrees, 81 percent say that blacks today are financially worse off than whites. But among blacks with no college experience, only 46 percent agree with that statement.

Pew also finds that college-educated blacks are more likely to report personal experiences with discrimination, and more likely to say that being black makes it harder to get ahead in life.

The data suggest an irony: By climbing the economic ladder, African Americans get perspective on the full system of inequality in America.

#### The idea that education fixes education is misguided

Marsh, Pennsylvania State University Assistant Professor of English, 2011

[John, 8/28/2011, The Chronicle Review, “Why Education Is Not an Economic Panacea”, http://www.chronicle.com/article/Why-Education-Is-Not-an/128790, accessed 7/2/2017, RV]

To put it bluntly, can we teach our way out of poverty and economic inequality, as so many people in and out of power so fervently hope? Reluctantly, I have concluded that education bears far too much of the burden of our hopes for economic justice, and, moreover, that we ask education to accomplish things it simply cannot do.

While this thesis—that education alone will not change things— has occasionally surfaced, few writers have given it the extended treatment it requires. I know, because when I began to have my doubts about the Odyssey Project, I went looking for answers to my questions and had to look hard for anyone else even asking them. When did the belief in education as an economic panacea arise? Why? More empirically, is it true? If not, why has it proved so attractive? Why do so many people, especially those in power, so urgently want to believe it? And how has it influenced what teachers and students do or imagine what they do? Finally, if it is not true that education will solve poverty and inequality, what might?

Within the last few years, a number of critics have begun to challenge our unexamined faith in "college for all," as one economist has put it. Unlike those critics, mostly conservatives, I do not argue that too many students are going to college (Charles Murray), that the United States has overinvested in higher education (Richard Vedder), that more young people should enter the trades rather than attend college (Murray, Vedder, and Matthew B. Crawford), or that since college teaches "few useful job skills," a degree, as the economist Bryan Caplan puts it, merely signals "to employers that graduates are smart, hardworking, and conformist" (Murray, Vedder, Crawford, and others too numerous to mention). Nor, as other critics have begun to argue, do I believe that a college degree has ceased to offer a good return on a young person's investment of time and money. As nearly every economist and journalist who has studied this manufactured controversy has shown, college continues to pay off. Even those like me foolish enough to major in English or some other supposedly irrelevant humanities or fine-arts discipline still earn, on average, more than those with only a high-school degree, and more than enough to offset the costs of tuition and forgone earnings needed to earn a degree. Indeed, today the*starting*salary for someone with a degree in English ($37,800) is higher than the *average* income of all those, including older and experienced workers, with only a high-school degree ($32,000).

Yet we find ourselves in an unusual position. The advice we would offer every halfway intelligent young person with a pulse—go to college—is not, I argue, counsel we can offer a whole generation of young people, let alone adults like those who might have enrolled in the Odyssey Project. An is ("Education pays") is not an ought ("Everyone ought to get an education). Some people may escape poverty and low incomes through education, but a problem arises when education becomes the only escape route from those conditions—because that road will very quickly become bottlenecked. As the political scientist Gordon Lafer has written, "It is appropriate for every parent to hope that their child becomes a professional; but it is not appropriate for federal policy makers to hope that every American becomes one." As Bryan Caplan has also put it, "Going to college is a lot like standing up at a concert to see better. Selfishly speaking, it works, but from a social point of view, we shouldn't encourage it."

Unlike others who argue this point, however, my concern is not with the inefficiencies that come from everyone standing up to see better but, rather, with the injustices that result. That is, my concern is with those who cannot stand up, those who, because of lack of ability, lack of interest, or other barriers to entry, do not or cannot earn a college degree. Insisting that they really should is neither a wise nor a particularly humane solution to the problem those workers will encounter in the labor market.

Nor is it a particularly feasible one. The U.S. economy, despite claims to the contrary, will continue to produce more jobs that do not require a college degree than jobs that do. A college degree will not make those jobs pay any more than the pittance they currently do. As some of my colleagues from graduate school could confirm, a Ph.D. working as a bartender earns bartender wages, not a professor's salary. What will make those bartending and other jobs outside the professions pay something closer to a living wage—if not a living wage itself—constitutes, to my mind, one of the major public-policy challenges of the 21st century. Education, however, is not the answer.

In terms of educational and economic policy, we may have even put the cart in front of the horse. As it stands, we seek to decrease inequality and poverty by improving educational enrollment, performance, and attainment. A good deal of evidence, however, suggests that we should do just the opposite. Only by first decreasing inequality and poverty might we then improve educational outcomes.

#### Mismatch of wealth is root cause to inequality not lack of education

Cody, the co-founder of the Network for Public Education, 2011

[Anthony, 1/19/2011, Education Week, “Heresy: Education is Not the Cure for Poverty”, <http://blogs.edweek.org/teachers/living-in-dialogue/2011/01/heresy_education_is_not_the_cu.html>, accessed 7/2/2017, RV]

In our work as educators, we spend much of our time discussing how to get young people on track to enter and complete college, and thus be ready for those wonderful careers in science, math and technology. But sometimes I have a disturbing sense of unreality. Sometimes it feels as if we are working so hard to get our students on a conveyer belt that leads - where? California's community colleges, already operating on a bare bones budget, face a cut of another $400 million. The State University and UC systems are losing $500 million. These cuts will mean the elimination of classes, increases in fees, and fewer available spaces for incoming students.

And we are told "you cannot fix problems by throwing money at them." It is so odd then, that when wealthy Americans run into problems, the first thing they demand is that money be thrown their way. Didn't we "fix" that banking crisis by throwing money at it? Haven't we fixed the terrible threat to the wealthiest Americans by preserving their 36% marginal tax rate - which was about to rise to the extortionary level of 39%? And those executives that raked in record bonuses apparently also appreciated the throwing of money in their direction.

It seems as if the problems of our schools could indeed be solved by some accurately thrown money. The trouble is, all the money is being thrown to those who already have it. And they are bribing those doing the throwing so there is no interruption in the flow.

But we still come back to the bigger question. What are we preparing our students FOR? Even assuming that college is accessible, does the bachelor's degree offer all that is promised? All the energy around education reform seems to hinge on some implicit assumptions. Our students are doomed to lives of poverty if they do not receive a good education, meaning attend college and get trained for the jobs of the future. Turn this around and you get the following assumption: If our students ARE well-educated and trained for these jobs, they will find good-paying jobs await them.

It seems as if we could look around at our current economy and see if there is evidence to support these assumptions. Lawrence Mishel at the Economic Policy Institute makes some solid inroads here in a recent report entitled "Education is Not the Cure for High Unemployment or Income Inequality."   
One of the theories offered as to why we have unemployment is that there is a mismatch between available jobs, and workers with sufficient skills to fill them. Mishel's research does not support this theory. According to him, "trends do not support any notion of this recession's higher unemployment being fueled by those with the least education."

Mishel also discusses the often heard claim that America must dramatically increase the number of students who attain four year college degrees.

... the trends in the 2000s indicate that the relative demand for college graduates is growing much more slowly than in prior decades. Plus, the wages for college graduates have been flat for about 10 years and running parallel to those with high school degrees, and they have been growing far more slowly than productivity. The implication of these trends is that a surge of college graduates, whatever the benefits (and there are many), can be expected to drive the college wage down. Wage inequality would diminish, but by pressing college graduate wages down (not just in relative terms), which is not the picture frequently painted of the future.

This is not to say that education offers no advantage - it does. But sending more and more of our students to college is not some sort of panacea for poverty. And there does NOT appear to be an increasing market demand for more college graduates - perhaps the opposite.

.... the rapid growth of the need for college graduates is not a juggernaut launched in the early 1980s that continues to this day: rather, the relative demand for college graduates has been slowing down in each decade since the 1980s and is now growing at a historically slow pace. It is this slow pace of the most recent period that might be the best clue to the future needs for college graduates.

Mishel concludes by suggesting that, rather than promoting more education as a panacea, we should pursue a

...much broader path to prosperity, one that encompasses those at every education level. The nation's productivity has grown a great deal in the last 30 years, up 80% from 1979 to 2009, and such productivity growth or better can be expected in the future. Yet with all the income generated in the past and expected in the future it is difficult to explain why more people have not seen rapid income growth. It is not the economy that has limited or will limit strong income growth, but rather the economic policies pursued and the distribution of economic and political power that are the limiting factors.

We will not educate our nation out of poverty - as seductive as that vision might be for us. Poverty will be reduced when we figure out how to get some of the tremendous wealth our economy is generating flowing back towards those who need it most, and stop throwing it at the wealthy.

#### Education not key to inequality—value of diploma too diluted

**Horowitz, Globe Staff writer, 2015**

[Evan, 7.27.15, Boston Globe, “Education can’t fix inequality,” <https://www.bostonglobe.com/metro/2015/07/27/why-education-can-cure-inequality/AU2VsWbt2TQBo4jpQ8LcyI/story.html>, Accessed 7.2.17 CT @ GDI]

Education has long been embraced as one of the best ways to combat inequality. When the Washington Post endorsed Barack Obama for president in 2008, they praised his sense that “the most important single counter to inequality … is improved education.”

Yet, this faith in the power of education has begun to falter. Hillary Clinton’s recent economic address included only passing mention of school reform and college readiness. Instead, her plan to tame inequality calls for more direct interventions in the economy, like raising the minimum wage and increasing worker training.

Behind this shift lies mounting evidence that improving our education system won’t do much to fix inequality. Diplomas may help people get better jobs, but they rarely vault college grads into the top 1 percent. There just isn’t enough room. Roughly one in three adults in the US has a college degree, while the top 1 percent is a much more exclusive club.

And if you’re not in that club, you’re stuck on the wrong side of the inequality divide — however many degrees you have.

### Inequality =/= Structural Violence – 1NC

#### No Inequality-Based Mortality Gap — it’s already closed.

**Currie, Princeton economics professor, 2016**

(Janet, “Falling inequality in mortality in the US,” 7-2, http://voxeu.org/article/mortality-inequality-good-news-county-level-approach

Overall, our results show that the health of the next generation in the poorest areas of the US has improved tremendously and that the race gap has largely closed. It is surprising how little attention has been paid to this health success story in either the academic or the public discussion. Likely drivers for the strong decline in mortality inequality are social policies that helped the most disadvantaged families. One of the most important may be expansions of public health insurance to poor pregnant women and children that took place in the late 1980s and 1990s. Other important factors include reductions in smoking prevalence, expansions of food and nutrition programs, and reductions in pollution. Overall, these findings show that even in times of great economic inequality, inequality in health outcomes is not inevitable but is strongly mediated by policy.

#### it’s not a moral obligation.

**Frankfurt, Princeton philosophy professor, 2015**

(Harry, “t's Get This Straight: Income Inequality And Poverty Aren't The Same Thing,” 8-24, https://www.forbes.com/sites/realspin/2015/08/24/lets-get-this-straight-income-inequality-and-poverty-arent-the-same-thing/#6fd78168273a,

There is very considerable discussion nowadays about the increasingly conspicuous discrepancy between the incomes of wealthier Americans and the incomes of those Americans who are less wealthy. President Barack Obama has declared that income in­equality is the greatest political challenge of our time. But just what is so awful about economic inequality? Why should we have this great concern, urged upon us by so many politicians and public figures, about the growing gap between the in­comes of the richest people in our country and the incomes of those who are less affluent? The first thing to notice is that economic inequality, however undesirable it may be for various reasons, is not inherently a bad thing. Think about it: We could arrange for the members of a society to be economically equal by ensuring that the economic resources available to each member of the society put everyone equally below the poverty line. To make everyone equally poor is, obviously, not a very intelligent social ambition. Insofar as people aim for equality (i.e., having the same as others), they are distracted from measuring the specific economic needs that are implied by their own particular interests, ambitions and capacities. The trouble with adopting equality as a social goal, then, is that it is alienating. It diverts people from being guided, in assessing their personal economic circumstances, by the most pertinent features of their own lives; and it leads them instead to measure their economic needs according to the significantly less pertinent circumstances of others. It isn’t especially desirable that each have the same as others. What is bad is not inequality; it is poverty. We should want each person to have enough—that is, enough to support the pursuit of a life in which his or her own reasonable ambitions and needs may be comfortably satisfied. This individually measured sufficiency, which by definition precludes the burdens and deprivations of poverty, is clearly a more sensible goal than the achievement of an impersonally calibrated equality. There is, of course, an evil other than poverty which it is important to avoid. The social undesirability of wide economic inequality does not lie only in a concurrent incidence of poverty. It lies also in the superior political influence, and other competitive advant­ages, enjoyed by those who are especially well-off. These advantages, when they are deliberately exploited, tend to undermine a fundamental requirement of our constitutionally mandated social order. Accordingly, such anti-democratic misuses of the competitive advantages provided by exceptional wealth must be discour­aged by suitable legislative, regulatory and judicial oversight. It is not inequality itself that is to be decried; nor is it equality it­self that is to be applauded. We must try to eliminate poverty, not because the poor have less than others but because being poor is full of hardship and suffering. We must control inequality, not because the rich have much more than the poor but because of the tendency of inequality to generate unacceptable discrepancies in social and political influence. Inequality is not in itself objectionable—and neither is equality in itself a morally required ideal.

### Inequality =/= Structural Violence – 2NC

#### Aff evidence is too pessimistic. *Newest trends* are overwhelmingly positive.

**Currie, Princeton economics professor, 2016**

(Janet, “Falling inequality in mortality in the US,” 7-2, http://voxeu.org/article/mortality-inequality-good-news-county-level-approach

Discussion and Conclusions

In contrast to many recent analyses of mortality inequality, we find improvements in overall life expectancy in both rich and poor counties. Our focus on life [end page 48] expectancy at birth rather than life expectancy in middle age may explain this finding. We find that inequality in mortality has fallen greatly among children. It is worth emphasizing that the reductions in mortality among African Americans, especially African-American males of all ages, are stunning and that is a major driver of the overall positive picture. This positive finding has been largely neglected in much of the discussion of overall mortality trends. Although our overall message is more positive than some earlier studies, we do find an alarming stagnation in mortality among white women aged 20 to 49. In the poorest counties mortality even increased slightly, indicating increasing inequality in mortality in that group. It sometimes seems as if the research literature on mortality is compelled in some way to emphasize a negative message, either about a group that is doing less well or about some aspect of inequality that is rising. In contrast, this study is one of comparatively few, along with Aizer and Currie (2014) and Currie and Schwandt (forthcoming), that has emphasized improvements in life expectancy across the broad US population. Our results point to strong health improvements and decreasing inequality, particularly among the younger cohorts who will form the future adult population of the United States. Given the growing literature demonstrating a connection between health in childhood and future health (as in Currie and Rossin-Slater 2015), this improvement in health among young people in poor counties suggests that these cohorts may well be healthier and suffer less mortality inequality in the future than those who are currently middle-aged and older. In addition, much of the increase in inequality in older cohorts in the past 20 years has been driven by historical smoking patterns. Current cohorts have much lower lifetime smoking rates, which is also likely to lead to more convergence in mortality rates. We believe that a balanced approach to the mortality evidence, which recognizes real progress as well as areas in need of improvement, is more likely to result in sensible policymaking. After all, emphasizing the negative could send the message that “nothing works,” especially in the face of seemingly relentless increases in income inequality. We have emphasized considerable heterogeneity in the evolution of mortality inequality by age, gender, and race. Going forward, identifying social policies that have helped the poor and reduced mortality inequality is an important direction for future research. Similarly, understanding the reasons that some groups and age ranges have seen stagnant mortality rates will be important for mobilizing efforts to reduce inequality in mortality and improve the health of the poor.

## Legitimacy Answers

### No Heg Impact – 1NC

#### No impact – the threat is overblown and heg doesn’t actually solve

**Mearsheimer, Chicago political science professor, 2016**

(JJ, “The Case for Offshore Balancing,” Foreign Affairs, July/August, https://www.foreignaffairs.com/articles/united-states/2016-06-13/case-offshore-balancing)

Other defenders of liberal hegemony argue that U.S. leadership is necessary to deal with new, transnational threats that arise from failed states, terrorism, criminal networks, refugee flows, and the like. Not only do the Atlantic and Pacific Oceans offer inadequate protection against these dangers, they claim, but modern military technology also makes it easier for the United States to project power around the world and address them. Today's "global village," in short, is more dangerous yet easier to manage. This view exaggerates these threats and overstates Washington's ability to eliminate them. Crime, terrorism, and similar problems can be a nuisance, but they are hardly existential threats and rarely lend themselves to military solutions. Indeed, constant interference in the affairs of other states-and especially repeated military interventions- generates local resentment and fosters corruption, thereby making these transnational dangers worse. The long-term solution to the problems can only be competent local governance, not heavy-handed U.S. efforts to police the world. Nor is policing the world as cheap as defenders of liberal hegemony contend, either in dollars spent or in lives lost. The wars in Afghanistan and Iraq cost between $4 trillion and $6 trillion and killed nearly 7,000 U.S. soldiers and wounded more than 50,000. Veterans of these conflicts exhibit high rates of depression and suicide, yet the United States has little to show for their sacrifices. Defenders of the status quo also fear that offshore balancing would allow other states to replace the United States at the pinnacle of global power. On the contrary, the strategy would prolong the country's dominance by refocusing its efforts on core goals. Unlike liberal hegemony, offshore balancing avoids squandering resources on costly and counterproductive crusades, which would allow the government to invest more in the long-term ingredients of power and prosperity: education, infrastructure, and research and development. Remember, the United States became a great power by staying out of foreign wars and building a world-class economy, which is the same strategy China has pursued over the past three decades. Meanwhile, the United States has wasted trillions of dollars and put its long-term primacy at risk. Another argument holds that the U.S. military must garrison the world to keep the peace and preserve an open world economy. Retrenchment, the logic goes, would renew great-power competition, invite ruinous economic rivalries, and eventually spark a major war from which the United States could not remain aloof. Better to keep playing global policeman than risk a repeat of the 1930s. Such fears are unconvincing. For starters, this argument assumes that deeper U.S. engagement in Europe would have prevented World War II, a claim hard to square with Adolf Hitler's unshakable desire for war. Regional conflicts will sometimes occur no matter what Washington does, but it need not get involved unless vital U.S. interests are at stake. Indeed, the United States has sometimes stayed out of regional conflicts-such as the Russo-Japanese War, the Iran-Iraq War, and the current war in Ukraine-belying the claim that it inevitably gets dragged in. And if the country is forced to fight another great power, better to arrive late and let other countries bear the brunt of the costs. As the last major power to enter both world wars, the United States emerged stronger from each for having waited.

Furthermore, recent history casts doubt on the claim that U.S. leadership preserves peace. Over the past 25 years, Washington has caused or supported several wars in the Middle East and fueled minor conflicts elsewhere. If liberal hegemony is supposed to enhance global stability, it has done a poor job.

### spheres of influence good

#### inevitable sphere of influence blocpolitik solves extinction – key to stability

Merry, National Interest political editor, 17

(Robert, June 27, 2017, Washington Times, “A new role for America”, http://www.washingtontimes.com/news/2017/jun/27/blocpolitik-would-replace-us-in-global-role/, accessed 7/2/17, DL)

Mr. Lind, a senior fellow at the New America think tank and author of books on American history and grand strategy, posits a thesis on where the world is headed that is both original and cogent. It breaks through the tired debate that has gripped the country since the end of the Cold War a quarter-century ago.

On one side of that debate are the neoconservative Republicans and liberal interventionist Democrats (John McCain and Robert Kagan are two examples of note), who yearn for a united world of independent nations sharing an international free market and policed by a benevolent global hegemon, the United States, which must and will prevent any smaller regional hegemons from emerging anywhere in the world.

On the other side are the realists (the University of Chicago’s John Mearsheimer, for example, or Sen. Rand Paul), who foresee a multipolar world in which the wisest U.S. geopolitical approach would be what Mr. Lind calls “one or another variant of an offshore-balancing strategy, with the United States shifting its weight to the least threatening great power” in an effort to maintain an equilibrium of global stability and U.S. security.

Mr. Lind, himself a member of the realist school, suggests that neither of those visions will come to pass. Indeed, he describes the global-hegemony strategy of neoconservatives and neoliberals as “now moribund,” however tenaciously its adherents may cling to it even in the face of its manifest failures since it began guiding U.S. foreign policy in the George W. Bush administration.

As for the realists’ offshore balancing strategy, which foresees a kind of geopolitical fluidity, with nations entering into temporary alliances based on shifting geopolitical circumstances, Mr. Lind suggests this vision may simply be “irrelevant” because it presupposes a greater number of major powers, able to play in the U.S. offshore balancing game, than we are likely to see.

Instead, Mr. Lind believes the world is more likely to divide itself into “a small number of more or less permanent hierarchical, multinational blocs, each led by one or more dominant nation-states.” After all, he notes, this wouldn’t be far removed from what emerged during the Cold War, when there were two such blocs in a bipolar world. But now we seem headed into a multipolar world, and thus it is reasonable to expect the emerging regional hegemons to pull under their banner other, more subservient nations willing to sacrifice a measure of national independence for military and economic security.

Certainly China will be one of these regional hegemons. Most likely, so will Russia. “The current conflicts with China and Russia are not bumps on the road to U.S. global hegemony but barricades,” writes Mr. Lind. “There is not the slightest chance that Chinese and Russian regimes, of any character, no matter how liberal or democratic, will ever accept as legitimate a permanent U.S military presence along their borders.” Peering further into the future, Mr. Lind believes India also could emerge “as a leading military and economic power, perhaps as the center of its own bloc.”

What we see under the Lind vision is a division of the world into spheres of influence — “the nightmare scenario invoked as a warning by proponents of global hegemony,” says Mr. Lind. It’s their nightmare scenario because the very concept of spheres of influence shatters their hopes for American global dominance and a “rules-based” global free market policed by America. But, as realists know, spheres of influence have characterized major portions of world history, including periods of ongoing peace and stability.

Indeed, the power and sustainability of geopolitical blocs can be seen in the fact that, even after the Cold War, the American bloc pieced together to fight it continued to operate as if that struggle were still ongoing. And regional powers that wish to curb America’s rise as a global hegemon — China and Russia in particular — will have to build blocs of their own in order to blunt America’s global ambitions. Thus, it could be that the emergence of “Blocpolitik” (the title of Mr. Lind’s article) is an almost inevitable geopolitical development.

Under this scenario, the United States will remain the hegemon of North America, probably of Europe, parts of the Asia-Pacific zone, and other regions within its reach. China will pull under its umbrella numerous Asian nations and perhaps other Third World nations, while Russia will dominate what might be called “Eurasia,” an entity, says Mr. Lind, that will be “much smaller and weaker than the former USSR.”

Such a system, in Mr. Lind’s view, could be conducive of a significant level of stability, with “centuries of low-level skirmishes along the frontiers without the conflicts escalating to wars of annihilation.”

### alt cause

#### the advantage should’ve been triggered – 30 alt causes

Sloss, Santa Clara University Law Professor, et al. 11

(David, Michael D. Ramsey, and William S. Dodge, April 2011, Cambridge University Press, “The U.S. Supreme Court and International Law: Continuity and Change”, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664773>, accessed 7/2/17, DL)

The twenty-first century’s first decade was an extraordinarily active one for international law in the Supreme Court, with the Court issuing more than 30 decisions implicating international law. Many of these decisions came in high-profile cases, and many made important contributions to the Court’s jurisprudence. In Sanchez-Llamas v. Oregon and Medellin v. Texas, the Court considered the domestic legal status of treaties and the domestic effects of decisions by the International Court of Justice. It considered the federal judiciary’s role in applying customary international law under the Alien Tort Statute in Sosa v. Alvarez-Machain. In a series of cases including Lawrence v. Texas, Roper v. Simmons, and Graham v. Florida it turned in part to international law and foreign practice to decide the scope of domestic constitutional rights. In F. Hoffman-La Roche Ltd. v. Empagran S.A., Morrison v. Australia National Bank and other cases, it used international law and related principles to constrain the global reach of federal statutes. And in prominent cases arising in the aftermath of the September 11, 2001 terrorist attacks, the Court grappled with questions of individual rights and separation of powers in a new kind of international warfare.

Many of these decisions were deeply controversial, provoking strong dissents from Justices not in the majority and strong criticism from academic and political commentators. Critics and supporters often differed sharply as to whether the Court’s decisions were faithful to, or a radical departure from, prior precedents. Indeed, the rhetoric of the criticisms can hardly be overstated: to some, the Court was abandoning a longstanding commitment to international law; to others, the Court was allowing international law to invade domestic law at the expense of traditional notions of national sovereignty.

### china bandwagoning

#### china transition solves – economic shift has already occurred

Goldman, Wall Street, Bloomberg, and Asia Times Economist, 17

(David, June 30, 2017, Asia Times, “Welcome to the brave new multi-polar world”, <http://www.atimes.com/article/welcome-brave-new-multi-polar-world/>, accessed 7/2/17, DL)

Welcome to the brave new multi-polar world

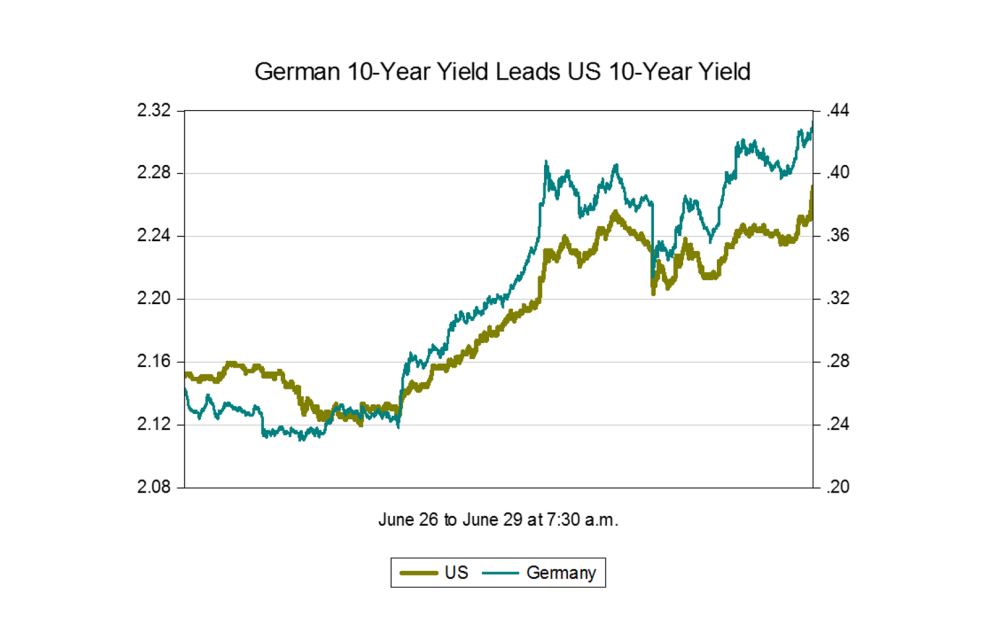
Far from being the source of risk in the global economy, China has emerged as its anchor of strength

It’s a story about the tail that wagged the dog that didn’t bark that isn’t in Kansas anymore. The dog that didn’t bark is commodity prices, and the tail that wagged is the Chinese yuan.

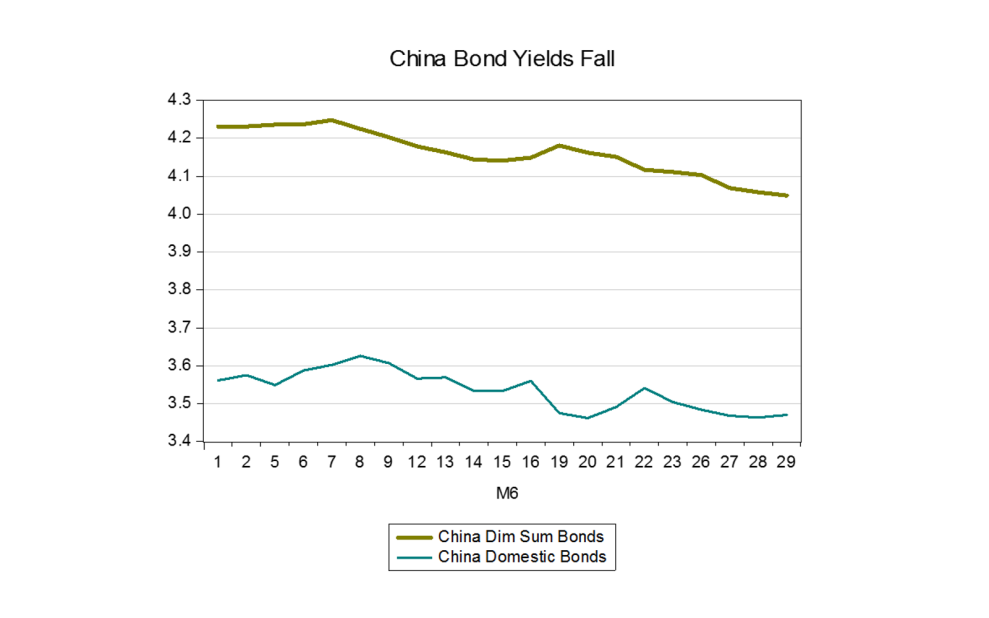
Financial markets this week revealed an historic shift away from an America-centered world economy. What is supposed to happen when central banks tighten – what used to happen – is that commodity prices drop along with emerging markets stock and equities. The Federal Reserve is supposed to – or used to – set the pace for global monetary policy.

Something different happened—in fact, something we haven’t seen before. As bond yields spiked in the industrial world, led by Frankfurt rather than Washington, commodity prices rose. That’s because world demand at the margin no longer depends on the United States. World trade growth is weak in the industrial world and robust in emerging Asia. China is the marginal buyer of oil and industrial metals. China was supposed to be the source of risk in the world economy. Instead, it is an anchor of strength.

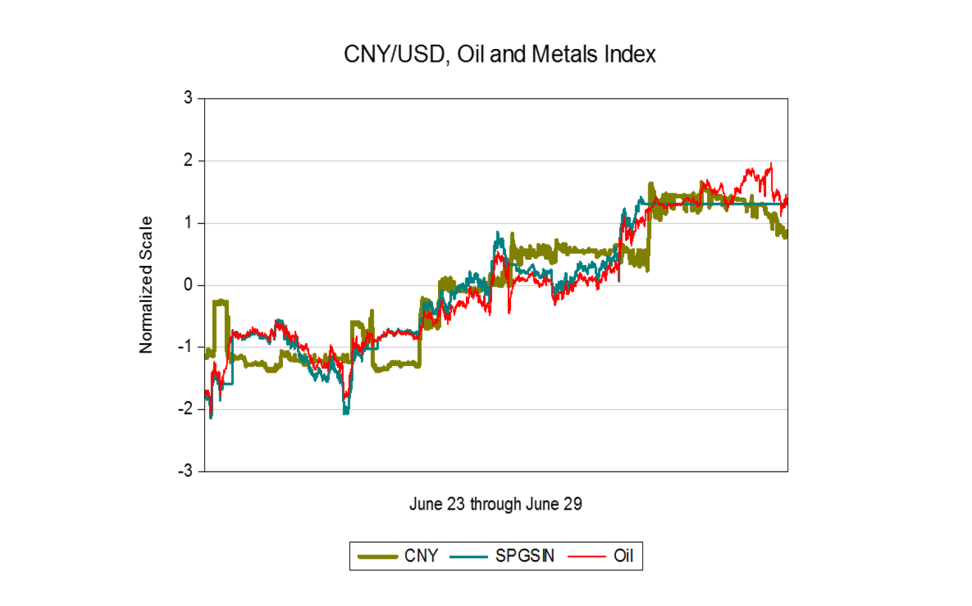
This is the first tightening cycle in which the impetus came not from the US Federal Reserve, which presides over the world’s main reserve currency, but from Europe.



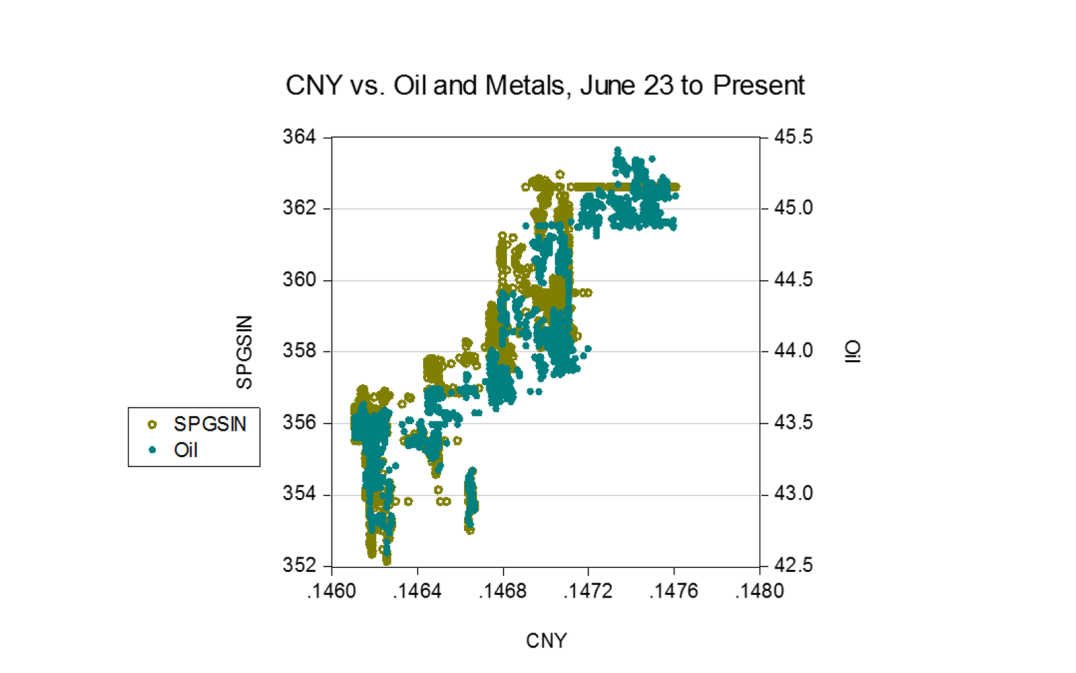
Remarkably, bond yields in the world’s second-largest economy (on a dollar basis) or largest (on a purchasing power parity basis) have been falling:



Strength in China’s currency corresponded to strength in raw materials. Shown below are oil, industrial metals prices (the S&P/Goldman Sachs index), and the yuan during the past five trading days as a time series (with normalized values).

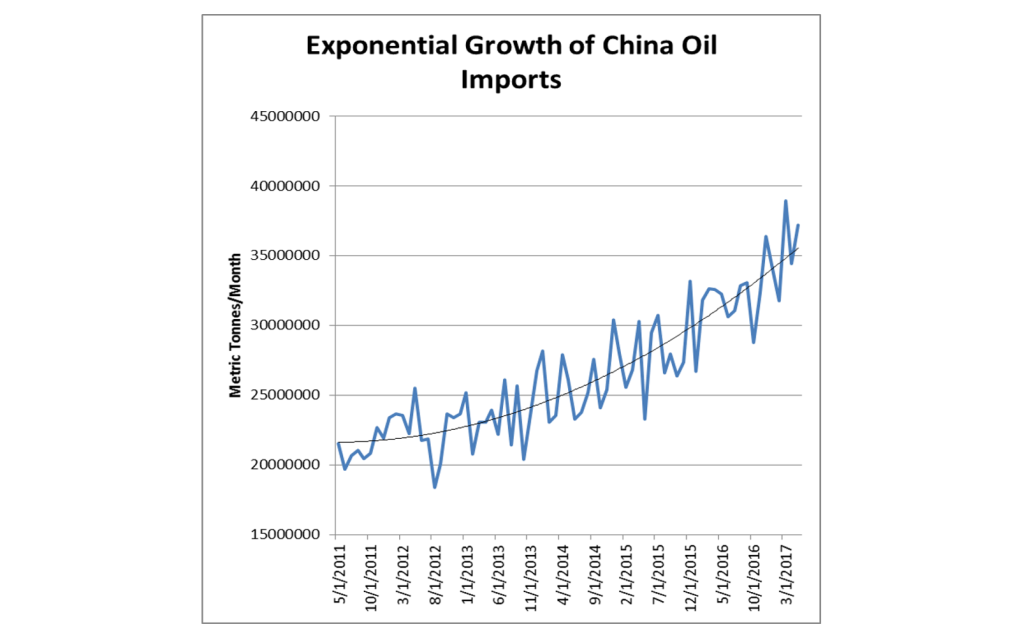


Here is the same data presented in a scatter chart:

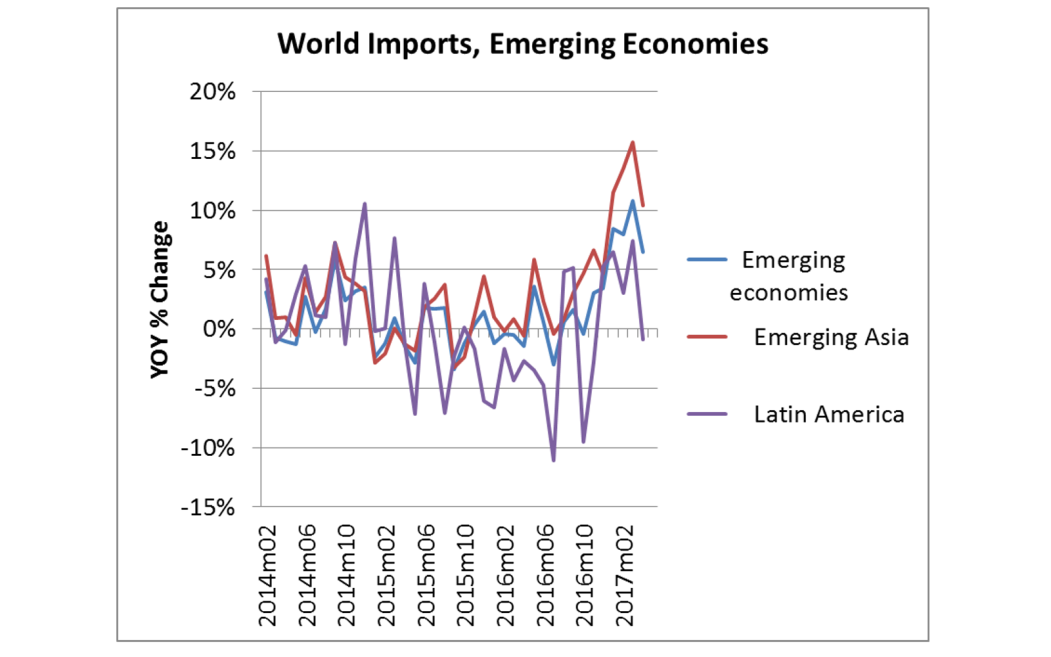


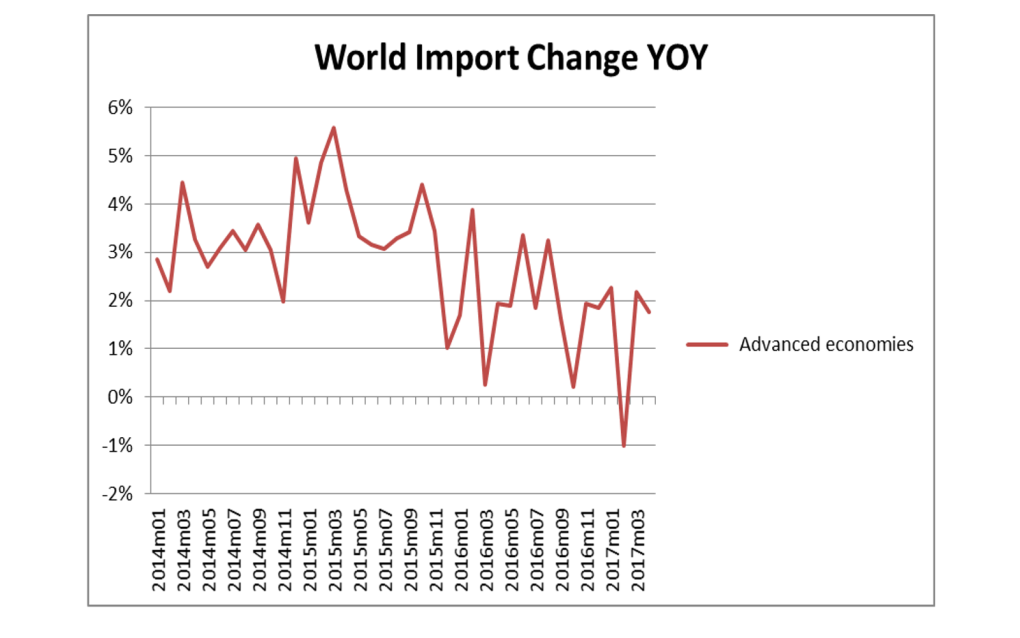
That is remarkable, considering that preponderant Western opinion held until recently that the Chinese currency was a source of risk. Hedge fund manager Kyle Bass bragged that he was short the yuan. Instead, China’s currency is an anchor of stability. China’s capital outflow of 2016 worried analysts who neglected to notice that Chinese companies were paying down dollar debt on a massive scale. Once the Chinese private sector adjusted its balance sheet, the outflows stopped. The People’s Bank of China meanwhile has made considerable progress in reducing the volume of high-risk “wealth management products” and other shadow banking instruments.

Two economic factors should be kept in mind. The first is that China is still importing vast amounts of oil, and almost certainly is the marginal price-setter in the market.



The second is that Asian trade is booming while world trade is stagnating—which is to say that at the margin, Asia is creating a great deal of its own demand. Intra-Asian trade is growing much faster than world trade. As the following charts show, imports of emerging Asian countries grew more than 10% year-over-year as of April 2017, while imports of industrial countries grew by less than 2%.





If this isn’t quite de-coupling, it nonetheless is a degree of independence we never have been before. Welcome to a new world.

#### yes china bandwagoning – alliances forming now

Torode, Special Correspondent, et al. 17

(Greg and Raju Gopalakrishnan, June 5, 2017, Reuters, “Unsure of the future of US leadership, Asian countries consider alliances to counter China”, http://www.businessinsider.com/unsure-of-the-future-of-us-leadership-asian-countries-consider-alliances-to-counter-china-2017-6, accessed 7/2/17, DL)

HK-based Reuters

Several Asian nations are seeking to bolster informal alliances among themselves, regional diplomats and officials said, unsettled by growing fears that the United States could not be relied on to maintain a buffer against China's assertiveness.

Countries including Australia, Japan, India and Vietnam are quietly stepping up discussions and co-operation, although taking care they do not upset Beijing, the diplomats said. No one was yet talking about a formal alliance.

Inaugurating the weekend Shangri-La Dialogue, the region's premier security forum, Australian Prime Minister Malcolm Turnbull said: "In this brave new world we cannot rely on great powers to safeguard our interests.

"We have to take responsibility for our own security and prosperity, while recognizing we are stronger when sharing the burden of collective leadership with trusted partners and friends."

His comments resonated through the three-day meeting that ended on Sunday.

Regional officials and analysts said there was growing mistrust of the administration of U.S. President Donald Trump, especially because of his withdrawal from the Trans-Pacific Partnership (TPP) on trade and then, last week, the pullout from the Paris climate accord.

Many fear Trump is signaling a deeper retreat from a traditional U.S. security role that has underpinned the region for decades.

### at: court power projection

#### executive and congress solves power projection better

Cabranes, Second Circuit Court of Appeals Judge, 15

(Jose, September 2015, Foreign Affairs, “Withholding Judgment”, <https://www.foreignaffairs.com/articles/2015-08-18/withholding-judgment>, accessed 7/2/17, DL)

The Kiobel case was met with outrage in the human rights community. The advocacy group Human Rights First lamented that the Supreme Court had extinguished “a beacon of hope for victims of gross human rights violations.” The New York Times’ editorial board called the ruling a “giant setback for human rights.” And legal scholars in the United States and around the world bemoaned the shuttering of U.S. courts to claims of global injustice. According to these critics, American courts must play a pivotal role in the projection of American power.

Not so. When it comes to managing international relations, the bench should follow the lead of the executive and legislative branches. Indeed, this is the one area of U.S. foreign policy where “leading from behind” actually makes sense. The executive and legislative branches are far better situated to project global power, so judges should play a constrained, but not invisible, role in foreign affairs. As a general rule—absent an express congressional directive otherwise—U.S. laws belong within U.S. borders.

#### courts fail and undermine power projection – executive and congressional flex is key

Cabranes, Second Circuit Court of Appeals Judge, 15

(Jose, September 2015, Foreign Affairs, “Withholding Judgment”, <https://www.foreignaffairs.com/articles/2015-08-18/withholding-judgment>, accessed 7/2/17, DL)

The Supreme Court was right. Compared with the judiciary, the executive and legislative branches of the U.S. government are far better suited to handle questions affecting foreign policy. For one thing, the Constitution suggests as much. Although the phrases “foreign policy,” “foreign affairs,” and “international relations” appear nowhere in the Constitution, the founders prescribed a division of labor when it came to how the United States would interact with its peers. The president is the commander in chief and has the power to receive and appoint ambassadors and to make treaties. Congress, for its part, has the power to declare war, make rules governing the armed forces, and withhold funding for foreign policy ventures, with the Senate required to sign off on treaties and ambassadorial appointments. The courts, by contrast, have no specific powers related to foreign policy.

Moreover, courts are structurally ill suited to make foreign policy. In the United States’ adversarial legal system, they are limited to the arguments and facts before them. They do not, and often cannot, consider the many facets of a complicated foreign policy problem. Nor are judges equipped to weigh how a given decision will affect another nation’s sovereignty or whether it might come into conflict with foreign laws or foreign governments. Judges interpret the law, not the law’s effects on diplomacy, and they usually lack the expertise needed to balance delicate foreign policy considerations, particularly when it comes to conduct occurring overseas.

In the same vein, U.S. judges are constrained by the information on which they can rely—information that is far more limited than that available to the other branches. Jurists must rely exclusively on the arguments and evidence presented by the parties in a given case, and there is no guarantee that these presentations will contain all the relevant information. But political actors can rely on any source they like, including hearsay and other types of evidence not allowed in court. Plaintiff Esther Kiobel joins a protest against Royal Dutch Shell Petroleum in front of the U.S. Supreme Court in Washington, D.C., October 2012.

In any event, judging is a somewhat monastic process, focused on interpreting the law through the myopic lens of a particular case. Over time, this creates a risk of outcomes that are inconsistent both between different judges and between different branches of government, as each judge tends to be the lord of his or her own fiefdom. By contrast, the policymaking process in the other branches is a deliberative and collaborative endeavor intended to produce a coherent national stance. Such unity is vital in international relations, which, as the Supreme Court pointed out in a 1962 decision, demand a “single-voiced statement of the Government’s views.”

Finally, judges’ prevailing posture is backward-facing. Their job is to resolve disputes after they have occurred. Those charged with managing foreign policy, on the other hand, confront situations in real time. They must strive to anticipate and solve problems before they materialize.

These structural disadvantages make it imperative for courts to tread cautiously in cases touching on foreign affairs. The sovereignty of another nation is not something to be disregarded casually. When the United States decides to act in ways that may offend foreign sovereigns, the executive and legislative branches should take the lead. This is so for a simple reason: applying U.S. law to foreign people in foreign places generates understandable irritation. The U.S. legal regime is an outgrowth of the United States’ distinct legal tradition. The people of other countries had no stake in its creation and therefore understandably resist having it imposed on them. In fact, the application of U.S. laws extraterritorially directly contradicts the principles of self-governance and self-determination that the United States rightly advances in the world.

Moreover, law is just one tool in the United States’ foreign policy toolbox, and it is usually not the one best suited to achieving national aims. Diplomatic, economic, and military tools, which are more squarely in the hands of the executive and legislative branches, allow the government to pursue calibrated responses to situations as they unfold. They leave room for subtlety and fluidity, horse-trading and compromise. They allow for informal discussions and interpersonal relations: foreign ministers, finance ministers, and defense ministers can achieve levels of candor that opposing lawyers cannot. Presidents, unlike judges, can pick up the phone. And whereas litigation picks winners and losers, international disputes are rarely zero-sum propositions.

There is one final reason judges should be particularly cautious in adjudicating cases that may affect foreign relations: the very real prospect that other countries will reciprocate through what some have called “lawfare.” A Chinese court could allow a lawsuit against a U.S. company for transactions conducted in the United States that were perfectly legal under U.S. law. A European court might permit a lawsuit against a former U.S. president for ordering a drone strike on a target abroad, or a lawsuit against a secretary of defense or a law professor who advised that president to use the drone. That may be where things are heading. And the more U.S. courts are willing to entertain claims that have no express extraterritorial grounding in a statute, the more they are encouraging the courts of other countries to do the same.

#### the aff undermines broader precedents – centuries of deliberation makes judges purely domestic – anything else fails

Cabranes, Second Circuit Court of Appeals Judge, 15

(Jose, September 2015, Foreign Affairs, “Withholding Judgment”, <https://www.foreignaffairs.com/articles/2015-08-18/withholding-judgment>, accessed 7/2/17, DL)

As the United States grew from a small set of colonies into a global hegemon, so did the geographic reach of its laws. From civil law to criminal law to human rights law, U.S. statutes now govern activity in every corner of the globe. Indeed, as recent news attests, soccer officials in Europe, cybercriminals in China, and multinational corporations operating in Africa are well within the United States’ legal cross hairs. As a result, the judges charged with interpreting U.S. laws have become crucial players in the exercise of American power.

Some legal scholars and human rights activists have applauded this development, urging U.S. courts to police distant lands. In their view, U.S. judges are well situated—perhaps uniquely situated—to decide matters of international justice, international commerce, and even international relations. They want judges in San Francisco to weigh in on securities transactions in Scotland; judges in Tampa to issue opinions about torture allegations in Tanzania. To this group, laws transcend land.

But applying domestic laws in foreign lands is a tricky business. Indeed, as the world has become more interdependent and multipolar, the limits of the United States’ legal reach—as well as the limited competence of its courts to resolve geopolitical questions—have become more apparent. The tension is especially notable when it comes to the Alien Tort Statute (ATS), which was enacted by the First Congress in 1789 and promptly forgotten for nearly 200 years. In 1980, the court on which I sit, the U.S. Court of Appeals for the Second Circuit, revived the ATS, allowing federal courts to decide cases brought by foreigners—although not by U.S. citizens—against foreign defendants for violations of “the law of nations” committed on foreign soil. The decision was widely celebrated by human rights lawyers who now hoped to seek justice for the victims of heinous crimes and dissuade would-be perpetrators from committing future ones. Its true impact, unfortunately, was far less momentous. It is doubtful that ATS litigation ever prevented a single human rights violation; few evildoers are deterred by the distant threat of monetary damages in civil litigation. Instead, the ATS contributed to a perception of American judicial imperialism. The fact that the United States is the only country in the world to entertain such suits has only increased foreign resentment.

Within the past five years, the tide once again has turned. Recognizing that federal courts may have gone too far in adjudicating cases with little, if any, connection to the United States, the U.S. Supreme Court has reaffirmed that U.S. legislation applies only within the United States, unless Congress says otherwise. The most notable shift came in 2013, when the Court handed down its decision in Kiobel v. Royal Dutch Petroleum, a case concerning an oil conglomerate’s alleged role in abuses committed by the Nigerian military in the 1990s. In its decision, the Court limited the global reach of the ATS in order to prevent “foreign policy consequences not clearly intended by the political branches”—that is, the executive and legislative branches of the U.S. government.

The Kiobel case was met with outrage in the human rights community. The advocacy group Human Rights First lamented that the Supreme Court had extinguished “a beacon of hope for victims of gross human rights violations.” The New York Times’ editorial board called the ruling a “giant setback for human rights.” And legal scholars in the United States and around the world bemoaned the shuttering of U.S. courts to claims of global injustice. According to these critics, American courts must play a pivotal role in the projection of American power.

Not so. When it comes to managing international relations, the bench should follow the lead of the executive and legislative branches. Indeed, this is the one area of U.S. foreign policy where “leading from behind” actually makes sense. The executive and legislative branches are far better situated to project global power, so judges should play a constrained, but not invisible, role in foreign affairs. As a general rule—absent an express congressional directive otherwise—U.S. laws belong within U.S. borders.

THE REACH OF THE LAW

Ever since George Washington’s presidency, isolationists and internationalists have engaged in a tug of war over the proper role of the federal courts in foreign policy. In 1793, Thomas Jefferson, then Washington’s secretary of state, sent 29 separate questions to the Supreme Court, formally requesting its advice on matters threatening U.S. neutrality in the ongoing war between France and Great Britain. The Supreme Court, uninterested in being a prime actor in foreign policy, politely declined to answer. Over two centuries later, this exchange is still cited as a precedent for the idea that there are certain cases that federal courts simply should not hear.

In a maritime case in 1812, the principle of judicial limitations in international matters was enshrined into law when the Supreme Court limited its own jurisdiction in issues involving the sovereignty of foreign nations. In its opinion, the Court introduced a critical legal term of art: “extraterritorial,” which means that a law has force abroad. Generally, the founders—and U.S. jurists up until the twentieth century—subscribed to what was known as the “Westphalian” tradition of territoriality, named after the 1648 treaty that created the modern state system. The concept links land and law, holding that a country’s courts have jurisdiction only where its flag flies.

This was a doctrine of legal nonintervention, and it was perfectly suited to a young and relatively weak republic. The United States had more to lose by abandoning this stance than it stood to gain by flexing its legal muscles globally. Although territoriality constrained the country’s ability to impose its law on others, it also ensured that others, particularly European powers, did not impose their laws on the United States. But as the United States expanded westward, it faced vexing challenges to this Westphalian conception of law. Were the territories that were conquered in the late 1840s during the Mexican War but not yet part of the union subject to U.S. laws? Did the state-granted “property rights” of a slave owner have extraterritorial effect if a slave escaped to a free state or territory? Far from being a mere philosophical inquiry, this last question sparked the Civil War.

Even as the United States began its economic and military ascent at the turn of the century, the judiciary continued to take a modest view of how far U.S. laws could reach. In 1909, the Supreme Court turned a preference against applying U.S. law abroad into a harder legal rule. Delivering the opinion in a case involving a dispute between two fruit companies operating in Latin America, Justice Oliver Wendell Holmes, Jr., formulated what came to be known as “the presumption against extraterritoriality.” The idea, as Holmes put it, was that “all legislation is prima facie territorial in nature.” Judges now had a default rule against applying U.S. statutes outside U.S. territory.

But as the United States emerged from World War II a global superpower, the pendulum swung in the other direction. Federal courts, busy interpreting the many New Deal regulations, were now more willing to exert authority over activities taking place overseas. Holmes’ presumption against extraterritoriality started down a path to obsolescence in 1945, when the Second Circuit introduced a competing doctrine—what came to be known as the “effects theory” of extraterritoriality. The concept was concerned primarily with whether the conduct of foreigners abroad caused harmful effects within the United States, and it led federal courts to dramatically expand the reach of U.S. law in areas of dispute as diverse as antitrust, securities, and employment. Foreigners who obeyed the law in their home countries now faced liability for violating U.S. statutes, even if all the relevant conduct was committed abroad. American laws had gone global.

Not surprisingly, U.S. allies and trading partners were not enthused. After all, one of the most frequently invoked justifications for the old Westphalian system of territoriality had been that it minimized conflicts between nations. Foreigners resented the rise of what one contributor to The Yale Law Journal called “Yankee jurisdictional jingoism.” For instance, in 2004, when the Supreme Court considered a case involving alleged anticompetitive practices in the vitamin industry, several of the United States’ closest trading partners—including Belgium, Canada, Germany, Japan, Ireland, the Netherlands, and the United Kingdom—submitted briefs expressing concern that U.S. judges had become the global arbiters of antitrust law, even when claims had little or no connection to the United States. Similar tensions arose in the context of the ATS. In 2007, after some South African citizens brought an ATS suit in New York federal court regarding conduct committed in their country under apartheid, Thabo Mbeki, then South Africa’s president, decried the United States’ “judicial imperialism.”

Recognizing these complaints, the Supreme Court has recently revived Holmes’ presumption against extraterritoriality, in both securities law and human rights law. In Kiobel, it held that the ats does not apply extraterritorially, unless the alleged human rights violations “touch and concern the territory of the United States” with “sufficient force to displace the presumption against extraterritorial application.” The Court worried that extending the reach of U.S. law abroad could result in “clashes between our laws and those of other nations” and lead to “international discord.” In light of the substantial risk—and, indeed, the documented instances—of diplomatic strife, the Court held that if Congress wants the courts to apply the ats or any other statute abroad, then it must say so. In so many words, the Court declared that when it comes to foreign policy, judges are simply out of their depth.

### at: legitimacy

#### legitimacy decline is inevitable – trump unpredictability

Bremmer, New York University Global Research Professor, 17

(Ian, Dec 18, 2016, Financial Times, “The Era of American Global Leadership Is Over. Here's What Comes Next”, <http://time.com/4606071/american-global-leadership-is-over/>, accessed 7/2/17, DL)

That's not because Trump is bound to fail where his predecessors have succeeded. Given the rise of other countries with enough power to shrug off U.S. pressure--and other factors, like the ability of smaller powers to punch above their weight in cyberspace--this moment was inevitable. America will remain the sole superpower for the foreseeable future--only the U.S. can project military muscle, economic clout and cultural influence into every region of the world. But Trump's election marks an irreversible break with the past, one with global implications.

For at least the next four years, America's interactions with other nations will be guided not by the conviction that U.S. leadership is good for America and the world but by Trump's transactional approach. This will force friends and foes alike to question every assumption they've made about what Washington will and will not do. Add a more assertive China and Russia to the greater willingness of traditional U.S. allies to hedge their bets on American plans and it's clear that we've reached a turning point. Trump is not an isolationist, but he's certainly a unilateralist, and a proudly selfish one. Even if he wanted to engage the G-7 or G-8 or G-20 to get things done--and he doesn't--it has become unavoidably obvious that the transition toward a leaderless world is now complete. The G-zero era I first predicted nearly six years ago is now fully upon us. No matter how long Trump remains in the White House, a crucial line has been crossed. The fallout will outlive his presidency, because Trump has proved that tens of millions of Americans like this idea.

Trump's "America first" approach fundamentally changes the U.S. role in the world. Trump agrees with leaders of both political parties that the U.S. is an exceptional nation, but he insists that the country can't remain exceptional if it keeps stumbling down the path that former Presidents, including Republicans and Democrats, have followed since the end of World War II. Washington's ambition to play the role of indispensable power allows both allies and rivals to treat U.S. taxpayers like chumps, he argues. Better to build a "What's in it for us?" approach to the rest of the world. This is a complete break with a foreign policy establishment that Trump has worked hard to delegitimize--and which he continues to ostracize by waving off charges of Russian interference in the election and by refusing the daily intelligence briefings offered to all Presidents-elect. American power, once a trump card, is now a wild card. Instead of a superpower that wants to impose stability and values on a fractious and valueless global order, the U.S. has become the single biggest source of international uncertainty.

And don't expect lawmakers to provide the traditional set of checks and balances. It's not just that the Constitution gives the President great power to conduct foreign policy. It's also that Trump has succeeded politically where his party's establishment has continually failed, and as long as he remains popular with the party's voters, many junior Republican lawmakers will answer to their President rather than to their leaders on Capitol Hill. Expect Trump to use the bully pulpit with a vengeance, often at 140 characters or less, to try to set new rules and rally the faithful to follow his lead.

### at: no international leadership

#### liberal internationalism is resilient – no threats

Ikenberry, Princeton Professor Politics, 10

(G. John, May 10, 2010, Millennium: Journal of International Studies, “The Liberal International Order and its Discontents”, Volume: 38, Number 3, p. 514-515, DL)

The Durability of Liberal International Order

There are also reasons to think that this liberal order will persist, even if it continues to evolve. Firstly, the violent forces that have overthrown international orders in the past do not seem to operate today. We live in the longest period of ‘great power peace’ in modern history. The great powers have not found themselves at war with each other since the guns fell silent in 1945. This non-war outcome is certainly influenced by two realities: nuclear deterrence, which raises the costs of war, and the dominance of democracies, who have found their own pathway to peace. In the past, the great moments of order-building came in the aftermath of war when the old order was destroyed. War itself was a ratification of the view that the old order was no longer sustainable. War broke the old order apart, propelled shifts in world power and opened up the international landscape for new negotiations over the rules and principles of world politics. In the absence of great power war it is harder to clear the ground for new ‘constitutional’ arrangements.

Secondly, this order is also distinctive in its integrative and expansive character. In essence, it is ‘easy to join and hard to overturn’. This follows most fundamentally from the fact that it is a liberal international order – in effect, it is an order that is relatively open and loosely rulebased. The order generates participants and stakeholders. Beyond this, there are three reasons why the architectural features of this post-war liberal order reinforce downward and outward integration. One is that the multilateral character of the rules and institutions create opportunities for access and participation. Countries that want to join in can do so; Japan found itself integrating through participation in the trade system and alliance partnership. More recently, China has taken steps to join, at least through the world trading system. Joining is not costless. Membership in institutional bodies such as the WTO must be voted upon by existing members and states must meet specific requirements. But these bodies are not exclusive or imperial. Secondly, the liberal order is organised around shared leadership and not just the United States. The G-7/8 is an example of a governance organisation that is based on a collective leadership, and the new G-20 grouping has emerged to provide expanded leadership. Finally, the order also provides opportunities for a wide array of states to gain access to the ‘spoils of modernity’. Again, this is not an imperial system in which the riches accrue disproportionately to the centre. States across the system have found ways to integrate into this order and experience economic gains and rapid growth along the way.

Thirdly, rising states do not constitute a bloc that seeks to overturn or reorganise the existing international order. China, India, Russia, Brazil, South Africa and others all are seeking new roles and more influence within the global system. But they do not constitute a new coalition of states seeking global transformation. All of these states are capitalist and as such are deeply embedded in the world economy. Most of them are democratic and embrace the political principles of the older Western liberal democracies. At the same time, they all have different geopolitical interests. They are as diverse in their orientations as the rest of the world in regard to energy, religion and ideologies of development. They are not united by a common principled belief in a post-liberal world order. They are all very much inside the existing order and integrated in various ways into existing governance institutions. Fourthly, the major states in the system – the old great powers and rising states – all have complex alignments of interests. They all are secure in the sense that they are not threatened by other major states. All worry about radicalism and failed states. Even in the case of the most fraught relationships – such as the emerging one between the United States and China – there are shared or common interests in global issues related to energy and the environment. These interests are complex. There are lots of ways in which these countries will compete with each other and seek to push ‘adjustment’ to problems onto the other states. But it is precisely the complexity of these shared interests that creates opportunities and incentives to negotiate and cooperate – and, ultimately, to support the open and rule-based frameworks that allow for bargains and agreements to be reached.

Overall, these considerations suggest that the leading states of the world system are travelling along a common pathway to modernity. They are not divided by great ideological clashes or emboldened by the potential gains from great power war. These logics of earlier orders are not salient today. Fascism, communism and theocratic dictatorships cannot propel you along the modernising pathway. In effect, if you want to be a modern great power you need to join the WTO. The capitalist world economy and the liberal rules and institutions that it supports – and that support it – are foundational to modernisation and progress. The United States and other Western states may rise or fall within the existing global system but the liberal character of that system still provides attractions and benefits to most states within it and on its edges.

### at: modeling

#### no modeling – broad consensus

Liptak, Supreme Court correspondent, 8

(Adam, September 17, 2008, New York Times, “U.S. Court Is Now Guiding Fewer Nations”, http://www.nytimes.com/2008/09/18/us/18legal.html?mcubz=2, accessed 7/2/17, DL)

WASHINGTON — Judges around the world have long looked to the decisions of the United States Supreme Court for guidance, citing and often following them in hundreds of their own rulings since the Second World War.

But now American legal influence is waning. Even as a debate continues in the court over whether its decisions should ever cite foreign law, a diminishing number of foreign courts seem to pay attention to the writings of American justices.

''One of our great exports used to be constitutional law,'' said Anne-Marie Slaughter, the dean of the Woodrow Wilson School of Public and International Affairs at Princeton. ''We are losing one of the greatest bully pulpits we have ever had.''

From 1990 through 2002, for instance, the Canadian Supreme Court cited decisions of the United States Supreme Court about a dozen times a year, an analysis by The New York Times found. In the six years since, the annual citation rate has fallen by half, to about six.

Australian state supreme courts cited American decisions 208 times in 1995, according to a recent study by Russell Smyth, an Australian economist. By 2005, the number had fallen to 72.

The story is similar around the globe, legal experts say, particularly in cases involving human rights. These days, foreign courts in developed democracies often cite the rulings of the European Court of Human Rights in cases concerning equality, liberty and prohibitions against cruel treatment, said Harold Hongju Koh, the dean of the Yale Law School. In those areas, Dean Koh said, ''they tend not to look to the rulings of the U.S. Supreme Court.'' The rise of new and sophisticated constitutional courts elsewhere is one reason for the Supreme Court's fading influence, legal experts said.

The new courts are, moreover, generally more liberal than the Rehnquist and Roberts courts and for that reason more inclined to cite one another.

Another reason is the diminished reputation of the United States in some parts of the world, which experts here and abroad said is in part a consequence of the Bush administration’s unpopularity around the world. Foreign courts are less apt to justify their decisions with citations to cases from a nation unpopular with their domestic audience.

“It’s not surprising, given our foreign policy in the last decade or so, that American influence should be declining,” said Thomas Ginsburg, who teaches comparative and international law at the University of Chicago.

Aversion to Foreign Law

The adamant opposition of some Supreme Court justices to the citation of foreign law in their own opinions also plays a role, some foreign judges say.

“Most justices of the United States Supreme Court do not cite foreign case law in their judgments,” Aharon Barak, then the chief justice of the Supreme Court of Israel, wrote in the Harvard Law Review in 2002. “They fail to make use of an important source of inspiration, one that enriches legal thinking, makes law more creative, and strengthens the democratic ties and foundations of different legal systems.”

Partly as a consequence, Chief Justice Barak wrote, the United States Supreme Court “is losing the central role it once had among courts in modern democracies.”

## Urban Growth Answers

### Urban growth High now

#### Urban growth now due to job opportunities – millennials prove

**Dure**, a northern Virginia-based writer for the Guardian, **14**

(Beau, Oct. 21, 2014, NPR, “Millennials Continue Urbanization Of America, Leaving Small Towns,” <http://www.npr.org/2014/10/21/357723069/millennials-continue-urbanization-of-america-leaving-small-towns>, accessed 7/2/17, CD)

"Most of the young people that go to college go away, and then they don't come back," says Lee Bianchi, a retired engineer who lived in Clinton, Iowa (pop. 26,647), from 1961 to 2008.

That's long been the storyline in small-town America, which for decades has bled citizens — especially young ones — to the glamorous big cities. One might have thought technology would stanch the flow, at least among millennials: With Wi-Fi and telecommuting, young people theoretically could dodge overpriced real estate and ugly commutes and opt instead for a spacious house with a big yard and a broadband connection.

But it turns out the millennial generation is only accelerating the demographic shift. In fact, this may be the most "bright lights, big city" generation in history. While the number of millennials is ticking slightly upward in small towns and rural areas, it's nothing compared with the growth of their numbers in suburbs and cities.

"At this point, the prognosis does not look good for much of small-town America," writes William H. Frey, a demographer at the Brookings Institution.

The kids aren't just flocking to the city proper, either, but to the metropolis writ large, including the fancier suburbs. The top destination for millennials is the Washington, D.C., suburb of Arlington, Va., where their ranks grew by a staggering 82 percent between 2007 and 2013. Arlington's median home sale price is $557,250, and of the 290 Arlington apartments listed on Zillow, only 10 would let you live alone for less than $1,200 a month.

An enterprising millennial with a flexible employer might hop across the Chesapeake Bay to the historic district of Cambridge, Md., (pop. 12,690) with a porch overlooking the Choptank River. With a thriving downtown and arts district, Cambridge was No. 10 on Livability's list of Best Small Towns in 2013. Homes go for $164,154, and a monthly $1,200 rental will get you a detached house or a 1,600-square-foot townhouse.

But affordable real estate and waterfront views don't have millennials biting. They continue "a multigenerational pattern of young adults preferring more expensive urban areas over lower-cost rural ones because the lifestyles and opportunities in such places make the extra burden of cost worth it," says Robert Lang, professor of urban growth and population dynamics at the University of Nevada, Las Vegas.

Which is to say: Getting to a big city — or at least near one — still has the smell of success.

"We don't all hail from small Midwestern towns, but most came from places where they felt limited — small-town Maine, suburban west Texas, California's Central Valley and the Inland Empire," wrote twentysomething Brittany Shoot of her friends and neighbors in the San Francisco Bay Area. "It's easy to find people who will sneeringly complain about how trapped they felt as teenagers."

Small towns will have to hustle to recruit and retain millennials, experts say. The American Planning Association urges local planners to mimic the appeal of city centers by creating "density." That means keeping the walkable neighborhoods and traditional town centers that millennials say is key to making a community a desirable place to live.

Smart-growth advocate James A. Bacon sees opportunities to fight off "brain drain" and attract urban "escapees" who start small businesses, but he worries that towns aren't taking advantage. "Unfortunately, to date, local economic developers have stuck with the industrial-recruitment strategy that bears less and less fruit," Bacon writes.

But without economic opportunity — that is, good jobs — the most charming downtown in the world can't attract permanent residents. Small towns may have to reinvent themselves, according to experts like Frey of the Brookings Institution.

But all is not lost. The numbers that point toward the decline of small towns also show a positive narrative for millennials, and perhaps a sunnier economic outlook than you'd expect. Not with standing student-loan debt and the stereotype of living in their parents' basements, a RealtyTrac analysis released in September showed that this generation is moving where the rents and mortgages are high. Arlington is just the tip of it.

From 2007 to 2013, the 10 counties that gained the most millennial residents had a median home price of $406,800. And the average population of those counties was 587,522 — a far cry from small-town living. Baby boomers filled out the other side of the equation by downsizing to counties with average populations of 261,232 and a median home price of $144,875.

So the best answer as to why millennials are moving away from smaller towns may be simple: because they can. And small towns will have to rev up their sales pitch to convince young adults that they can live not just cheaply but also well in the places that older generations called home.

### Not key to growth

#### Urban growth does not correlate with economic growth

Theg, Publications Manager at PLOS ONE, 14 (Alex Theg, 10/20/14, PLOS ONE, “ Does Urbanization Always Drive Economic Growth? Not Exactly…”, <http://blogs.plos.org/everyone/2014/10/20/urbanization-always-drive-economic-growth-exactly/>, accessed 7/2/17, MJ)

Researchers in China examined global economic data on urbanization and per capita GDP levels spanning three decades (1980-2011). During this time, the proportion of the world’s population living in cities grew from just 39% in 1980 to 52% in 2011. And while urbanization and per capita GDP may be strongly correlated, the authors found no correlation between the rates of urbanization and economic growth. In other words, fast urban growth doesn’t always translate into fast GDP growth, as witnessed by the graph below. In stark contrast to the first graph, there is no easily discernible pattern connecting the speed of urbanization and the speed of GDP growth.

The authors also point out that over three decades, many countries—for example, Gabon—had rapidly growing urban populations but low and even negative economic growth (top graph in green below). Conversely, many countries, such as Sri Lanka and Uzbekistan, saw negative rates of urbanization— people leaving cities for rural areas—but still had positive overall economic growth (bottom graph in white). These cases do not support the hypothesis that fast urbanization speeds economic growth.

### Urbanization Doesn’t Solve CC

#### There is no relationship between urbanization and emissions – if anything they have causality reversed

Liddle, Energy Studies Institute senior fellow, 14

[Brantley, 2014, “Impact of population, age structure, and urbanization on carbon emissions/energy consumption: Evidence from macro-level, cross-country analyses” Munich Personal RePEc Archive, <https://mpra.ub.uni-muenchen.de/61306/1/MPRA_paper_61306.pdf> Accessed: 7-2-2017, BP]

By contrast, Liddle and Lung (2010) found that urbanization had an insignificant influence on total carbon emissions in OECD countries; similarly, Jorgenson (2007), Jorgenson (2012), and Jorgenson and Clark (2010 and 2012) found a significant, but very small influence (elasticity of 0.02) for urbanization in both developed and developing countries. Whereas, Jorgenson et al. (2010) studied total energy consumption in less developed countries and found that urbanization had a significant positive influence, but that the share of the population living in urban slum conditions had a significant negative influence on energy consumption. Fang et al. (2012) found an insignificant impact for urbanization on energy consumption in low-income countries, but a significant (albeit small), negative impact for urbanization in high-income countries. Lastly, Liddle (2004) and Liddle and Lung (2010) considered more disaggregated forms of energy and carbon emissions. Liddle (2004) uncovered a significant, negative relationship between urbanization and per capita road energy use in OECD countries. However, Liddle and Lung (2010) ultimately determined that urbanization had no effect on aggregate carbon dioxide emissions from transport in their analysis of developed countries, but they did find that urbanization had a significant positive and, relative to GDP per capita, large impact on aggregate residential electricity consumption in those same countries.

A different impact for urbanization in less developed countries than in developed countries (also uncovered by Poumanyvong and Kaneko 2010 for energy consumption) is not surprising. The most developed/OECD countries are likely to be “fully urbanized” (Henderson 2003)—i.e., their urbanization levels no longer change. Furthermore, even for countries in similar development/income levels, the urbanization-energy consumption/emissions relationship should be heterogeneous since, taking OECD countries as an example, the level of urbanization for fully urbanized countries varies considerably. For example, the level of urbanization has changed very little since 1950 for both Austria and Belgium (having increased by only 6% since then or 0.1% per year); yet, their current urbanization levels are substantially different, 68% and 97%, respectively.

Among the multi-country, Granger causality studies, Mishra et al. (2009) found one-way short-run causality from urbanization to energy consumption for a panel of Pacific Island countries; Hossain (2011) found no causal relationship between urbanization and carbon emissions in the short-run for a panel of newly industrialized countries; and Al-mulali et al. (2013) found a positive bi-directional long run relationship between urbanization and both energy consumption and carbon emissions for a panel of Middle East and North African countries.

Yet, it is plausible that energy/electricity consumption could cause urbanization too. For example, rural to urban migration to fill manufacturing jobs would be associated with higher energy consumption (since manufacturing should consume more energy than traditional agriculture). Likewise, migration motivated by the improved quality of life that energy/electricity may bring means that energy causes urbanization. Indeed, Liddle and Lung (2014) uncovered a long-run, causal relationship from several aggregations of electricity consumption (i.e., total electricity consumption, industry electricity consumption, and residential electricity consumption) to urbanization for panels of high, middle, and low income countries, as well as for panels of non-OECD countries pooled geographically (i.e., Africa, Asia, and Latin America). In other words, the employment and quality of life opportunities that access to electricity afford likely encourage migration to cities, and thus, “cause” urbanization. However, Liddle and Lung (2014) could not reject pervasively causality from urbanization to electricity consumption, i.e., there was evidence of heterogeneity within the panels

### Alt causes to suburbanization

#### Alt causes to suburbanization

Thompson, Sustainable Prosperity Director of Research, 13

[David, October 2013, “SUBURBAN SPRAWL: EXPOSING HIDDEN COSTS, IDENTIFYING INNOVATIONS’ Sustainable Prosperity, http://thecostofsprawl.com/report/SP\_SuburbanSprawl\_Oct2013\_opt.pdf Accessed: 7-2-2017 BP]

Why have the suburbs grown so fast? Much of the literature places the blame on municipal plans and zoning rules. However, while such plans and rules allow for sprawl and even shape it, they don’t require it. There is however a demand for sprawl; people and firms have been choosing the suburbs without considering some of the other costs. Why is that?

A key factor is price: it’s cheaper to buy a house in the suburbs. In a 2012 survey, 79% of Toronto-area residents said prices influenced their choice of location; the survey concluded that housing affordability, not personal preference, may be driving homebuyers to the suburbs. Likewise, for firms that have a choice of location, the suburbs are generally cheaper.

Prices are lower in sprawling areas for a number of reasons. Distance from city amenities is one reason, but it is not the only one. Markets don’t exist in a vacuum; they exist in a framework of government policy and law, and are heavily influenced by it. For example, several decades of government spending on major free-to-use highway systems has enabled daily long distance commuting. Furthermore, the ongoing policy failure to address the other costs of road use (such as illness, injuries and climate change) subsidizes and perpetuates automobile use and suppresses the price of transportation to and from suburban locations.

Most significantly, undercharging developers for necessary infrastructure and municipal costs created by new greenfield developments artificially distorts the market in favour of sprawling development, though some municipalities are starting to examine the underlying costs. Utility pricing that fails to reflect the higher costs of servicing sprawling areas is another hidden subsidy

### Alt causes to segragation

#### Multiple alt causes to segregation

**Glink**, CEO/Founder at Best Money Moves LLC, **12**

(Ilyce, June 20, 2017, CBS Money Watch, “U.S. housing market remains deeply segregated,” <http://www.cbsnews.com/news/us-housing-market-remains-deeply-segregated/>, accessed 7/2/17, CD)

The real estate market today reflects an ugly, if often forgotten, truth: Residential segregation in the U.S. is alive and well. Although that problem is commonly thought of as a relic of America's racially troubled past, a recent study shows that fewer black and white families are today moving into multi-ethnic neighborhoods. "We pay a lot of attention to this proliferation of multi-ethnic neighborhoods, but they are still only a small part of the overall inter-neighborhood mobility picture for blacks and whites," said Kyle Crowder, a professor of sociology at the University of Washington and lead author of the study, in a statement. "Blacks tend to originate in neighborhoods with very high concentrations of blacks and, when they move, they tend to move to other places that have very high concentrations of blacks. Their typical destination is not a multi-ethnic neighborhood. The same goes for whites." Indeed, segregation appears to be on the rise despite an overall increase in the number of racially and ethnically mixed neighborhoods, which the study defines as areas whose populations were at least 10 percent black, 10 percent Hispanic or Asian, and 40 percent white. A range of factors, including **high levels of existing residential segregation, poverty, and large suburban populations**, tend to limit residential integration for black and white families. "Lower levels of these characteristics promote integration," Crowder said. "Additionally, mobility into more diverse neighborhoods is more common in metropolitan areas with large supplies of new housing and relatively large concentrations of racial and ethnic minorities."

### No Warming – 1NC

#### Adaptation and resilience solve warming

Hart 15 (Michael, he’s the Simon Reisman chair at the Norman Paterson School of International Affairs at Carleton University in Ottawa, former Fulbright-Woodrow Wilson Center Visiting Research, he was also a Scholar-in-Residence in the School of International Service and a Senior Fellow in the Center for North American Studies at American University in Washington, a former official in Canada’s Department of Foreign Affairs and International Trade, where he specialized in trade policy and trade negotiations, MA from the University of Toronto and is the author, editor, or co-editor of more than a dozen books, “Hubris: The Troubling Science, Economics, and Politics of Climate Change”, google books)

As already noted, the IPCC scenarios themselves are wildly alarmist, not only on the basic science but also on the underlying economic assumptions, which in turn drive the alarmist impacts. The result cannot withstand critical analysis. Economists Ian Castles and David Henderson, for example, show the extent to which the analysis is driven by the desire to reach predetermined outcomes.50 Other economists have similarly wondered what purpose was served by pursuing such unrealistic scenarios. It is hard to credit the defense put forward by Mike Hulme, one of the creators of the scenarios, that the IPCC is not engaged in forecasting the future but in creating “plausible” story lines of what might happen under various scenarios.51 Each scare scenario is based on linear projections without any reference to technological developments or adaptation. If, on a similar linear basis, our Victorian ancestors in the UK, worried about rapid urbanization and population growth in London, had made similar projections, they would have pointed to the looming crisis arising from reliance on horse-drawn carriages and omnibuses; they would have concluded that by the middle of the 20th century, London would be knee-deep in horse manure, and all of the southern counties would be required to grow the oats and hay to feed and bed the required number of horses. Technology progressed and London adapted. Why should the rest of humanity not be able to do likewise in the face of a trivial rise in temperature over the course of more than a century? The work on physical impacts is equally over the top. All the scenarios assume only negative impacts, ignore the reality of adaptation, and attribute any and all things bad to global warming. Assuming the GHG theory to be correct means that its impact would be most evident at night and during the winter in reducing atmospheric heat loss to outer space.52 It would have greater impact in increasing minimum temperatures than in increasing maximum temperatures. Secondary studies, however, generally ignore this facet of the hypothesis. The IPCC believes that a warmer world will harm human health due, for example, to increased disease, malnutrition, heat-waves, floods, storms, and cardiovascular incidents. As already noted there is no basis for the claim about severe-weather-related threats or malnutrition. The claim about heat-related deaths gained a boost during the summer of 2003 because of the tragedy of some 15,000 alleged heat-related deaths in France as elderly people stayed behind in city apartments without air conditioning while their children enjoyed the heat at the sea shore during the August vacation. Epidemiological studies of so-called "excess" deaths resulting from heat waves are abused to get the desired results. Similar studies of the impact of cold spells show that they are far more lethal than heat waves and that it is much easier to adapt to heat than to cold.53 More fundamentally, this, like most of the alarmist literature, ignores the basics of the AGW hypothesis: the world will not see an exponential increase in summer, daytime heat (and thus more heat waves), but a decrease in night-time and winter cooling, particularly at higher latitudes and altitudes. Based on the AGW hypothesis, Canada, China, Korea, Northern Europe, Australia, New Zealand, South Africa, Chile, and Argentina will see warmer winters and warmer nights. There are clear benefits to such a development, even if there may also be problems, but the AGW industry tends to ignore the positive aspects of their alarmist scenarios. The feared spread of malaria, a much repeated claim, is largely unrelated to climate. Malaria’s worst recorded outbreak was in Siberia long before there was any discussion of AGW. Similarly, the building of the Rideau Canal in Ottawa in the 1820s was severely hampered by outbreaks of malaria due to the proximity of mosquito-infested wetlands in the area. Malaria remains widespread in tropical countries today in part because of the UN’s lengthy embargo on the use of DDT, the legacy of an earlier alarmist disaster. Temperature is but one factor, and a minor one at that, in the multiple factors that affect the rise or decline in the presence of disease-spreading mosquitoes. Wealthier western countries have pursued public health strategies that have reduced the incidence of the dis- ease in their countries. Entomologist Paul Reiter, widely recognized as the leading specialist on malaria vectors and a contributor to some of the early work of the IPCC, was aghast to learn how his careful and systematic analysis of the potential impacts had been twisted in ways that he could not endorse. In a recent paper, he concludes: “Simplistic reasoning on the future prevalence of malaria is ill-founded; malaria is not limited by climate in most temperate regions, nor in the tropics, and in nearly all cases, ’new' malaria at high altitudes is well below the maximum altitudinal limits for transmission. Future changes in climate may alter the prevalence and incidence of the disease, but obsessive emphasis on ’global warming' as a dominant parameter is indefensible; the principal determinants are linked to ecological and societal change, politics and economics.”54 Catastrophic species loss similarly has little foundation in past experience.55 Even if the GHG hypothesis were to be correct, its impact would be slow, providing significant scope and opportunity for adaptation, including by ﬂora and fauna. One of the more irresponsible claims was made by a group of UK modelers who fed wildly improbable scenarios and data into their computers and produced the much-touted claim of massive species loss by the end of the century. There are literally thousands of websites devoted to spreading alarm about species loss and biodiversity. Global warming is but one of many claimed human threats to the planet’s biodiversity. The claims, fortunately, are largely hype, based on computer models and the estimate by Harvard naturalist Edward O. Wilson that 27,000 to 100,000 species are lost annually - a figure he advanced purely hypothetically but which has become one of the most persistent of environmental urban myths. The fact is that scientists have no idea of the extent of the world's ﬂora and fauna, with estimates ranging from five million to 100 million species, and that there are no reliable data about the rate of loss. By some estimates, 95 per cent of the species that ever existed have been lost over the eons, most before humans became major players in altering their environment. A much more credible estimate of recent species loss comes from a surprising source, the UN Environmental Program. It reports that known species loss is slowing reaching its lowest level in 500 years in the last three decades of the 20th century, with some 20 reported extinctions despite increasing pressure on the biosphere from growing human population and industrialization.57 The alarmist community has also introduced the scientifically unknown concept of "locally extinct,” often meaning little more than that a species of plant or animal has responded to adverse conditions by moving to more hospitable circumstances, e.g., birds or butterflies becoming more numerous north of their range and disappearing at its extreme southern extent. Idso et al. conclude: “Many species have shown the ability to adapt rapidly to changes in climate. Claims that global warming threatens large numbers of species with extinction typically rest on a false definition of extinction (the loss of a particular population rather than en- tire species) and speculation rather than real-world evidence. The world’s species have proven very resilient, having survived past natural climate cycles that involved much greater warming and higher C02 concentrations than exist today or are likely to exist in the coming centuries?“

### No Warming – 2NC

#### 4 degree warming can’t cause extinction

Hansen et al., PhD, head climate scientist at NASA, professor in the Department of Earth and Environmental Sciences at Columbia University, 13

(James, 9-16-2013, “Climate sensitivity, sea level and atmospheric carbon dioxide,” Royal Society, http://rsta.royalsocietypublishing.org/content/371/2001/20120294.full)

The runaway greenhouse effect has several meanings ranging from, at the low end, global warming sufficient to induce out-of-control amplifying feedbacks, such as ice sheet disintegration and melting of methane hydrates, to, at the high end, a Venus-like hothouse with crustal carbon baked into the atmosphere and a surface temperature of several hundred degrees, a climate state from which there is no escape. Between these extremes is the moist greenhouse, which occurs if the climate forcing is large enough to make H2O a major atmospheric constituent [106]. In principle, an extreme moist greenhouse might cause an instability with water vapour preventing radiation to space of all absorbed solar energy, resulting in very high surface temperature and evaporation of the ocean [105]. However, the availability of non-radiative means for vertical transport of energy, including small-scale convection and large-scale atmospheric motions, must be accounted for, as is done in our atmospheric general circulation model. Our simulations indicate that no plausible human-made GHG forcing can cause an instability and runaway greenhouse effect as defined by Ingersoll [105], in agreement with the theoretical analyses of Goldblatt & Watson [128]. On the other hand, conceivable levels of human-made climate forcing could yield the low-end runaway greenhouse. A forcing of 12–16 W m−2, which would require CO2 to increase by a factor of 8–16 times, if the forcing were due only to CO2 change, would raise the global mean temperature by 16–24°C with much larger polar warming. Surely that would melt all the ice on the planet, and probably thaw methane hydrates and scorch carbon from global peat deposits and tropical forests. This forcing would not produce the extreme Venus-like baked-crust greenhouse state, which cannot be reached until the ocean is lost to space. A warming of 16–24°C produces a moderately moist greenhouse, with water vapour increasing to about 1% of the atmosphere's mass, thus increasing the rate of hydrogen escape to space. However, if the forcing is by fossil fuel CO2, the weathering process would remove the excess atmospheric CO2 on a time scale of 104–105 years, well before the ocean is significantly depleted. Baked-crust hothouse conditions on the Earth require a large long-term forcing that is unlikely to occur until the sun brightens by a few tens of per cent, which will take a few billion years [121].

#### No impact for 100 years – and their authors overestimate everything

Ridley 15 (Matt, DPhil in Zoology from Oxford, member of the Science and Technology Select Committee in the House of Lords of the UK, fellow of the Royal Society of Literature and of the Academy of Medical Sciences, and a foreign honorary member of the American Academy of Arts and Sciences. He is honorary president of the International Centre for Life in Newcastle, “Climate Change Will Not Be Dangerous for a Long Time”, http://www.scientificamerican.com/article/climate-change-will-not-be-dangerous-for-a-long-time/)

The climate change debate has been polarized into a simple dichotomy. Either global warming is “real, man-made and dangerous,” as Pres. Barack Obama thinks, or it’s a “hoax,” as Oklahoma Sen. James Inhofe thinks. But there is a third possibility: that it is real, man-made and not dangerous, at least not for a long time. This “lukewarm” option has been boosted by recent climate research, and if it is right, current policies may do more harm than good. For example, the Food and Agriculture Organization of the United Nations and other bodies agree that the rush to grow biofuels, justified as a decarbonization measure, has raised food prices and contributed to rainforest destruction. Since 2013 aid agencies such as the U.S. Overseas Private Investment Corporation, the World Bank and the European Investment Bank have restricted funding for building fossil-fuel plants in Asia and Africa; that has slowed progress in bringing electricity to the one billion people who live without it and the four million who die each year from the effects of cooking over wood fires. In 1990 the Intergovernmental Panel on Climate Change (IPCC) was predicting that if emissions rose in a “business as usual” way, which they have done, then global average temperature would rise at the rate of about 0.3 degree Celsius per decade (with an uncertainty range of 0.2 to 0.5 degree C per decade). In the 25 years since, temperature has risen at about 0.1 to 0.2 degree C per decade, depending on whether surface or satellite data is used. The IPCC, in its most recent assessment report, lowered its near-term forecast for the global mean surface temperature over the period 2016 to 2035 to just 0.3 to 0.7 degree C above the 1986–2005 level. That is a warming of 0.1 to 0.2 degree C per decade, in all scenarios, including the high-emissions ones. At the same time, new studies of climate sensitivity—the amount of warming expected for a doubling of carbon dioxide levels from 0.03 to 0.06 percent in the atmosphere—have suggested that most models are too sensitive. The average sensitivity of the 108 model runs considered by the IPCC is 3.2 degrees C. As Pat Michaels, a climatologist and self-described global warming skeptic at the Cato Institute testified to Congress in July, certain studies of sensitivity published since 2011 find an average sensitivity of 2 degrees C. Such lower sensitivity does not contradict greenhouse-effect physics. The theory of dangerous climate change is based not just on carbon dioxide warming but on positive and negative feedback effects from water vapor and phenomena such as clouds and airborne aerosols from coal burning. Doubling carbon dioxide levels, alone, should produce just over 1 degree C of warming. These feedback effects have been poorly estimated, and almost certainly overestimated, in the models. The last IPCC report also included a table debunking many worries about “tipping points” to abrupt climate change. For example, it says a sudden methane release from the ocean, or a slowdown of the Gulf Stream, are “very unlikely” and that a collapse of the West Antarctic or Greenland ice sheets during this century is “exceptionally unlikely.” If sensitivity is low and climate change continues at the same rate as it has over the past 50 years, then dangerous warming—usually defined as starting at 2 degrees C above preindustrial levels—is about a century away. So we do not need to rush into subsidizing inefficient and land-hungry technologies, such as wind and solar or risk depriving poor people access to the beneficial effects of cheap electricity via fossil fuels. As the upcoming Paris climate conference shows, the world is awash with plans, promises and policies to tackle climate change. But they are having little effect. Ten years ago the world derived 87 percent of its primary energy from fossil fuels; today, according the widely respected BP statistical review of world energy, the figure is still 87 percent. The decline in nuclear power has been matched by the rise in renewables but the proportion coming from wind and solar is still only 1 percent. Getting the price of low-carbon energy much lower will do the trick. So we should spend the coming decades stepping up research and development of new energy technologies. Many people may reply that we don’t have time to wait for that to bear fruit, but given the latest lukewarm science of climate change, I think we probably do.

### Irreversible – 1NC

#### They can’t solve – Co2 levels have to be at 350 ppm max – anything else triggers the impact

McKibben 7 (Bill McKibben, Schumann Distinguished Scholar at Middlebury College, American environmentalist, author, and journalist who has written extensively on the impact of global warming, no date, but website was founded in 2007 so whatever, <http://www.350.org/en/node/48>)

**In early 2008,** Jim Hansen **and a team of researchers** gave us a new number, verified for the first time by real-time observation (and **also by reams of** new paleo-climatic data). They said that 350 parts per million CO2 was the upper limit if we wished to have a planet "similar to the one on which civilization developed and to which life on earth is adapted." That number is unrefuted; indeed, a constant flow of additional evidence supports it from many directions. Just this week, for instance, oceanographers reported that longterm atmospheric levels above 360 ppm would doom coral reefs worldwide. It is**, therefore,** no longer possible to defend higher targets as a bulwark against catastrophic change. **The Global Humanitarian Forum reported recently that** climate change was already claiming 300,000 lives per year**—that should qualify as catastrophic. A new Oxfam report makes very clear the degree of suffering caused by the warming we've already seen, and adds "Warming of 2 degrees C entails a devastating future for at least 600 million people," almost all of them innocent of any role in causing this trouble.** If the Arctic melts at less than one degree, then two degrees can't be a real target. This is simply how science works. New information drives out the old. **You could, logically, defend** targets like 450 **or 2 degrees C as the best we could hope for politically, especially if you add that they represent absolute upper limits that we must bounce back below as quickly as possible. But even that is politically problematic, because it** implies—to policy makers **and the general public—**that we still have atmosphere left in which to put more carbon**, and time to gradually adjust policies.** We don't—not with feedback loops like methane release starting to kick in with a vengeance**. It is, we think, far wiser to tell people the best science, in part because it motivates action.** It's the difference between a doctor telling you that you really should think about changing your diet and a doctor telling you your cholesterol is already too high and a heart attack is imminent.

#### And, we just hit 400 ppm – that makes warming irreversible

Chitransh 16 (Anugya, science writer for Kicker, MSN, and Times of India, MA In Journalism from CUNY, “Time to freak out: Earth’s carbon dioxide levels are now irreversible”, http://gokicker.com/2016/05/11/time-freak-earths-carbon-dioxide-levels-now-irreversible/)

[[graphics omitted]]

The world is getting ready to cross a major climate change marker which will more or less prove that global warming is irreversible. This is Cape Grim, located in the northwestern part of Tasmania, Australia: It's the most accurate spot in the southern hemisphere to monitor carbon dioxide in the atmosphere. And for the first time, Cape Grim will be at 400 parts per million (ppm) of carbon dioxide. Just FYI, the safe level of carbon dioxide is 350 ppm. Once this happens, the level of carbon dioxide on Earth will never again go below 400 ppm, according to scientists. In other words, we're in a state of permanent danger from CO2. Another station in Hawaii already crossed the 400 ppm milestone in 2013. The last time the levels were this high, humans did not exist.

### Irreversible – 2NC

#### 400 ppm means warming’s inevitable – they can’t solve

Slezak 16 (Michael, Australia's environment reporter for The Guardian, spent four years at New Scientist, where he won several awards for his journalism, “World's carbon dioxide concentration teetering on the point of no return”, http://www.theguardian.com/environment/2016/may/11/worlds-carbon-dioxide-concentration-teetering-on-the-point-of-no-return)

The world is hurtling towards an era when global concentrations of carbon dioxide never again dip below the 400 parts per million (ppm) milestone, as two important measuring stations sit on the point of no return. The news comes as one important atmospheric measuring station at Cape Grim in Australia is poised on the verge of 400ppm for the first time. Sitting in a region with stable CO2 concentrations, once that happens, it will never get a reading below 400ppm. Meanwhile another station in the northern hemisphere may have gone above the 400ppm line for the last time, never to dip below it again. “We’re going into very new territory,” James Butler, director of the global monitoring division at the US National Oceanographic and Atmospheric Administration, told the Guardian. When enough CO2 is pumped into the atmosphere from burning fossil fuels, the seasonal cycles that drive the concentrations up and down throughout the year will eventually stop dipping the concentration below the 400ppm mark. The 400ppm figure is just symbolic, but it’s psychologically powerful, says Butler. The first 400ppm milestone was reached in 2013 when a station on the Hawaiian volcano of Mauna Loa first registered a monthly average of 400ppm. But the northern hemisphere has a large seasonal cycle, where CO2 concentrations decrease in summer but increase in winter. So each year since it has dipped back below 400ppm. Then, combining all the global readings, the global monthly average was found to pass 400ppm in March 2015. In the southern hemisphere, the seasonal cycle is less pronounced and atmospheric levels of CO2 hardly drop, usually just slowing in the southern hemisphere summer months. This week scientists revealed to Fairfax Media that Cape Grim had a reading of 399.9ppm on 6 May. Within weeks it would pop above 400ppm and never return. “We wouldn’t have expected to reach the 400ppm mark so early,” said David Etheridge, an atmospheric scientist from the CSIRO, which runs the Cape Grim station. “With El Nino, the ocean essentially caps off it’s ability to take up heat so the concentrations are growing fast as warmer land areas release carbon. So we would have otherwise expected it to happen later in the year. “No matter what the world’s emissions are now, we can decrease growth but we can’t decrease the concentration. “Even if we stopped emitting now, we’re committed to a lot of warming.” Over in Hawaii, the Mauna Loa station, which is the longest-running in the world, is sitting above 400 ppm, and for the first time, might never dip below it again. “It’s hard to predict,” Butler told the Guardian. “It’s getting real close.” Meanwhile, the global average, after controlling for the seasonal cycle, popped above 400ppm late last year. Within a couple of years, the seasonal dips will never drop below 400ppm in the global average too. All together, the world is on the verge of no measurements ever showing a reading under 400ppm. “There’s an answer to dealing with this and that’s to stop burning fossil fuels,” Butler said. Butler also emphasised that this CO2 is locking in future warming. “It’s like lying in bed with your electric blanket set to three. You jack it up to seven – you don’t get hot right away but you do get hot. And that’s what we’re doing.”

## Solvency Answers

### RTE Fails – 1NC

#### Right To Education fails — many other policies also key.

Darby and Levy 11 — Derrick Darby, Associate Professor in the Department of Philosophy at the University of Kansas, holds a Ph.D. in Philosophy from the University of Pittsburgh, and Richard E. Levy, J.B. Smith Distinguished Professor of Constitutional Law at the University of Kansas School of Law, holds a J.D. from the University of Chicago School of Law, 2011 (“Slaying The Inequality Villain In School Finance: Is The Right To Education The Silver Bullet?,” *Kansas Journal of Law & Public Policy* (20 Kan. J.L. & Pub. Pol'y 351), Summer, Available Online to Subscribing Institutions via Lexis-Nexis)

C. Implications Whether school finance litigation relies on adequacy or equity and whether one chooses to understand the philosophical demands of a right to education in terms of adequacy or equality, attending to the empirical evidence suggests that it will take much more than improved resources to address the complex problem of educational inequality. Indeed, once we expand our horizons to consider the full and complex array of factors that affect educational achievement, it is clear that the right to an education cannot alone bear the burden of alleviating educational inequality, especially if the right is understood in terms of educational funding. To illustrate, assuming that adequacy theorists are correct about the negative impact of segregation on unequal group-based educational outcomes, societal efforts may have to reach well beyond schools, perhaps to mandate greater integration in places where people live, work, worship, and play. It is unlikely that simply bringing young and middle school age children together in school for a few hours a day, five days a week, will be enough to overcome many of the negative effects of voluntary segregation in other parts of society. Of course, such a proposal would be met with serious resistance and criticism. Still, it may be difficult for proponents of greater integration to avoid moving in this direction. If we consider additional factors, such as the health and cognitive effects of poverty, teacher perceptions of student ability, or teacher expectations or student expectations of discrimination in the labor market as factors shaping educational outcomes, then it is also clear that merely recognizing a right to education will not suffice. We would have to combine this right with a larger effort to reduce poverty, greater enforcement of existing anti-discrimination laws, or the development of new approaches to targeting subtle and not so subtle forms of discrimination throughout society. Hence, a serious appreciation of the complexity of the empirical debate regarding the factors that shape educational outcomes seems to demand a more cautious assessment about the prospect of recognizing a right to education as the silver bullet to slay the educational inequality villain. Although we may someday have a better empirical understanding of the factors affecting educational success, it is clear that scholars have yet to settle this matter. For practical purposes, then, what matters most is that we are more circumspect when we draw conclusions about weighty matters pertaining to the demands of equality and justice. In the present case, the variety of competing explanations of unequal educational outcomes forces us to curb our enthusiasm for the prospects that recognizing a right to education will suffice to eradicate educational inequalities. Many factors affect educational outcomes - some related to resources, others related to the educational system and the manner in which education is delivered, and many that are unrelated to the educational system. Pending a final settlement of these matters, which is highly improbable, it will be all the more difficult for courts, lawyers, and [\*377] policymakers to sort out the problem of educational inequality. n121

### RTE Fails – 2NC

#### RTE doesn’t solve broader inequality.

**Levy and Darby**, J.B. Smith Distinguished Professor of Constitutional Law and University of Michigan, Philosophy, Professor, **11**

(Richard E. and Derrick, University of Kansas School of Law, “Slaying the Inequality Villain in School Finance: Is the Right to Education the Silver Bullet?,” <https://kuscholarworks.ku.edu/handle/1808/11398>, 6/28/17, CD)

This article, part of a symposium on Educational Reform in the 21st Century, considers the relationship between the recognition of a right to education and the amelioration of educational inequalities. As currently understood and implemented, the right to education is focused on the question of funding, and assumes a correlation between funding and educational achievement. This relationship, however, is a complex one, and educational achievement is influenced by numerous factors, many of which are extrinsic to the educational system or funding for it. Thus, legal and philosophical debates about the recognition, nature, and content of a right to education must acknowledge that addressing disparities or inadequacies in educational funding will not necessarily secure improved educational outcomes. As currently understood, the right to education cannot be the silver bullet for which many may have hoped, because it focuses on educational inputs (resources) rather than educational outcomes (achievement). Indeed, the focus in educational policy circles has increasingly shifted from educational inputs to educational outcomes. We believe that parties and courts involved in school finance litigation may also begin to rely on outcomes in assessing whether states are satisfying their constitutional obligations regarding the right to education. Such an outcomes-based approach may hold promise as a means to bridge the gap between our aspirations concerning the right to education and the realities of persistent and substantial educational inequalities. At the same time, however, we must recognize that the educational system alone is not responsible for educational inequalities, which means that education reform alone cannot completely solve this problem. Although a new wave of outcomes-based litigation may help to address the problem, it is a partial solution at best. Our argument unfolds in several steps. We begin with a review of the history of school finance litigation, highlighting the “equity” and “adequacy” aspects of the right to education. We then discuss how “equality” and “adequacy” theories factor into opposing philosophical conceptions of a just distribution of educational resources and opportunities, and consequently inform opposing conceptions of the right to education. We observe that a critical - yet largely unanswered - empirical question is whether the recognition of a right to education (whatever its content) will improve educational outcomes. After considering social scientific literature on the racial achievement gap, we argue that recognizing a right to education cannot be the silver bullet to slay the villain of educational inequality. Nevertheless, adequate and equitable funding remains the basis for school finance litigation, so litigants and courts must find a way to link funding with improving educational outcomes. We predict that school finance litigation will increasingly draw on the tools for assessing educational outcomes developed by education experts and policymakers as the basis for evaluating constitutional violations and remedies, and outline what such a new wave of school finance litigation might look like.

### RTE Doesn’t Solve Funding

#### The plan costs more than what is allocated to the Department of Defense—50% of the total federal budget

Ciolino, Tulane University, Juris Doctorate Degree, 16

[Max, 2016, University of Pennsylvania Journal of Law and Social Change, “The Right to an Education and the Plight of School Facilities: A Legislative Proposal,” file:///Users/anthonywinchell/Downloads/19UPaJLSocChange107.pdf, pp. 125-126, accessed 6/30/17, AW]

B. Federal Fiscal Capacity

The budget of the United States government is larger than the combined budgets of the total funding sources of all fifty states combined. According to NASBO, the combined total funding for state governments from all sources in 2015 was $1.8 trillion. 12 The Fiscal Year 2014, according to the White House's budget manual, included expenditures of nearly $3.8 trillion.1 24 The aggregate funding needs of the states, compared to the states' funding from all sources resulted in a need that amounted to about 17.8 % if the NEA's conservative estimate is accurate, and 36.1% if the 21st Century's $650 billion estimate is accurate. Recall, however, that funding from all sources is not an accurate way to conduct budgetary analysis, because the majority of state funds are earmarked for specific purposes prior to a legislative session. Similarly, the federal budget for the Fiscal Year 2014 encompassed $3.8 trillion in expenditures,125 but only about $1.06 trillion of these funds were contained within the discretionary funding mechanism.126 Making matters worse, the federal government anticipated total receipts to amount to about $3.03 trillion. 127 In other words, the federal government was operating at a deficit of over $700 billion dollars, or more than 20% of the total budget.

When the federal budget is broken out into its member departments and agencies by discretionary funding only, the Department of Education is the third most highly funded department. The Department of Education was given an operating budget of $71.2 billion, or 6.7% of the total discretionary budget. 12 The Department of Health and Human Services was the second highest funded department, at $78.3 billion or 7.4% of the discretionary budget. 129 And the Department of Defense was, predictably, the most highly funded department. In Fiscal Year 2014, the Department of Defense was allocated $526.6 billion, or 49.8% of the total discretionary budget. 130

It sheds further light on the scope of the school facilities funding problem that, by using more generous estimates, it would take more resources than those allotted to the entire Department of Defense just to modernize America's schools! 13 1 Furthermore, the facilities needs estimates could only barely be fully funded using the 2014 federal deficit spending.132 In other words, school facility financing needs are beyond the fiscal capacity of the federal government. When this is combined with the limitations imposed on states discussed above, or the $369 billion in outstanding bonds being held by local governments and school districts,133 school facility funding is in a difficult position.

### Litigation fails

#### courts fail – lack of authority, legislative politics, inefficient litigation, and limited solutions

Black, Howard University Law Associate Professor and Education Rights Center Director, 10

(Derek, 2010, William and Mary Law Review, “UNLOCKING THE POWER OF STATE CONSTITUTIONS WITH EQUAL PROTECTION: THE FIRST STEP TOWARD EDUCATION AS A FEDERALLY PROTECTED RIGHT,” Volume: 51, Number 1343, p. 1371-1372, DL)

These problems continue for at least two reasons. First, even if courts were qualified for the job, courts lack the authority to do legislatures' job of allocating funds and drafting legislation. Courts simply strike down unconstitutional statutes and funding formulas. Creating funding formulas and distributing resources remain within the sole purview of legislatures and their political processes. Thus, legislatures can and do make the minimal changes necessary to satisfy court orders, without also eliminating other historical ways of inequitably allocating funds.13 ° In fact, many, if not most, state funding formulas still fail to distribute resources based on actual student needs.131 Instead, they distribute resources based on politics and the availability of funds.132

Second, although equity and student-based funding can be achieved at a single moment in time, litigation is not a suitable vehicle for maintaining equity and student-based funding over time. Whereas litigation has been the only force sufficient enough to move state legislatures toward greater equity and quality in their schools,133 litigation is an inherently inefficient means of reform. Litigation costs are staggering and the production of research circumscribed. Most important, litigation is finite, starting and ending at definite points. Courts lack the capacity to project into the future and fashion remedies that are self-perpetuating. The only other option is to monitor legislatures directly on a yearly basis to ensure compliance, but most courts lack the will for what can become a perpetual battle. 3 4 In fact, some commentators suggest that although state courts became increasingly involved in education reform over the last decade, they are now less receptive to litigation and are questioning their own ability to produce long term solutions. 135